

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 4 May 2005

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

DR THE HONOURABLE JOSEPH LEE KOK-LONG

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

THE HONOURABLE MA LIK, J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE FINANCIAL SECRETARY

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

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

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

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

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.
SECRETARY FOR SECURITY

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

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/Instruments | <i>L.N. No.</i> |
|--|-----------------|
| Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 2005 | 58/2005 |
| Tax Reserve Certificates (Rate of Interest) (No. 3) Notice 2005..... | 59/2005 |
| Legal Practitioners (Amendment) Ordinance 1998 (Commencement) Notice 2005 | 60/2005 |

Other Paper

Report of the Subcommittee to Study the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mr LAU Kong-wah will address the Council on the Report of the Subcommittee to Study the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005.

Report of the Subcommittee to Study the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005

MR LAU KONG-WAH (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee to Study the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005 (the Subcommittee), I now report on the deliberations of the Subcommittee.

On 18 March 2005, the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005 (the Notice) was published in the Gazette under section 55(6) of the Eastern Harbour Crossing Ordinance (the EHC Ordinance). The Notice seeks to amend the Schedule to the EHC Ordinance to vary the EHC Road Tunnel tolls pursuant to the arbitration award. The Notice took effect on 1 May 2005.

The Subcommittee held three meetings to discuss the issue with the Administration, the New Hong Kong Tunnel Company Limited, and Dr Raymond SO, Associate Professor of the Department of Finance of The Chinese University of Hong Kong.

The Subcommittee is very much concerned with the arbitrators' determination to increase the tolls for private cars and taxis by \$10, from \$15 to \$25, with corresponding increases for other types of vehicles. The Subcommittee has asked the tunnel company to consider reducing the actual level of increase, deferring the effective date of the increase or implementing the new tolls in stages. However, the request has not been accepted by the tunnel company.

The Subcommittee is very disappointed at the magnitude of the toll increase which does not take into account the prevailing economic conditions, the affordability of the general public, and the sentiments of the community. The Subcommittee is gravely concerned about the increase in the EHC tolls and the resultant economic and traffic implications. The EHC toll increase may induce public transport operators and the trucking industries to raise the fares of public transport services and delivery charges, hence adding to the financial burden of the public and the business sector. There is also concern that the EHC toll increase would aggravate the traffic congestion at the Cross-Harbour Tunnel and its surrounding areas and approach roads. As such, the Subcommittee considers that there is an urgent need to address the problem of uneven distribution of traffic amongst the three road harbour crossings; otherwise, the community as a whole will have to bear substantial social and economic costs.

In the course of discussions, some members expressed that whilst the Arbitrators' Award was not welcomed by the general public, it was an outcome of due process in full compliance with law. In fact, the power of the Legislative Council to amend the Notice is also restricted. The Legislative Council is not

able to make any alterations to the toll levels and the timing for implementation of the new tolls, and the Legislative Council is not in a position to alter the decision of the Arbitrators.

The Subcommittee notes that in respect of the EHC, there had been two arbitrations conducted: one in 1997 and one this year. The Subcommittee considers that since its defeat in the 1997 arbitration, the Administration has not come up with effective measures to address the problem of excessively high tunnel tolls and the uneven distribution of traffic among the harbour crossings. Based on the results of the two arbitrations, the Subcommittee has urged the authorities to learn the lessons seriously and adopt a more pragmatic approach to negotiate with the tunnel company for a solution to the problem.

Some members also criticized the Government for its lack of vigorous actions to negotiate with the tunnel company with a view to mitigating the impact of the toll increase from this arbitration.

Regarding the calculation of rate of return, the Subcommittee notes that the Administration and the tunnel company have adopted the internal rate of return (IRR) on equity for calculating the rate of return for the EHC. However, Dr Raymond SO, Associate Professor of the Department of Finance of The Chinese University of Hong Kong, holds a different view and suggests that another approach should be used to assess the rate of return on equity. The Subcommittee notes that application of different approaches for calculation would give rise to different rates of return, and hence, the need and magnitude of the EHC toll increase.

Given the wide public concern over the appropriateness of using the IRR on equity as a yardstick for determining a reasonable but not too excessive remuneration for the EHC, the Subcommittee has examined the subject matter in detail.

The Subcommittee notes that the IRR on equity has commonly been used for calculating the rate of return of Build-Operate-Transfer projects. Such calculation has taken into account the impact of time on cash value of the project during the whole period. Similarly, the IRR on equity has also been adopted as the basis in drawing up the fee schedules for the Western Harbour Crossing and Route 3.

Regarding the impact on traffic, the Subcommittee anticipates that the Cross-Harbour Tunnel and its approach roads will become seriously congested after the new tolls of the EHC have taken effect. The Subcommittee has urged the Administration to put in place appropriate measures to closely monitor the traffic condition and address the possible disruptions.

At the meeting on 28 April 2005, the Subcommittee passed a motion strongly reprimanding the tunnel company for substantially increasing the tolls in disregard of the people's livelihood, and calling on the tunnel company to expeditiously reach an agreement with the Government. The Subcommittee requested the tunnel company to defer its toll increase before such an agreement was reached.

In view of the very limited power which the Legislative Council can exercise in respect of the Notice, the Subcommittee considers that it will not pursue the matter further, but the Panel on Transport will follow up the subsequent work. The Subcommittee however urges the Administration to closely liaise with the tunnel company with a view to deferring the toll increase and implementing as soon as possible the proposal to resolve the uneven distribution of traffic among the three road harbour crossings. Thank you, Madam President.

PRESIDENT (in Cantonese): According to Rule 21(5) of the Rules of Procedure, Members or public officers wishing to speak on subsidiary legislation laid on the Table of the Legislative Council should inform me before the meeting and obtain my consent. No debate should be conducted on the addresses of Members or public officers but the President may, at his/her discretion, allow short questions to be put to the Members or the public officers who have spoken, that is, the President allows other Members to put short questions to the Members or public officers who have spoken, for elucidating any matter raised in the course of the addresses. Three Members have made this request and I have given my consent. Therefore, Mr WONG Kwok-hing, Mr Andrew CHENG and Ms Miriam LAU will address the Council on the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005 respectively. This Notice was laid on the Table of the Council on 6 April 2005.

MR WONG KWOK-HING (in Cantonese): Madam President, since the EHC announced its decision to increase its toll by 67% in accordance with the Arbitrator's Award last month, there has been strong objection in the community. At present, the general public, the transport trades and the political parties unanimously hope that the EHC can show understanding of the present situation of society by deferring the increase or lowering the rate of increase. But the EHC company refused to give in. As such, the Subcommittee to Study the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005 (the Subcommittee) endorsed my motion to reprimand the EHC company. I would like to thank colleagues again for their support.

Madam President, nowadays one of the issues to which corporate management attaches great importance is "corporate social responsibility". To put it in a simpler term, it is the corporate conscience. In fact, enterprises will no longer solely consider profits or shareholders' interests as their only operational standard. They at the same time have to be socially responsible and committed by substantially repaying the community in a sustainable manner by returning profits gained from the community, so as to maintain a favourable social and business environment and foster a "win-win" situation between the community and the corporate.

However, judging from the EHC toll increase, the EHC company is determined to pursue its "reasonable but not excessive" remuneration right in the very beginning without considering the affordability of the public, or the chain effect of inducing price increases in Hong Kong. Everyone knows that our economy was in the downturns and deflation persisted in the past few years. The public has been beset by unemployment. It is thus fair and reasonable for the Government to reject the EHC company's application for toll increase at that time.

It is common knowledge that transport expenses are high in Hong Kong. A worker, despite minimizing expenses on consumer products or food, still has to spend 20% to 30% of their salary on transport. The general public will definitely have to shoulder an even greater burden in transport expenses with the present toll increase of the EHC. As far as I know, taxis and public light buses have explicitly stated their intention to transfer the toll increase onto passengers. As for franchised buses and other transport trades, they have also indicated the toll increase will add to their cost, making their operation even more difficult. The most worrying issue is that the toll increase will further aggravate the uneven distribution of traffic among the three road harbour crossings and thus make the already congested traffic of the Cross-Harbour Tunnel even worse.

Have the EHC company considered all these chain effects on the people's livelihood and our economy when insisting on its toll increase?

Madam President, after the Government has received the arbitrator's Award, it did not release such information to the Legislative Council for discussion until the expiry of the appeal period and went ahead to gazette the toll increase despite discussion on the matter was still ongoing. We all know that the Government was informed of the Arbitrator's Award in February this year. However, the Government only put up those 10-odd proposals to solve the problem of uneven distribution of traffic among the three road harbour crossings when it was pressurized by the public and the Legislative Council with regard to the toll increase issue.

The three road harbour crossings are vital links between Hong Kong Island and Kowloon peninsula. They are also the bottleneck of our land traffic. It is a matter of the greatest urgency for the Government to address the issue of uneven distribution of traffic among them. I therefore urge the Government to make no delay but expeditiously launch relevant measures to put an end to this issue which involves the livelihood of all people in Hong Kong. Moreover, I would like to urge the Government once again to introduce as soon as possible the fare adjustment system put forth by the Secretary which allows for fare increases and decreases, so as to respond to the public discontent towards the high transport expenses.

Madam President, I so submit.

MR ANDREW CHENG (in Cantonese): Madam President, the contents of this notice are actually very brief. An adjustment is made to the tunnel tolls payable by each type of vehicles as set out in the schedule to the Ordinance. However, over the past two months, there has been much public concern about the changes to these tunnel tolls.

Madam President, the adjustment to tunnel tolls this time is made as a result of arbitration. Public reaction to the adjustment of tunnel tolls can be seen clearly in the traffic volume for each tunnel yesterday and today. We in the Democratic Party share the same feeling with the public on this issue. The public has to face an unscrupulous tunnel company. But our Government is a lame government and what it does every day is only to ask people to leave their homes half an hour earlier. This makes the people of Hong Kong spend one to

two hours more every day on traffic on top of their long working day. So, Madam President, I hope the Government can face the rise in tunnel tolls squarely. In the motion moved by Mr WONG Kwok-hing, I hope the tunnel company can be asked to reach a consensus with the Government as soon as possible so that a holding company can be set up to make recommendations on tunnel tolls and traffic flow so as to address the present uneven traffic volumes in the three tunnels.

The Notice today is about the extent of the increase in tunnel tolls charged by the Eastern Harbour Crossing. In future, the Government has to face and deal with the outcome of the arbitration related to the Tate's Cairn Tunnel. I urge the Government to examine what can be learnt when a review is made on how arbitration was undertaken with respect to the Eastern Harbour Crossing. This may enlighten the Government on how we are to deal with our paid tunnels and whether or not a plan acceptable to all can be proposed to tackle the problem of uneven traffic flows in the tunnels. A long-term policy on the tunnels is an urgent matter for the Government.

Madam President, I am sorry. I know you are reading the draft speech I submitted yesterday. I am sorry to say that the draft which my colleague gave you yesterday was quite brief because that was what I thought would be allowed. But hearing Mr LAU Kong-wah and Mr WONG Kwok-hing mention many viewpoints raised in the Subcommittee, I have made a somewhat longer speech, and I do not think I dare to say any more than that. *(Laughter)* However, I hope Dr Sarah LIAO, Secretary for the Environment, Transport and Works, who is not here today, can realize that the public does have expectations for the Government. I hope Mr Donald TSANG, Chief Secretary for Administration and Acting Chief Executive, will not just sit back and do nothing. He must not let the burden of social costs to be added on to Hong Kong people, who are working long hours every day, as a result of spending so much time on traffic.....

PRESIDENT (in Cantonese): I have allowed you to speak as much as possible, but your speech is getting very long. Every word said by those two Members is exactly the same as what is in the draft speeches they submitted in advance. Actually, I would like to make use of this opportunity to tell Members why the draft speeches on subsidiary legislation should be submitted to the President in advance. The Rules of Procedure stipulate that no debate may arise on the address. Therefore, if there are words in a speech which may compel the party

being criticized to rise and seek permission to explain his position, it will not be possible for me to act according to the Rules of Procedure because I must be fair to everyone. So I need to read the draft speeches of Members in advance and require Members to speak according to their drafts. If Members think this situation can be improved, please make your suggestions to the Committee on Rules of Procedure. As for me, what I am doing is to enforce the rules passed by the Committee on Rules of Procedure and by Members themselves. I hope I can have Members' co-operation. Ms Miriam LAU.

MS MIRIAM LAU (in Cantonese): Madam President,

MR ANDREW CHENG (in Cantonese): Insofar as I understand it, for example, Ms Miriam LAU and I were outside the Chamber I hope the President can make a ruling. I understand that Ms LAU has not handed in her draft too. Right?

Well, I now realize that she has. My apologies. However, Madam President, what I said just now are points already raised in the Subcommittee. Thank you, Madam President.

PRESIDENT (in Cantonese): In fact, Mr Andrew CHENG, I am aware that those points of yours had already been raised in the Subcommittee. However, given your wish to raise those points, I hope that you had let the President know beforehand. Since the Secretary for the Environment, Transport and Works is not in attendance today, nor is there a representative from her Bureau, I need not give them an opportunity to speak. However, had the circumstances been different, the case would have been more difficult to handle. Therefore, you could have alerted me in the first place. Ms Miriam LAU.

(Mr LEE Wing-tat indicated a wish to speak)

MR LEE WING-TAT (in Cantonese): Madam President, I would like to raise a point of order in respect of your ruling, because I do not quite understand the two reasons given in your ruling. First, the point that the President, has the final power of ruling in this Chamber, this I do not dispute. In other words, if that Honourable colleague failed to submit a draft speech beforehand, and if he failed

to observe the principle of not allowing any debate, you may terminate his speech. The President has such power.

Second, the Government is not represented. However, this does not constitute a factor as to whether or not we should hand in our draft speeches in advance for your examination, because all public officers designated by the Government for attendance in this Chamber must be aware that this discussion may be within their portfolio. If one needs to reply or engage in a discussion, one should attend the meeting in the first place. For this reason, I do not quite understand the two points made in the President's ruling. First, is it necessary to submit draft speeches in advance? Second, does the absence of designated public officers constitute a limitation on our speech? Thank you, Madam President.

PRESIDENT (in Cantonese): I will answer the second question first. The question of whether or not there is attendance by public officers is not a point of consideration for the President. Just now, I was only explaining to Mr Andrew CHENG, who should have let me examine his draft speech in advance. Since the Administration has not appointed any public officer to attend, it does not have an opportunity to make clarification in respect of any criticism made. I stated the fact only. As a matter of practice, I never consider whether any public officer will attend when I consider draft speeches of Members. Similarly, draft speeches of public officers are examined by the President. Moreover, there were precedents in which I requested the relevant public officers to delete from their draft speeches the parts which I thought might provoke a debate. The standard is very clear. Therefore, if you wish to make additions to your speech, you have to inform me beforehand. Just now, I permitted Mr Andrew CHENG to speak without making any interruption. Why? Because I was listening to him very carefully, and I found that his remarks were points already raised in the Subcommittee. Despite the fact that he did not follow the usual practice, I let him continue with his speech. But then, when he came to the latter part of his speech, noticing that there was no public officer in attendance other than the Chief Secretary for Administration, he requested the Chief Secretary to do something. In my view, given his full knowledge that what he was doing was improper, why did he see it fit to continue? For that reason, I explained the practice to Members. Nevertheless, I understand that some Members may consider that practice not at all appropriate. Then Members may wish to consider if it is necessary to improve the Rules of Procedure. It is as simple as that. Do you understand the point?

MR LEE WING-TAT (in Cantonese): Madam President, can I take your clarification to mean that the requirement of submitting draft speeches to you in advance is provided for in the Rules of Procedure, for this is a special arrangement. I have all along felt that you, Madam President, have the absolute power to prohibit any colleague from straying beyond the scope of debate. But this is the first time that I have heard of the practice of submitting draft speeches in advance. And does it mean that Members cannot speak if they fail to submit draft speeches in advance? Thank you, Madam President.

PRESIDENT (in Cantonese): Mr LEE, it is clearly stipulated in Rule 2 of the House Rules, which I believe you, having been a Member of this Council for so many years, had a part in approving it. For this reason, I will not engage in any further discussion with any Member over this issue.

Ms Miriam LAU, my apologies for having kept you waiting for such a long time.

MS MIRIAM LAU (in Cantonese): Madam President, the toll increase by the Eastern Harbour Crossing (EHC) company has triggered off strong reactions in the community mainly because the rate of increase is 67%, which is very high.

Although we are very dissatisfied with the rate of the toll increase and are very much concerned about the consequences it may cause, we have to admit that the EHC company is only acting in line with the law and we have to respect the Arbitrator's Award. Because of the toll increase is indeed very large, the public will find it hard to accept all at once. Commerical vehicles will be the first to bear the brunt and their business will be seriously affected. Despite the EHC company's insistence to go its own way to increase its toll as scheduled, the transport trades still hope that it can offer them concessions so as to reduce the impact of the toll increase on their business.

Although the toll increase of the EHC is legal, does it have to increase the toll to the ceiling allowed by the law? The Western Harbour Crossing and the Route 3 Tai Lam Tunnel have also obtained approval on their rate of toll

increase, however, instead of opting for the rate allowed by the law, they have adopted administrative measures to offer concessions to certain types of vehicle. In this respect, I hope the Government can enter into negotiations with the EHC company again and that the company can adopt similar concessionary measures.

As it stands now, the EHC company will increase its tolls on public buses and public light buses in October. Can this date be further deferred? As for the taxi trade, they have already made a suggestion to the EHC company to maintain the existing concession on the return toll till the end of June and levy the new toll charge from 1 July 2005 onwards. Can this concession on taxi's return toll be deferred for one more year? Can the EHC company offer other concessions to other transport trades? All these administrative measures can help the transport trades and will also be helpful to the overall traffic flow.

The uneven distribution of traffic and the different toll charges among the three road harbour crossings is a long-standing problem. The Panel on Transport started discussion on the problem a few years ago. If the Government do not address this problem squarely or do something about it today, when other tunnel companies apply for a toll increase in future — we know that the Tai Lam Tunnel is planning a toll increase — and again fail to reach an agreement with the Government, arbitration may also be required. In which case, we may also be confronted with an outcome that we will find unacceptable and be dissatisfied with. If by which time the same problem occurs again, how should we handle it? To avoid the recurrence of such a problem, the Government should start an early discussion with the two tunnel companies, so as to find a long-term solution to this long-standing problem.

Madam President, I so submit.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. I wish to remind Members again that they can only put one question in their supplementaries. Will Members please be as concise as possible when asking questions and do not make comments when putting supplementaries, since doing so does not comply with Rule 26(5) of the Rules of Procedure. First question.

Handling of Entry Applications by Taiwan Residents

1. **MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, some Members have received a number of complaints alleging that the applications by former or incumbent Taiwan officials for entry into Hong Kong for academic and cultural exchanges or making personal visits often meet with procrastination or other difficulties. In this connection, will the Government inform this Council:*

- (a) *of the number of entry applications involving former or incumbent Taiwan officials that have been reported to the Central People's Government for approval in accordance with the Basic Principles and Policies of the Central People's Government on the handling of Taiwan-related Matters in Hong Kong after 1997 announced by former Vice-Premier QIAN Qichen in 1995, (generally known as "QIAN's Seven-point Principles"), over the past three years, and of the criteria adopted by the Hong Kong authorities for determining whether the activities of individual Taiwan Officials in Hong Kong are official contacts, or academic exchanges or visits in their personal capacity;*
- (b) *whether it has briefly explained the reasons for refusal to the Taiwan residents who were refused entry into Hong Kong; if it has, of the reasons for such refusal in the past three years; and*
- (c) *whether it will, in the light of the experience of the Macao authorities in handling the entry applications by Taiwan residents, consider adopting the measure of granting visa-on-arrival to Taiwan visitors, so as to promote exchanges between Hong Kong and Taiwan?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President,*

- (a) **Statistics on Taiwan Visit Permits processed by the Immigration Department (ImmD) in the past three years (that is, 2002 to 2004) are set out below.**

| <i>Year</i> | <i>Received</i> | <i>Approved</i> | <i>Refused</i> | <i>Withdrawn</i> | <i>Being processed at year-end</i> |
|-------------|-----------------|-----------------|----------------|------------------|------------------------------------|
| 2002 | 80 645 | 79 691 | 93 | 1 414 | 352 |
| 2003 | 51 625 | 49 928 | 92 | 1 272 | 685 |
| 2004 | 59 876 | 58 475 | 69 | 1 473 | 544 |

As Taiwan Visit Permits are made in the applicants' personal capacity, the ImmD does not compile statistics on whether the applications involve Taiwan officials and the number of applications reported to the Central People's Government for approval.

In determining whether activities of individual Taiwan officials in Hong Kong are official contacts, the Administration will take into account all relevant factors and circumstances before making a decision.

- (b) The Director of Immigration is not obliged under the prevailing law to provide any reason for rejecting an entry application. In general, the main reasons for rejecting entry applications include doubtful purpose of visit of the applicants, travel documents with limited validity period, insufficient funds, and so on. The ImmD does not compile statistics on the reasons for rejecting Taiwan Visit Permits.
- (c) We have introduced a number of improvement measures in recent years to facilitate the entry of visitors from Taiwan. On 18 March 2002, the iPermit Scheme was introduced under which the processing time of applications only takes a few minutes. Under the iPermit Scheme, Taiwan residents only need to present identification documents at an authorised airline office in Taiwan. The airline staff will transmit the applicant's data to the ImmD through the Internet. The application will be processed automatically by the computer system of the ImmD. If the application is approved, the computer system will instantly send an "e-notification" to the airline office in Taiwan. Upon arrival in Hong Kong, the visitor may collect the entry permit at the airline's desk in the Hong Kong International Airport before proceeding to immigration counters for clearance.

From the introduction of the Scheme to 31 March 2005, the ImmD issued 547 417 iPermits.

The iPermit Scheme offers speedy service to Taiwan residents who wish to visit Hong Kong. This service is more convenient and efficient than "visa on arrival". It also avoids inconvenience to visitors should their entry be refused after arrival. Moreover, as various control points need to process a large number of visitors, the processing of "visa on arrival" will lengthen the waiting time and cause inconvenience to Taiwan visitors as well as visitors from other countries/regions. We therefore have no plan to issue "visa on arrival".

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, according to "QIAN's Seven-point Principles", all official contacts and exchanges between the Hong Kong Special Administrative Region (SAR) and Taiwan in various forms have to be reported to the Central People's Government for approval or be approved by the Chief Executive under the specific authorization of the Central People's Government. Some time ago, when Chairman of the Kuomintang LIEN Chan visited the Mainland, the Central Authorities determined the status of his visit as a contact between two parties rather than an official visit. When LIEN Chan made a transit through Hong Kong to enter the Mainland, was the reception given by the SAR Government subject to the provisions in "QIAN's Seven-point Principles" and had to be approved or authorized by the Central People's Government, or was it the case that Secretary Stephen LAM had misunderstood "QIAN's Seven-point Principles" and took things into his own hands by inappropriately receiving him at the airport in his capacity as an official of the SAR and acted on his own by preventing Mr PAO Cheng-kang of the Chung Hwa Travel Service from receiving LIEN Chan as a matter of courtesy?*

PRESIDENT (in Cantonese): Which official is going to reply?

SECRETARY FOR SECURITY (in Cantonese): Madam President, perhaps let me reply first. We did not receive any application for a visa permit from Dr

LIEN Chan for the purpose of visiting Hong Kong. Therefore, I am not in a position to answer Mr CHEUNG Man-kwong's question. I do not know if Secretary Stephen LAM has anything to add.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, I asked about him making a transit rather than coming to Hong Kong. I am talking about the time when he was in transit.*

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, you are asking about his transit rather than entry, right?

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, about the time when Dr LIEN Chan was entering China via Hong Kong.*

PRESIDENT (in Cantonese): However, what you mentioned in your question is application for entry into Hong Kong for academic and cultural exchanges or making personal visits. When you asked your supplementary, I had not listened to it clearly before I asked the Secretary for Security to reply. However, the Secretary for Security has pointed out that your supplementary had nothing to do with applications for entry into Hong Kong. Therefore, can you explain how your supplementary is relevant to the subject?

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, in that case, I shall put it in another way, if I may. Madam President, according to "QIAN's Seven-point Principles", all official contacts and exchanges between the SAR and Taiwan in various forms have to reported to the Central People's Government for approval or be approved by the Chief Executive under the specific authorization of the Central People's Government. In the past, Mr MA Ying-jeou also applied for entry into Hong Kong, but without success. Concerning Mr MA Ying-jeou's case, may I ask whether it was the Central Authorities that decided to refuse his visit to Hong Kong according to the stipulations of "QIAN's Seven-point Principles", or did the Central Authorities authorize Hong Kong to make the decision to refuse his visit to Hong Kong?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam President, generally, we do not comment on such cases in the Legislative Council. I have no comments on Mr MA Ying-jeou's case.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President.....*

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

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, indeed it has not. Madam President, what I am asking is whether in Mr MA Ying-jeou's case, "QIAN's Seven-point Principles" were involved, that is, whether it is the policy that it has to be approved by the Central Authorities?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, our policy is that we do not discuss individual cases.

MR MARTIN LEE (in Cantonese): *Madam President, I hope you can make a ruling. Had the reply given by the Government just now been addressed to reporters, there would have been no problem. However, insofar as the Legislative Council is concerned, when we ask questions on policies, it is inevitable that reference be made to specific incidents. It is impossible to ask questions concerning policies in a very general way. How can the Secretary possibly get away by such an answer? Madam President, I do not think the Secretary should be allowed to respond in this way because it is not a press conference now.*

PRESIDENT (in Cantonese): Actually, the supplementary asked by Mr Martin LEE has also been asked by a number of Members before, that is, the President

is asked to make the officials concerned give the answers that Members wish to get. However, ever since I have been the President, I have said many times that it is up to officials to decide how to reply to supplementaries. They represent the Government when giving replies. No matter if their reply is good or not, the Government will be held accountable for all reactions or political consequences. However, what I can ask once again is: Secretary for Security, do you have anything to add?

SECRETARY FOR SECURITY (in Cantonese): Madam President, I have nothing to add.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, I have something to say.*

PRESIDENT (in Cantonese): Mr LEUNG, you are not allowed to speak. You have to comply with the provisions of the Rules of Procedure. *(Laughter)* You ought to read the Rules of Procedure.

MR LEUNG KWOK-HUNG (in Cantonese): *I believe that it is reasonable for you to say that you cannot tell officials how to reply because you are only the President of the Legislative Council. However, the Acting Chief Executive is now present and the Secretaries were reappointed by him. The three Secretaries of Departments and 11 Directors of Bureaux were all reappointed by him. Therefore, since the Acting Chief Executive is now present, I consider it most unfair that he has given his subordinates a free rein in replying in such a way. Can the President ask the Acting Chief Executive to order Secretary Ambrose LEE to give a reply? This will be the right thing to do. He is now present, or should I raise the request with him direct? If I do so, the President will throw me out again. I believe what I have said is reasonable.*

PRESIDENT (in Cantonese): Mr LEUNG, have you finished with what you want to say?

MR LEUNG KWOK-HUNG (in Cantonese): *This team of three Secretaries of Departments and 11 Directors of Bureaux costs nearly several million dollars in public funds.*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what you have raised is not a point of order.

DR YEUNG SUM (in Cantonese): *Madam President, Mr CHEUNG Man-kwong asked this question on behalf of the Democratic Party. In particular, concerning the issue raised in part (a) of the main question, we have always expressed extreme disappointment on the way in which the SAR Government handles cross-strait relations.*

Madam President, I wish to ask Secretary Stephen LAM a question through you. Since the Chairman of the Kuomintang, Dr LIEN Chan, and our State President, Mr HU Jintao, have agreed on a common viewpoint concerning "One China with separate verbal expressions", in view of this new development, will the Secretaries of Departments and Directors of Bureaux review Hong Kong's role as the bridge between the two sides of the strait and review the arrangement for former or incumbent Taiwan officials to come to Hong Kong for academic and cultural exchanges or making visits? Is he willing to conduct a review?

PRESIDENT (in Cantonese): Although Dr YEUNG Sum's supplementary is very long, in fact, he is asking the Government if it will review the existing policy on the entry of visitors from Taiwan. Which Secretary will give a reply? Secretary for Constitutional Affairs.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, our position has always been to promote exchanges and the relationship between Hong Kong and Taiwan on the basis of "QIAN's Seven-point Principles". On this occasion, when Chairman LIEN Chan led a group from the Kuomintang on a visit to the Mainland, he passed through Hong

Kong twice. A new situation has been created and the exchanges and relations between both sides of the strait have been promoted. Of course, we hope that on the basis of these new developments, cross-strait relations will continue to develop and the exchanges between Hong Kong and Taiwan can also continue to be promoted. However, we will continue to deal with each case of entry in accordance with the Immigration Ordinance.

DR LUI MING-WAH (in Cantonese): *Madam President, part (a) of the main reply provided by the Government said that from 2002 to 2004, only about 200 000 persons had applied for Taiwan Visit Permits and were approved. However, it is mentioned in part (c) that in those three years, over 500 000 iPermits were issued. Do the 500 000 iPermits issued include the 200 000 Taiwan Visit Permits?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, they do not. The number of iPermits issued is a separate figure.

MR LEE WING-TAT (in Cantonese): *Madam President, I make it clear that my question is about policy. I stress that my question is not about specific cases but the policy.*

May I ask the Secretary for Security whether, insofar as the political parties that support unification are concerned, if some important leaders pass through Hong Kong on their visits to the Mainland or enter Hong Kong, it is necessary for the Secretary for Security or the Government to seek advice from the Central Authorities or ask for instruction or approval?

SECRETARY FOR SECURITY (in Cantonese): Madam President, we deal with such applications on a case-by-case basis. We will certainly deal with them according to the existing Immigration Ordinance and immigration policy. At present, I am not in a position to answer Mr LEE Wing-tat's supplementary. We have to make a decision depending on each case and after considering the circumstances of it.

MR LEE WING-TAT (in Cantonese): *Madam President, I do not think that my Cantonese is that bad. In fact, it is not specific cases that I am asking about and I have said that I am asking a question about policy, so the Secretary has to give a reply to the Legislative Council. According to the policy, what criteria and approach has the Government adopted in dealing with individual cases? I am not asking about specific cases. What I want to ask is: What is the Secretary's policy?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, our practice is to deal with each case according to the existing legislation and our established policy.

MR LEE WING-TAT (in Cantonese): *Madam President, I have asked this twice and it seems that there are only two words in the Government's established policy, that is, "established policy". What sort of policy is that? What does an "established policy" mean?*

SECRETARY FOR SECURITY (in Cantonese): Since Mr LEE Wing-tat wants me to say more, I will perhaps explain a little bit more. Under the existing policy, applications for visa or entry permit, including those from Taiwan residents, are determined on individual merits and may be approved if the applicant satisfies normal immigration requirements which include but are not restricted to the following: first, there is no security objection to and no known adverse record on the applicant; second, the applicant has re-entry facilities to his place of residence; third, the applicant is in possession of sufficient funds for the proposed stay; and fourth, the genuineness of the applicant's visit is not in doubt.

In considering an application, the Director of Immigration will take into account all relevant factors and circumstances pertaining to the case before making a decision. In particular, the Director will consider whether allowing the entry of the person concerned is in the public interest. For example, whether the applicant's presence in the SAR is undesirable or whether his presence would prejudice the the SAR's interests or its relations with other governments.

MR ALBERT HO (in Cantonese): *Madam President, whenever the interpretation and implementation of "QIAN's Seven-point Principles" are mentioned, the Government is always evasive. In fact, this question is asked with a view to requesting the Administration to provide information and give a reply as to in how many cases approval had to be sought from the Central Authorities according to "QIAN's Seven-point Principles". However, this issue is sidestepped in the main reply by saying that the ImmD does not have any information on the approvals. As far as we know, the Government has put into practice "QIAN's Seven-point Principles" a number of times and this should be the responsibility of the Constitutional Affairs Bureau. Regarding my supplementary, I wish to ask the Secretary for Constitutional Affairs via the President to reply as to in how many cases was approval sought from the Central Authorities according to "QIAN's Seven-point Principles" to allow the Taiwan officials concerned to come to Hong Kong, in how many cases was approval given and in how many cases was refusal made, and whether the "QIAN's Seven-point Principles" are applicable to former officials, that is, Taiwan officials who are no longer in office?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): *Madam President, of course, the SAR Government will implement its policy relating to "QIAN's Seven-point Principles" to the fullest extent. However, the ImmD also acts in accordance with the Immigration Ordinance in considering each application. We will not comment in public on our communications with the Central Authorities.*

MR ALBERT HO (in Cantonese): *Madam President, the supplementary that I have asked is very specific. In how many cases was the approval of the Central Authorities sought? May I know if even this type of information has to be kept confidential and cannot be divulged? I have also asked another question: Are the "QIAN's Seven-point Principles" also applicable to former officials? Is it the case that it is not even possible to explain the relevant policy to us, that a completely black-box style of operation is called for and it is not possible to explain to the Hong Kong public how the "QIAN's Seven-point Principles" are put into practice?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Constitutional Affairs, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in the reply given by the Secretary for Security earlier on, it was already made clearly that the ImmD of the SAR Government does not have the statistics requested by Mr Albert HO. As regards the question asked by Mr HO on how the "QIAN's Seven-point Principles" are put into practice and whether visits by former officials can be considered official contacts, I can tell Members that generally speaking, insofar as the SAR Government is concerned, if our officials receive visitors in their official capacities and the visitors also get in touch with us and meet us in their official capacities, then this will constitute an official contact. However, in considering whether to get into official contact with individuals coming from Taiwan, we will of course consider all relevant factors and circumstances and decisions have to be made on a case-by-case basis.

MR ALBERT HO (in Cantonese): *Madam President, the first part of the Secretary's reply has got the drift of my supplementary wrong. What I asked is whether the Secretary for Constitutional Affairs had the relevant figures, that is, requests for approval on such applications made to the Central Authorities through the Director of Immigration, however, the Secretary passed the ball back to the ImmD. I am only talking about his Bureau.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, all decisions on entry are made by the Director of Immigration according to the laws of Hong Kong, therefore, I have nothing to add.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, in fact, according to Articles 62 and 64 of the Basic Law, the Government must be accountable to us and answer questions. I have heard how Secretary Ambrose*

LEE answer the questions with total irrelevance, whereas Mr Martin LEE and the Democratic Party also made a mistake in putting questions.....

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, many Members are still waiting to ask questions.

MR LEUNG KWOK-HUNG (in Cantonese): *I would like to ask if I can put the question direct to the Acting Chief Executive. This is because it is surely not the Secretary but the Acting Chief Executive who deals with the relationship between Hong Kong and the Mainland. If we put the question to the Secretary, it is only natural that he cannot answer it. Madam President, can you do me a favour by allowing me to put the question to the Acting Chief Executive direct?*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, it is up to the Government to decide which official it assigns to come to the Legislative Council to answer questions. The President is in no position to instruct a particular official to give a reply. Therefore, when two Secretaries are present, you can hear that I often ask which Secretary will reply, since I cannot give any instruction. Concerning your request, I.....

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President.....*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please come back to the supplementary that you want to put.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, I have my ground. If the Acting Chief Executive had not been present, of course, my request would not have been proper because it would not be reasonable to ask him to come here by car right now and he may get stuck in a traffic jam on the way, right? However, he is now present, you see. This is by no means an improper request. If one sees injustice happening in the streets, one would step*

forward to stop it. At present, Members have asked the Secretaries questions but the Secretary said that he would not answer them. In fact, everyone knows that "QIAN's Seven-point Principles" say that the Government is responsible for.....Right now, he is present.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, have you finished putting your question? In fact, you are not putting a supplementary to him, but you are asking if the President can request the Chief Secretary for Administration to reply to your supplementary.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, to ask the Chief Secretary for Administration or the Acting Chief Executive to give a reply, since all power is now in his hands and he can answer all the questions all at once. Can the President do the legislature this favour?*

PRESIDENT (in Cantonese): If you have finished, please sit down first. Let me tell you again that I have no power to order that a particular official answers a supplementary.

MR LEUNG KWOK-HUNG (in Cantonese): *Then there is no way. I can now only ask the Secretary to go back and seek advice from the Acting Chief Executive, since he cannot answer our question today. What I wish to ask is: Since Mr JIANG Zemin has stepped down and the Mr QIAN in "QIAN's Seven-point Principles" is no longer in office, and the so-called "HU's Four Points" have now been laid down, has he received any instructions to study "HU's Four Points" in order to handle the Taiwan issue?*

PRESIDENT (in Cantonese): Our present subject has to do with Taiwan officials applying for entry into Hong Kong. The supplementary that you put in this way is not relevant. You can put it this way, as Mr Albert HO did: At present, a new policy has come into being. Will this policy lead to a different approach in considering the entry of Taiwan officials into Hong Kong?

MR LEUNG KWOK-HUNG (in Cantonese): *Thank you, Madam President.*

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have already said when answering Mr LEE Wing-tat's supplementary that cross-strait relations has experienced an elevation due to the visit made by Chairman LIEN Chan and a deputation from the Kuomintang to the Mainland via Hong Kong. Of course, we hope that the exchanges between Hong Kong and Taiwan can also be taken forward actively by taking advantage of such a development.

PRESIDENT (in Cantonese): Council has spent over 25 minutes on this question. Ms Margaret NG, is it a point on the Rules of Procedure?

MS MARGARET NG (in Cantonese): *Yes, Madam President. I have forgotten some Rules. After an official has spoken, can a Member seek clarification?*

PRESIDENT (in Cantonese): You have to wait for your turn.

MISS MARGARET NG (in Cantonese): *Alright. Thank you.*

PRESIDENT (in Cantonese): Last supplementary.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, I wish to ask the Government if it has any special criteria to specifically deal with the applications for entry made by Taiwan officials or former officials. If yes, what are the details?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not understand Miss TAM Heung-man's supplementary. By "specifically", did she mean a team to specifically handle such work?

PRESIDENT (in Cantonese): Miss TAM Heung-man, please elaborate.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, yes, that is correct.*

SECRETARY FOR SECURITY (in Cantonese): We only have a team to process applications from Taiwan but there is no special team to deal with applications made by former or incumbent officials.

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

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, my supplementary is on whether there are any special criteria and what are they? Are there any such criteria?*

SECRETARY FOR SECURITY (in Cantonese): As I have just said, in dealing with applications for entry into Hong Kong lodged by Taiwan residents, we deal with them according to our legislation, that is, the Immigration Ordinance and the established policy. When I gave my replies to other Members just now, I also explained our policy.

PRESIDENT (in Cantonese): Second question.

Reform in Professional Liability

2. **MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, the Hong Kong Institute of Certified Public Accountants (HKICPA) has made a submission to the Government proposing a reform in professional liability to fortify Hong Kong's position as a global financial centre. In this connection, will the Government inform this Council:*

- (a) *whether it has considered the accounting profession's proposal to implement a proportionate liability system; if it has, of the progress made in implementing the system; if not, the reasons for that;*
- (b) *whether it will amend the Companies Ordinance to repeal the provision which prohibits auditors from contractually limiting liability to clients in respect of audit work; if it will, of the time for making the amendment; if not, the reasons for that; and*
- (c) *whether it will consider implementing a limited liability partnership system; if it will, of the time for implementation; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I would like to point out that professional liability reform involves a wide range of complicated matters, including some fundamental legal principles. It does not concern just the accountancy profession, but also other professions as well as the interests of other stakeholders including their clients and creditors. As such, in considering the subject, the Government needs to study the relevant matters carefully and comprehensively, taking into account the possible implications to parties that may be affected.

In its earlier submission to the Government, the HKICPA has raised concerns about the liability for professional practice. Indeed, we note that similar concerns or views have also been expressed by some other professions. For example, The Law Society of Hong Kong has submitted a paper on the Limited Liability Partnership (LLP) proposal to the Government. The relevant

views and proposals touch on a wide range of matters. They do not affect just the legal liability of a particular profession, but also the interests of other relevant parties and the community as a whole.

Furthermore, the two proposals made by the HKICPA, namely the introduction of the proportionate liability system and the LLP, were indeed discussed by the Legislative Council Panel on Administration of Justice and Legal Services on 31 March this year. At that meeting, representatives of the Department of Justice had explained the Government's position.

First, I would like to talk about the proportionate liability system and the LLP. The introduction of proportionate liability will have a very far-reaching impact. Under this proposal, the well-known and well-established principle of joint and several liability of tortfeasor would be replaced. This is a fundamental change of our general law of tort.

The introduction of the LLP would also have ramifications which go beyond a particular profession. The partnership as a business model is not limited to a particular sector. For many years, the partnership has been adopted by many small and medium size business undertakings across the board. It would be neither rational nor fair to introduce the LLP for a particular sector. Other jurisdictions do not seem to have followed this route.

The two proposals concern not just the individual professions but also affect the interests of clients, creditors, and so on, or even the general public. The effect is to shift some of the burden of risk from the professionals to their clients. The relevant questions would require careful consideration. Before undertaking a detailed assessment on the implications of the proposals to various parties and the general public and a research of overseas experience, the Government is not in a position to give further comments.

As mentioned by the representatives of the Department of Justice at the meeting of the Panel on Administration of Justice and Legal Services on 31 March, the relevant bureaux and departments are examining the proposals with a view to preparing a paper for consideration by the Policy Committee. As we understand it, the Panel has also scheduled another meeting for 23 May to discuss the proposal to introduce the LLP.

In her question, Miss TAM Heung-man referred to the provision in the Companies Ordinance that prohibits auditors from entering into contract with their clients to limit their liability in respect their audit work. This provision is modelled on a similar provision in the United Kingdom Companies Act. In a nutshell, it prohibits a company exempting its auditor, and so on, from, or indemnifying them against, liability of the company or a related company in respect of such conduct as negligence in relation to that company or related company. However, the provision permits the company in certain circumstances (for instance, when the auditor has judgement in his favour in legal proceedings) to indemnify the auditor against any liability incurred by the auditor in defending any civil or criminal proceedings. The provision also permits the company to purchase insurance for the auditor in certain statutorily specified circumstances.

At present, some other jurisdictions whose company law systems are similar to that of Hong Kong, such as the United Kingdom and Australia, still have similar legislation. Any repeal of the provision may have wide implications. Moreover, the proposal is related to the abovementioned reform in the professional liability system. We will keep in view of international developments in this respect, and review the need to amend section 165 of the Companies Ordinance after the completion of the study regarding professional liability reform.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, in the seventh paragraph of the main reply, the Government said that it would prepare a paper as soon as possible. May I ask the Government when it will submit the paper to us?*

Moreover, in the eighth paragraph of the main reply, it is pointed out that "the provision also permits the company to purchase insurance for the auditor in certain statutorily specified circumstances". However, at the last meeting of the Panel on Administration of Justice and Legal Services, some accounting professionals pointed out that they had difficulty in taking out insurance currently. In respect of the case that accountants are unable to take out insurance, how will the Administration address and deal with it?

PRESIDENT (in Cantonese): Miss TAM Heung-man, you have raised two questions in your supplementary question, do you want

MISS TAM HEUNG-MAN (in Cantonese): *Will the Secretary please answer the latter one. Thank you, Madam President.*

PRESIDENT (in Cantonese): Do you mean the first question?

MISS TAM HEUNG-MAN (in Cantonese): *No, it should be the second question.*

PRESIDENT (in Cantonese): Fine, will the Secretary please answer the second question.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, regarding the insurance issue raised by Miss TAM Heung-man just now, Members will know that it is a commercial decision made between accounting firms and insurance companies. In this connection, I believe if one party does want to take out insurance and the other party does want to accept it, both parties will be able to work out a very fair and reasonable deal.

MS AUDREY EU (in Cantonese): *Madam President, in the second line of the seventh paragraph of the main reply, the Secretary pointed out that "the relevant bureaux and departments are examining the proposals with a view to preparing a paper". May I ask the Secretary whether the paper to be prepared by "the relevant bureaux and departments" is only meant for discussion at the meeting of the Panel on Administration of Justice and Legal Services held on 31 March? Or, does the Secretary mean that the relevant bureaux and departments will examine a change in the whole policy, or even discuss a change of the entire tort law? May I ask the Secretary to state clearly which bureaux or departments was he referring to when he mentioned "the relevant bureaux or departments" and how many are conducting the study? For this has a bearing on how early*

could the Government have the study completed. Furthermore, which sectors or professions will the study cover?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have pointed out in my main reply that the issue involves a wide range of issues. In fact, apart from the accountancy profession, the legal profession has also raised similar issues. Stakeholders in the insurance sector, as well as doctors and persons from the taxi trade have also raised related issues. Therefore, the issue does involve interdepartmental discussions, and the Government has charged the Department of Justice with the co-ordination of the entire study. As I have pointed out in my main reply, the Government hopes that a proposal drawn up with interdepartmental effort would be submitted to the Committee for consideration.

MS AUDREY EU (in Cantonese): *The Secretary has not answered my supplementary. I asked the Secretary which bureaux and departments were involved, but the Secretary only replied that interdepartmental efforts would be made. Will the Secretary point out clearly which bureaux and departments are included? The study will obviously be co-ordinated by the Secretary for Justice, but which departments are included? How many persons will participate? As I pointed out earlier, I would like to know how early the Government would be able to provide us with the answer.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add? Does the Secretary for Justice want to answer this follow-up question?

SECRETARY FOR JUSTICE (in Cantonese): Madam President, since the issue of LLP was proposed last year, different views have been expressed by various departments within the Government. As the Secretary for Financial Services and the Treasury said earlier, the issue involves a wide range of issues. Precisely because of this, the Chief Secretary for Administration later decided that the Financial Services and the Treasury Bureau and the Department of Justice should work together to examine the issue and prepare a paper for submission to the Policy Committee for consideration. The scope of this paper is very extensive.

First, the LLP we are discussing involves various levels. For instance, some raised the question of whether a ceiling should be set for civil tort cases. This is one of the suggestions. Moreover, some proposed the establishment of a LLP system. In fact, Hong Kong has already in place legislation on LLP, only that it is not applicable to the systems we are now referring to, and that it has many limitations. Furthermore, a majority of enterprises have adopted the general business model of partnership in operation, which has the merit of greater flexibility and less constraints. If these enterprises operate under the model of limited companies or LLP, this would be self-initiated. If we are to mandate their model of operation by legislation, we must consider the extent of impact it may cause on the public, professional sectors and clients.

Therefore, at present, it has already been quite difficult for us to define the scope of coverage. We will be able to decide which bureaux are involved only when we come to narrowing the scope later. For example, for the insurance sector, the Financial Services and the Treasury Bureau will be involved; for the health care sector, the Health, Welfare and Food Bureau will be involved. However, we have not yet come to that stage; we are still defining the scope. In respect of the industries to be involved, since not only the accountancy profession as mentioned by Miss TAM Heung-man will be included, great difficulty will be encountered. Besides, there should be no improvisation or hasty work. We have already decided to carry out this job and will accord priority to it. However, this is entirely an internal issue, which is not the content of the paper to be discussed by the Panel on Administration of Justice and Legal Services at its meeting to be held on 23 May. It is definitely a different matter.

MS AUDREY EU (in Cantonese): *Excuse me, the Secretary for Justice has not yet answered my supplementary question. My supplementary actually asked how many bureaux and departments are involved. Does the Secretary mean that only two bureaux or departments, the Financial Services and the Treasury Bureau and the Department of Justice, are involved? Moreover, I have also asked her how many people are involved.*

PRESIDENT (in Cantonese): The Secretary for Justice may not have such information at hand.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, as a matter of fact, it is not because we do not have the relevant information, only that we cannot make the decision yet. However, two major bureaux and departments, the Department of Justice and the Financial Services and the Treasury Bureau, definitely will have a role to play in this matter. Despite discussions on which bureaux should be involved, a decision can yet to be made. In respect of the Department of Justice, this is the work of the Legal Policy Division. Hence, it is not that we do not make the decision, but that the issue is as massive as a huge elephant, which can hardly be put in a house even if we want.

MR JAMES TIEN (in Cantonese): *Madam President, on the issue of proportionate liability and LLP, the Government has given its reply in the fifth paragraph of the main reply, stating that "The partnership as a business model is not limited to a particular sector. For many years, the partnership has been adopted by many small and medium size business undertakings across the board". That is to say the relevant system cannot be introduced for the sake of individual sector. Moreover, regarding the sixth paragraph of the main reply of the Government, may I ask the Government whether it will only consult the views of the legal sector and accountancy profession? Professionals naturally consider it the best option to shift all the liability onto their clients. Taking into consideration such circumstances, should the Government not consider the views of other clients, such as the views of the Commerce, Industry and Technology Bureau and the Economic Development and Labour Bureau, in order to strike a balance? Otherwise, from the point of view of the business sector that makes full payment, it will be unfair to clients if professionals can shift all the liability onto them by adopting the partnership model while failing to take out insurance.*

PRESIDENT (in Cantonese): Which Secretary will answer this question? Secretary for Financial Services and the Treasury.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr James TIEN is right. Since this subject involves a wide range of issues and substantial public interest, we will definitely give comprehensive consideration to the matter as a whole. We will not only consider the request of

the professional sectors, but also views of the creditors, the public and the business sector. This is also one of the reasons why the study on this subject takes a longer time.

MR JAMES TIEN (in Cantonese): *The Secretary has not yet answered my supplementary question. I certainly have to thank the Secretary for considering the subject. However, in addition to the Department of Justice and the Financial Services and the Treasury Bureau, will other government bureaux or departments, such as the Commerce, Industry and Technology Bureau and the Economic Development and Labour Bureau, work together in this?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): As the Secretary for Justice explained earlier, though the Financial Services and the Treasury Bureau and the Department of Justice will take a leading role in addressing this issue, owing to the extensive scope involved, I believe, as I explained just now, other bureaux and departments will definitely be involved when the relevant policy is submitted to the Policy Committee for consideration.

MR LI KWOK-YING (in Cantonese): *Madam President, given this proposal by the accountancy profession to introduce the LLP system, I think, apart from the accountancy sector, other sectors will also be greatly affected. This is also true to the solicitor business. In this connection, I notice the Secretary has mentioned in the second, fifth and seventh paragraphs of the main reply the issue on the LLP, but I would like to point out that LLP indeed only involves the relationship between the partners concerned. Take a solicitor firm as an example where the employer will employ professionally qualified employees who will handle an entire case independently. Has the Government considered the proportion of liability to be borne by the employer and employee under such circumstances? Has the Government considered, studied and formulated proposals geared in this direction?*

PRESIDENT (in Cantonese): Secretary, I cannot determine precisely whether.....

MR LI KWOK-YING (in Cantonese): *Madam President, the LLP system only involves the apportioning of limited liability among partners. But the question I would like to put forth now is not on the partners involved. I am asking about the situation in the professional sector, where an employee carries out his work with his own professional knowledge, but the employer has to be held liable to the mistakes made by the employee. Therefore, I am turning the focus of the LLP issue to the relationship between the employer and the employee. Will the Government consider the issue from this angle?*

PRESIDENT (in Cantonese): Do you mean to ask whether this study will include the issue you just mentioned on the liability to be borne by the employer and the employee? Secretary, will you try to answer this.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, from the supplementary question raised by Mr LI Kwok-ying, Members can imagine how complex the issue is. Hence, more time is needed for discussion. However, I believe the point of view put forth by Mr LI just now will be considered collectively by the Committee during their discussion.

PRESIDENT (in Cantonese): This Council has spent more than 19 minutes on this question. Last supplementary question.

MR HOWARD YOUNG (in Cantonese): *Madam President, in the second paragraph of the main reply, the Secretary mentioned that other professions have also raised the issue on LLP. As far as I know, non-professional business undertakings, such as the tourism industry, has also raised this issue. May I ask the Secretary whether he has ever received or heard the views of the tourism industry, querying the possibility of setting up the LLP system? If he has, will the Secretary consider this? As the Secretary stated in the fifth paragraph of the main reply that the issue was very complicated and could not be restricted to a particular sector, has the Government considered telling the tourism industry that the scheme is unlikely to be feasible, thus pre-empting any false hopes?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I do not know the tourism industry has put forth this opinion, but I will check this up with Secretary Stephen IP. Maybe I can provide a written reply to the supplementary question of the Member. (Appendix I)

PRESIDENT (in Cantonese): Third question.

Continued Increase in Voluntary Contributions to MPF Scheme

3. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, in view of the continued increase in the amount of voluntary contributions to the Mandatory Provident Fund Scheme (MPFS), will the Government inform this Council:*

- (a) *of the number of persons making voluntary contributions and the amount of such contributions in the past three years, as well as the total amount of voluntary contributions directly made to the trustees without involving employers since the implementation of MPFS;*
- (b) *as the payment of voluntary contributions and the accrued benefits attributable to such contributions do not fall within the regulatory purview of the Mandatory Provident Fund Schemes Authority (MPFA), whether the authorities have any plan to review the relevant policy so as to tighten the regulation of voluntary contributions, thereby safeguarding the interests of the contributors; and*
- (c) *whether the voluntary contributions directly made to the trustees without involving employers are currently covered by the MPFS Compensation Fund; if they are, whether the authorities will increase the Compensation Fund's existing reserve of \$900 million; if they are not, whether the authorities have any plan to put such contributions under the coverage of the Compensation Fund?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President,

- (a) According to the information of the MPFA, the amount of voluntary contributions has been quite stable since the implementation of the Mandatory Provident Fund (MPF) System. The relevant annual amount is slightly higher than \$2 billion, accounting for about 9% of the annual total contributions of \$24 billion.

We notice that in 2004, a number of trustees have launched the "special voluntary contributions" schemes, under which voluntary contributions are made directly to trustees without involving employers, but the total amount of voluntary contributions over the past year has not increased significantly. Currently, the MPFA does not have a breakdown on the amount of contributions to such schemes. However, in view of the recent development of the "special voluntary contributions" schemes, the MPFA has already revised the guidelines on the relevant statistical returns. Under these guidelines, trustees are required to update their computer systems and submit statistical information on "special voluntary contributions" from the end of this year, so as to enable the MPFA to have a better grasp of the contribution pattern of such schemes.

At present, MPF statistics collected by the MPFA are mainly related to assets and hence, statistics on the number of persons making voluntary contributions are not available. In fact, since each scheme member may possess more than one MPF account, the number of MPF accounts does not represent the number of scheme members, making it impossible to calculate accurately the number of persons participating in the voluntary contribution schemes.

- (b) Under the MPF legislation, as regards the regulatory matters including regulations on trust and custody, investment restrictions, disclosure of information, reporting, auditing requirements, and so on, voluntary contributions are subject to similar regulations as those for mandatory contributions. Thus, members of both the voluntary contribution schemes and mandatory contribution schemes are afforded the same level of protection.

As regards contribution and withdrawal of voluntary contributions, the existing legislation allows the persons concerned to make arrangements which they consider to be most appropriate since such

contributions are voluntary in nature. They are not obliged under the legislation to follow the stipulations on mandatory contributions, for example, the requirement that they could only withdraw the accrued benefits when they reach the age of 65.

Together with the MPFA, we will continue to monitor the growth of the voluntary contributions and the social needs, and review the relevant policies and arrangements from time to time to ensure that the interests of scheme members are safeguarded.

- (c) Currently, "special voluntary contributions" which are directly made to trustees without involving employers are covered by the Compensation Fund. We have allocated a sum of \$600 million as its seed money when the Compensation Fund was established in 1998. At that time, we intended to review the reserve level and levy rate in the light of the total amount of accrued benefits and other prevailing factors once the reserve reached \$900 million. At present, the annual levy rate of the Compensation Fund is 0.03% of the net asset value of the scheme assets. As at the end of March this year, the reserve of the Compensation Fund amounted to \$850 million. Together with the MPFA, we have already commenced the work to review the reserve level and levy rate of the Compensation Fund.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, while the Secretary mentioned in part (a) of the main reply that the ratio of voluntary contributions was not high at the moment, according to a major insurance group, after visiting several companies, it was found that as many as a quarter of the employees were willing to increase the amount of voluntary contributions. As there is no ceiling on the amount of voluntary contribution at present, and contributors are allowed to withdraw their benefits at any time, it would thus easily lead to a surge of benefits withdrawal. When the investment climate is unfavourable, would this add to the volatility of the market? In that event, it would affect the return of employees contributing at the statutory rate.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as to the situation mentioned by Mr TAM, I do

not think it would affect the volatility of the market. According to the current figures of the MPFA, the relevant amount is over \$120 billion, invested respectively in deposits, bonds and shares. Compared with the financial market as a whole, the percentage accounted for is not significant. Even if some voluntary contributors want to withdraw their benefits, I do not think it would cause any major impact. Also, I believe that contributors would not withdraw their benefits all at the same time. As I have just said, as the amount of voluntary contributions only accounts for about 9%, I believe no impact would be caused on the financial market.

MR MA LIK (in Cantonese): *Madam President, may I ask the Secretary if the Government encourages savings through voluntary contributions, so as to enhance retirement protection for the public, whether it would consider tightening up the restrictions on voluntary contributions? For instance, whether it would impose a restriction on the period for withdrawal, so as to ensure that the contribution would not be withdrawn prematurely under a favourable market climate?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as I have just explained, the voluntary contribution scheme is to a certain extent like savings for contributors to be used for retirement. As such, I believe that it would be unlikely for contributors to save up money in one month and then withdraw it in another. Their main purpose for making contributions is to provide retirement protection. Therefore, I am not worried about such a situation arising. However, the Government can not impose mandatory requirement on the age for which contributors are eligible for benefit withdrawal. Since such contributions are voluntary in nature, we have to give contributors flexibility. I therefore believe that our current approach is reasonable.

MS LI FUNG-YING (in Cantonese): *Madam President, one of the slogans of the MPFA is "to save for your old age". In the Secretary's main reply, it was said that under the MPF legislation, voluntary contributions are subject to similar regulations as those for mandatory contributions. However, the*

withdrawal of accrued benefits of voluntary contributions is not subject to any regulation. Madam President, may I ask the Secretary whether any review or study would be conducted with a view to requiring at least the withdrawal of accrued benefits of voluntary contributions to be subject to the same regulations as those for mandatory contributions?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I am not sure about Ms LI Fung-ying's question. Did she ask, as far as the Compensation Fund is concerned, whether there is no difference between the voluntary contribution schemes and mandatory schemes? I am not sure if that was her point, so I need to clarify.

MS LI FUNG-YING (in Cantonese): *Yes.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Ms LI Fung-ying seemed to say "yes". Well, I have to clarify that it is a fact that both schemes are covered by the Compensation Fund. However, as I explained to Mr MA Lik earlier, since the voluntary contribution schemes are voluntary in nature, we can not impose mandatory requirement on the age for contributors to withdraw benefits and must give them certain flexibility. As for mandatory contributions, we do have provisions on them. I am not sure if I have answered Ms LI Fung-ying's question. If I have not, I am prepared to make further explanations.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, about the Compensation Fund mentioned in part (c) of the main reply, the Secretary said that a review would be conducted once the reserve reached \$900 million, and it is now time for the review. I want to ask the Secretary if they have any idea as to the optimum level of the reserve so that, for instance, when the optimum size of the Fund reaches \$900 million or \$1.5 billion, we can reduce the levy rate to 0%. Have they thought about the idea? Or does the Secretary have any indicator policy-wise to determine the optimum size of the Compensation Fund?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, we stated from the outset that we would conduct a review when the Compensation Fund reached \$900 million. We have to bear in mind the need to protect contributors on the one hand, while levy contributions on the other. As such, we will strike a balance. According to our initial plan, we would conduct a review once the Fund has reached \$900 million. Also, in the course of the review, we would consider the above issues, that is, how to protect contributors and to strike a balance on the levy rate. We will report to the Legislative Council once the review has been completed.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I know the review must be conducted, but my question is whether there is any ultimate target.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have answered the question. We will strive to strike a balance and it is our ultimate target. As such, we will take into account these two factors when conducting the review.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, would you please rule if my supplementary question is in order. Of course, I am not quite in favour of requiring contributors to withdraw their contributions only when they reach the age of 65. My supplementary question is: As regards the 9% voluntary contributions, how many percents of them have been withdrawn? Does the Secretary have figures on this? The Secretary just now held that contributors were unlikely to withdraw their benefits. However, is there any objective figure to tell us that in the past few years, the ratio of withdrawal in regard of voluntary contributions has been on the low side? Is there any such figure?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, we have not got figures on this. I did not mean to say that contributors of voluntary contributions would not withdraw their

benefits. In fact, I do not know when they will do that, I was only saying that since it is a saving plan, its purpose is to provide retirement protection. As such, unlike investors in the stock market, they will not make transactions day in and day out. I want to clarify that this is what I meant. However, we do not have any data in this regard. Even so, I will hold further discussions with colleagues in the MPFA. Once I have the data in this regard, I am happy to provide Mr SIN Chung-kai with the figure in writing.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, in answering questions of other Members, the Secretary said that MPF schemes members generally regard their contributions as savings for retirement protection, therefore they would not withdraw their benefits before reaching the age of retirement. However, the Secretary does not have any data to support his argument. Will the Secretary please clarify how he has reached such a conclusion?*

PRESIDENT (in Cantonese): Will you please elaborate.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I can give an explanation. If the Secretary can provide figures to support his argument that the withdrawal rate in regard to voluntary contributions is very low, it will follow that the voluntary contributions are indeed meant for retirement protection. However, if the Secretary does not have data in this regard, on what basis can he justify his reply to the DAB colleagues?*

PRESIDENT (in Cantonese): If the Member clearly asked the Secretary if he had substantive data to support his argument when he first put his supplementary question, the present situation will not emerge. Generally speaking, I do not allow Members to make further clarification, lest Members may raise several follow-up questions. As Mr SIN Chung-kai did not make himself clear in putting his question, it is only now that I understand his meaning. Let us see if the Secretary has anything more to say.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, we all know that it is a retirement protection scheme and not an ordinary investment scheme. I do not mean that there is absolutely no figure, I will consult the MPFA to see if such figure is available. However, what I mean is people normally save up money for the longer term. If the MPFA has data on this, I am happy to provide them to Mr SIN Chung-kai in writing.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary mentioned that the reserve of the Compensation Fund has amounted to \$850 million and he also told Mr LEE Cheuk-yan that the Government was prepared to review this level. Madam President, as I have taken part in the scrutiny of this legislation, I hope the Government's preparatory work would not wait until the reserve has reached a certain level. May I ask the Secretary if he has formulated any timetable for the future? If yes, is he prepared to launch various tools?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I can tell Miss CHAN Yuen-han that we will complete the relevant work within 12 months. We will decide at that time if we are going to maintain the reserve at \$900 million and to collect a levy at 0.03%. We will make a decision on these in 12 months' time.

MR WONG KWOK-HING (in Cantonese): *Madam President, have the authorities received any complaints about voluntary contribution scheme members encountering problems in withdrawing benefits? If so, what are the problems?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I am also very much concerned about complaints. According to the information obtained from the MPFA, the number of complaint cases was very small. As we can see, the ratio of voluntary contributions only accounts for 9%, though there is no substantive figure provided by the MPFA,

the number of complaints should be very small. Nevertheless, we believe that proportionally speaking, the number of complaints received must be very small.

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

MR WONG KWOK-HING (in Cantonese): *Madam President, the Secretary said the number of complaints is small, but he cannot give us a figure. Besides, it seems that the Secretary has not made any reply on the problems encountered by contributors.*

PRESIDENT (in Cantonese): Secretary, do you have the information with you?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have not got the information with me. If Mr WONG Kwok-hing wants to know the exact number of complaints, I will enquire with the MPFA and then reply Mr WONG Kwok-hing in writing once such information is available. (Appendix II)

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, I wish to ask a follow-up. In response to my supplementary question, the Secretary said that the present ratio of voluntary contributions was not high, accounting only for 9%. In addition, as he believed that contributors would not withdraw their benefits all at the same time, it would not affect the market. However, we see that there is an upward trend in the number of contributors withdrawing benefits. If the market climate is unfavourable, they may want to withdraw their money all at once. If the amount of withdrawal grows bigger and bigger, there may be an impact on the market. May I ask the Secretary, while the ratio of voluntary*

contributions is only 9% at present, at what level the ratio should reach before the authorities take note of it?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Government is in fact mindful of the stability of the financial market. We have some committees to closely monitor the situation of the financial market. Once any instability in the financial market is spotted, we will of course look into a number of factors. As to the factor mentioned by Mr TAM Yiu-chung just now, we will also take into consideration its impact or the instability brought to the financial market. Therefore, it is not merely a problem for the MPFA, but for the entire market. We will closely monitor the development of the market as a whole.

PRESIDENT (in Cantonese): Fourth question.

Employment of Persons with Disabilities

4. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, regarding the employment of disabled persons, will the Government inform this Council:*

- (a) *of the number of disabled persons employed on non-civil service contract (NCSC) terms in various government departments as at 31 December 2004;*
- (b) *whether it knows the respective numbers of disabled persons employed by various publicly-funded universities, the Hospital Authority (HA), the Airport Authority (AA) and the two railway companies in the past three years, and the respective percentages of such employees in the overall employees of these organizations; and*
- (c) *whether it will stipulate that government departments should employ a certain percentage of disabled persons when recruiting NCSC staff, as well as the policies to encourage the organizations mentioned above to employ more disabled persons?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, it is the Government's policy to assist people with disabilities (PWDs) to develop their personal capabilities for securing jobs in the open market, so as to enable them to become self-reliant and integrate fully into society. With this policy objective in mind, the Social Welfare Department (SWD) and the Skills Centre of the Vocational Training Council (VTC) provide PWDs with a full range of vocational rehabilitation and training services to equip them for employment. The Health, Welfare and Food Bureau, the Labour Department (LD) and the SWD also encourage and assist employers to employ PWDs.

The Government fully recognizes the importance of setting a good example in employing PWDs. We welcome applications from PWDs for both civil service and non-civil service vacancies. The relevant elements in our policy on the employment of PWDs as civil servants are:

- (i) in respect of recruitment, if a PWD meets the basic entry requirements specified for a post, he/she will not be subject to any shortlisting criteria, and will be invited to selection interviews and compete for the post on the same grounds as other applicants;
- (ii) if a PWD is considered suitable by the selection board to carry out the duties of a particular post, he/she would be recommended for appointment even though he/she may not be able, due to the disability, to perform the duties of every post in the same rank or level; and
- (iii) government departments that employ PWDs also provide these officers with on-the-job assistance, where necessary, to enable them to better perform their duties. Such assistance may include changes to job content and work schedule; provision of appropriate technical aids, training, and so on.

The above principles apply also to the recruitment of NCSC staff.

I will now answer the individual parts of the question:

- (a) As at 31 December 2004, 36 government departments employed a total of about 190 PWDs on NCSC terms.

- (b) The number of PWDs employed by the HA, the AA, the two railway companies and the publicly-funded universities in the past three years, and the respective percentages of the overall numbers of employees of these organizations accounted for by PWDs are set out in the Annex to my reply, a copy of which has been distributed to Members for reference, and I am not going to repeat the information here.
- (c) The Administration has no intention to stipulate that government departments should employ a certain percentage of PWDs, whether on civil service or NCSC terms. This issue was previously discussed in the Legislative Council, and the Administration remains of the view that a fixed percentage or quota is not an appropriate or effective means to promote the employment of PWDs.

The Government, and indeed the whole community, should help PWDs to find jobs on the basis of their abilities rather than disabilities. Under a compulsory employment quota system, PWDs will be perceived as a liability, making them difficult to be accepted by their peers at work. A mandatory employment quota system is therefore unlikely to be effective in achieving the desired results.

On the recommendation of the Sub-committee on Employment of the Rehabilitation Advisory Committee, the Secretary for Health, Welfare and Food issued a letter to Directors of Bureaux and Heads of Departments in May 2003, requesting them to encourage the subvented organizations and the public bodies under their purview to further enhance the employment opportunities of PWDs through various measures.

The Administration has also launched a series of measures to encourage and assist employers in the public and private sectors to employ PWDs. These measures include:

- (i) the Work Orientation and Placement Scheme of the LD and the On-the-job Training Programme for PWDs of the SWD provide employers of PWDs with wage subsidy up to half of the wage given to the disabled employee (subject to a ceiling of \$3,000 per month) for up to three months;
- (ii) the Interactive Selection Placement Service Website of the LD provides administrative support to employers in placing job vacancies on the Internet and in searching for suitable candidates; and
- (iii) the LD, SWD and the Skills Centres of the VTC hold award presentation ceremony for employers of the disabled in recognition of their exemplary efforts in providing job opportunities for PWDs.

We believe that the prevailing policy and arrangements, which place emphasis on vocational rehabilitation, promotion and practical assistance, are appropriate for the objective of promoting employment opportunities for PWDs.

Annex

Number of PWDs Employed by the
HA, AA, Kowloon-Canton Railway Corporation,
MTR Corporation Limited and Publicly-funded Universities

| <i>Organizations</i> | <i>No of PWDs employed (% of the total workforce)</i> | | |
|---|---|-------------------------------|----------------|
| | <i>2002</i> | <i>2003</i> | <i>2004</i> |
| HA | 515 (0.97%) | 688 (1.30%) | 857 (1.63%) |
| AA | 1 (0.10%) | 1 (0.10%) | 1 (0.10%) |
| Kowloon-Canton Railway Corporation ^{Note} | 4 (0.07%) | 4 (0.07%) | 4 (0.07%) |
| MTR Corporation Limited ^{Note} | Comparable to that in 2004 | Comparable to that in 2004 | 39 (0.60%) |

| <i>Organizations</i> | <i>No of PWDs employed (% of the total workforce)</i> | | |
|-------------------------------------|--|-------------|-------------|
| | <i>2002</i> | <i>2003</i> | <i>2004</i> |
| Publicly-funded Universities | Among the seven publicly-funded universities, only one has record on the employment of PWDs. The university concerned has employed four PWDs in the past three years representing less than 1% of the overall full-time staff. | | |

Note As the two railway corporations do not collect information on their employees' disabilities, the figures above are provided by the corporations as estimates.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, actually we all know that the unemployment problem of PWDs is very serious. I do not know how Secretary Dr York CHOW would feel after reading the Annex, but I do feel sad and indignant. I would ask the Secretary to look at the data. The HA has 857 PWDs, which accounts for 1.63% of the total workforce; the AA only has one PWD, accounting for 0.10%; the Kowloon-Canton Railway Corporation has four PWDs, accounting for 0.07%; the MTR Corporation Limited has 39 PWDs, accounting for 0.6%. For those employed on NCSC terms, I have calculated that there are 190 PWDs, accounting for 1.3% of the workforce. As far as I know, about 2% of the civil servants are PWDs. In Japan, it is a statutory requirement that a quota of 2% should be allotted to PWDs. However, I would ask Secretary Dr York CHOW to look at the number of PWDs employed by these organizations. It is shameful indeed. May I ask the Secretary what he will do? I also know that the Secretary has done something. In the last page of the main reply, it is said that the Secretary was recommended to issue a letter to Directors of Bureaux and Heads of Departments in May 2003, requesting them to encourage the public bodies to take further measures. Did the Secretary issue the letter? Have those Directors of Bureaux and Heads of Departments done anything? Nevertheless, judging from the results, we can see that the Government has been slapped in the face, as nothing has been done. May I ask the Secretary if there are any measures to rectify the existing shameful situation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, first of all, I have to clarify that the existing situation of employment of PWDs in Hong Kong is not shameful. In the entire Asia*

Region, Hong Kong is already a more advanced area in which a rather large number of PWDs have been employed. However, this problem cannot be solved overnight. In 2003, we issued a letter to 369 government subvented organizations. At present, 21 organizations have already set internal indicators in regard to the employment of PWDs or set the related indicators with the HA. Besides, 85 organizations have already formulated policies on the employment of PWDs. They include the HA, four universities, the Hong Kong Institute of Education and the AA. Nineteen organizations also announce the number of PWD staff in their annual reports. Of course, we will continue to follow up this survey and will keep on encouraging more organizations to carry out such work.

However, I have to clarify one point and that is, we cannot judge the employment of PWDs simply by figures. We have to cherish a concept of helping them in employment, and help them to realize their working abilities and foster a sense of achievement at work. We have to work at this in several ways. If the disabilities of the PWDs are born, we should start with education and adopt some measures in terms of their social life. For postnatal disabilities, we have to start with rehabilitation. When their disability starts to stabilize, we can provide some training to cater for their daily needs. At the same time, we should also do a lot of work on the employer side, to make them realize that PWDs have certain working abilities, and they will specially treasure any working opportunities. We have been doing this kind of work. We cannot, of course, make so many organizations accept a certain number of PWD staff overnight. Individual organizations will figure out a standard number according to their work nature and operational needs. We do not want to impose a mandatory requirement on them as to the number of PWD staff that they have to employ, because when some organizations can employ a certain number of PWDs, other organizations may not necessarily be able to do so.

I hope Mr LEE can understand that we will make continuous efforts in this regard. And I also hope that Members can continue to support us.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the Secretary did not answer my supplementary. He pointed out that the situation in Hong Kong was not shameful. But I was saying that the organizations were shameful. My supplementary asked whether these organizations were shameful, and what kind of work the Secretary would do. The Secretary did not answer what measures he would take to ensure that these organizations would employ more PWDs. He*

only told us what he would not do, for example, he would not mandate the organizations to employ them. However, will he further

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have to emphasize again that we are not doing nothing, for we are encouraging other organizations to employ PWDs. We are liaising with 369 government subvented organizations and will follow up their work in this regard annually. We will continue with these efforts. In 2002, Hong Kong conducted a survey to study the employment of PWDs — let me check clearly whether it was 2002, as it might be 2000. Anyway, the next survey will be conducted in 2007. During the previous survey in 2000, there were 59 700 PWDs with working abilities. Among these 59 700 PWDs, 52 500 PWDs, or 88% of them, were already employed. I believe that some of them do not have working abilities, but this was not disclosed in the survey. I think this is what we have to follow up. Therefore, we hope that in the next household survey, we can have a more in-depth study on this issue.

PRESIDENT (in Cantonese): Nine Members are waiting for their turn to ask supplementaries. Twelve minutes have already been spent on the exchange between Mr LEE Cheuk-yan and Secretary Dr York CHOW on this question. Thus, I hope Members can be as concise as possible when asking their questions so that more Members can have a chance to ask supplementaries.

MR ABRAHAM SHEK (in Cantonese): *Madam President, the Disneyland will be commissioned in September. Since the Government is one of the shareholders of Disneyland, has it discussed with the Disneyland and requested it to employ PWDs?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am sorry, Mr SHEK, we do not have such information. We may provide a written reply after following up this matter. (Appendix III)

PRESIDENT (in Cantonese): Mr SHEK, the Secretary has already answered your question.

MR ABRAHAM SHEK (in Cantonese): *Madam President, I was not asking whether there were such information, but whether the Government had ever discussed this matter.*

PRESIDENT (in Cantonese): Secretary, has discussion been held?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, this matter has not been discussed within my Bureau, but we can liaise with the government departments concerned.

MR FRED LI (in Cantonese): *Madam President, since the Government insists not to specify an employment percentage of PWDs, I would like to ask in another way as such: Can the Government review the existing 100 000-odd government posts to see which ones are suitable to be filled by PWDs? In other words, if the working abilities of PWDs can cope with certain posts and when such posts become vacant, can these non-governmental organizations recruit PWDs to fill these posts?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, our policy is not to single out some positions for application by PWDs. According to our policy, PWDs are welcome to apply for any government posts, whether civil service or non-civil service posts. Only if they satisfy the basic entry requirements of the posts, they will be given a certain level of preferential treatment, and this is already stated in the main reply. Therefore, the existing policy is to encourage PWDs more positively to apply for government posts, and let us employ PWDs according to the needs of the posts concerned. I think this is a more appropriate and effective policy.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, Secretary Dr York CHOW just pointed out that under their strong encouragement, 19 out of 369 organizations would announce their numbers of PWD staff employed, while 21 organizations would set internal indicators on this. Despite his strong encouragement, actually only about 5% of the organizations have responded. May I ask Secretary Dr York CHOW, apart from his continuous positive encouragement, whether he will directly require these organizations — I am presently not referring to commercial organizations, but public or government subvented organizations — to set internal indicators which they deem practicable and to announce these figures?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, we will certainly liaise with the organizations concerned, particularly those that have not accomplished these tasks. We will require them to continuously put in more efforts in this respect. However, we also have to understand that some organizations are already doing such work, but they may not tell us such information. Thus we certainly have to follow up. Among these 369 organizations, many are welfare organizations. I believe Dr CHEUNG will also understand that they do employ PWDs. Nevertheless, some small-scale organizations simply cannot set any indicator. It is not possible for those organizations that employ only 10 to 20 workers to set any indicator. Although these organizations are unable to set any indicator, we still hope that they can adopt the policy of employing capable PWDs as far as possible. And this is even more important. A lot of organizations are smaller in scale. If their staff size is below 100, it will be difficult for them to set a percentage. I think we should understand this point. Hence, this task definitely has to continue and I hope that the sector that Dr CHEUNG represents can promote this task with us together.*

DR FERNANDO CHEUNG (in Cantonese): *Madam President, the Secretary did not answer my supplementary. I just asked the Secretary whether he would require these organizations to do so. It is useless to talk only about policies. The AA also has a policy, but it has employed only one PWD. Will the Secretary require these public or government subvented organizations to set an indicator?*

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have said I also hope that some larger-scale organizations can formulate a policy. However, as I just said, small-scale organizations simply have no alternative. When an organization only employs 10-odd people and if there is one PWD, this is already almost 10%. Under the circumstances, this indicator is not a good guideline. Instead, we should formulate a policy to encourage them to employ capable PWDs as far as possible.

MS EMILY LAU (in Cantonese): *Madam President, in the main reply, the Secretary mentioned that he would not adopt a compulsory employment quota system, as PWDs would be perceived as a liability under this system, making them difficult to be accepted by their peers. May I ask the Secretary the reasons for such a remark? Do local PWDs ask the Secretary not to implement this system, otherwise, there will be such consequences? Besides, do other places implementing a quota system have similar experience?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I would like to tell Ms LAU that I am also the Hong Kong representative of Rehab International. Over the past decade or so, this issue has been under our discussion. From our experience, we also see that there are fewer and fewer countries being punished for not attaining the quota. Among Asian countries, only China and Japan have such a situation. Basically, Japan has already admitted that this is not a successful measure. Many companies employ PWDs simply for the purpose of meeting the quota. As no duties could be assigned to them, these PWDs are either being discriminated or sitting idly in corners in the companies. Some companies will even choose simply paying them wages. To PWDs, their dignity and feeling will be seriously injured under this system. A majority of the countries which used to implement the quota system, the United Kingdom, for example, have already given up the system since 1995 as it was not reckoned as a good measure. A lot of European countries deem that combating discrimination is the most important task presently. I believe that Hong Kong also has to analyse our situation and study what policies could be used to promote the employment of PWDs. According

to my present view, we have to educate and encourage the public, and we also have to reward the employers in doing so. I think this is a positive way instead.

MS EMILY LAU (in Cantonese): *Madam President, the Secretary has not answered my supplementary fully. In regard to overseas countries, he has given a very good reply. However, will local PWDs also agree with what the Secretary said in the main reply, that is, they will be perceived as a liability if they are employed due to the quota system?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, there are of course different views in Hong Kong. I believe that even Members here have different views. However, from the point of view of PWDs generally, especially those PWDs having a job at the present moment, they think that they have to be treated equally with other staff at work. They should enjoy no special status, nor should they enjoy any status simply because of compliance with certain legislation. I think this is very important.

PRESIDENT (in Cantonese): We have already spent more than 21 minutes on this question. This is the last supplementary.

MR PATRICK LAU (in Cantonese): *Madam President, according to the information provided to us by the Secretary just now, some organizations only employ very few PWDs. Is this due to the reason that our city and transportation cannot be barrier free, and thus unable to provide easy access to PWDs?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I believe that movement and transportation is a very important factor to PWDs at work. At present, a lot of PWDs will make use of public transport, some have to be escorted by their family members while some will use special means of transport. In this regard, we really must have suitable matching measures. I agree that when considering the employment of PWDs, we have to consider these issues at the same time.

PRESIDENT (in Cantonese): Fifth question.

Rationalizing Regulatory Regimes

5. **MR ABRAHAM SHEK:** *Madam President, in his 2004 policy address, the former Chief Executive admitted that the "regulatory regime in some areas has become excessively tight and detailed, leading to frustration among business people", and in this year's policy address, he said that the Subgroup on Business Facilitation had identified two sectors for review, the real estate/construction sector being one of them, with a view to rationalizing the regulatory regimes and simplifying the licensing procedures concerned. Regarding the review, will the Government inform this Council:*

- (a) *whether it has drawn up any timetable and objectives; if so, of the details; if not, the reasons for that; and*
- (b) *of the official who will be in charge?*

FINANCIAL SECRETARY (in Cantonese): Madam President,

- (a) With a view to improving the business environment of the real estate and construction industry, the Government is reviewing the regulations concerning these trades. The reviews cover the regulatory regimes of two broad areas, namely (1) the pre-construction stage and (2) the construction stage of a development process.

The objectives of both reviews are to eliminate outdated and excessive regulations and to make recommendations to speed up the project development cycle, and reduce compliance cost. Last year, the Subgroup on Business Facilitation (SBF) under the Economic and Employment Council (EEC) set up a dedicated Task Force to review the regulations concerning the pre-construction stage of development process. An unofficial member from the real estate sector serves as the convener. There are 12 other members, including representatives from the real estate and professional

sectors as well as a Legislative Council Member. The Task Force regularly reports progress of the review to the EEC.

The pre-construction regulatory review aims to address the trade's concern about the lengthy process in granting land which has become an obstacle to the development of the real estate and construction industry and affected the employment opportunities of construction workers. The work programme of the pre-construction regulatory review mainly covers (1) land and (2) town planning matters.

Concerning land matters, the review focuses on improvement opportunities in two aspects, *viz.* (1) simplification of lease conditions and (2) speeding up the lease modification process. The review on land matters has completed and recommendations made include reducing the many levels of control details in land leases, and exploring various means to enhance the efficiency of both the public and private sectors in the lease modification process. The Pre-construction Task Force is working with the Housing, Planning and Lands Bureau to identify feasible options for improvement.

The review on town planning matters will take place in the latter half of this year, and the tentative completion date is the end of this year.

The review of the construction stage is taken up by a dedicated task force under the Provisional Construction Industry Coordination Board (PCICB). This Task Force is chaired by a PCICB member, and other members include professionals and representatives of industry organizations and government departments. This Task Force regularly reports progress to the PCICB.

The construction stage review will study six priority areas within this year:

- reducing government involvement in detailed technical issues through private certification of compliance with regulatory requirements;

- aligning key development parameters under the various regulatory provisions;
- delegating vetting authority by regulatory agencies to one another to minimize repetitive submissions;
- centralizing the processing of building plans so as to integrate the checking of related statutory requirements (such as licensing requirements);
- tracking the status of processing building submissions; and
- overall review of the regulatory framework for the construction stage.

The construction stage review will identify preliminary recommendations for improvement by the end of this year, and will elaborate on the scope and rationale of those recommendations.

Many of the issues being pursued under the two reviews involve considerations at the technical level and debates on matters of principle.

- (b) The EEC chaired by myself will continue to identify opportunities to improve the regulations and simplify the procedures pertaining to the pre-construction stage of development from a business facilitation angle. During the process, the EEC and its Task Force will work closely with the bureaux and departments responsible for these regulations to examine the feasibility of the recommendations. The bureaux and departments concerned will also be responsible for implementing the various recommendations adopted.

Regarding the review to simplify the control parameters and regulatory regime for the construction stage of the development process, the PCICB, supported by the Environment, Transport and Works Bureau, will closely monitor the progress of the review.

MR ABRAHAM SHEK (in Cantonese): *I wish to thank the Secretary for providing us a very good answer. Can the Secretary clarify why the six recommendations relating to land and lease matters, which were made by the pre-construction Task Force out of the January and April meetings, have not been implemented to date?*

FINANCIAL SECRETARY (in Cantonese): Madam President, the Task Force has convened a number of meetings and made a number of recommendations concerning pre-construction regulatory measures. With regard to the series of recommendations made by the Task Force in the December meeting, we are currently actively studying them in detail. Since some of them are related to concepts of a higher level, we have not yet determined the details of implementation. Representatives of the Lands Department attended the Task Force's meetings on 18 and 31 March and made preliminary responses and exchanged views with the Task Force. The Housing, Planning and Lands Bureau and the Lands Department are currently actively studying the six recommendations in detail. Since many of the recommendations being pursued involve technical issues and discussions have to be conducted on matters of principle, we therefore need more time to study the pros and cons before a timetable for implementation of the recommendations could be drawn up. The Task Force will definitely make regular reports to the EEC on its work progress and we are of course glad to brief the relevant panel of the Legislative Council.

DR RAYMOND HO (in Cantonese): *The Secretary explained in the main reply that the review of the construction stage was undertaken by a dedicated Task Force under the PCICB with members being representatives of industry organizations. May I ask whether the opinions respective of professional bodies would be consulted direct in order to gauge their views on whether the scope of the study is adequate upon its completion? Moreover, can the recommendations of the Task Force deal with issues that require attention?*

PRESIDENT (in Cantonese): Will the Financial Secretary or Secretary Dr Sarah LIAO answer this supplementary?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, the scope of the review of the construction stage to be conducted by the Task Force would be rather extensive. This Task Force is under the PCICB and is chaired by a professional. Just now Dr Raymond HO questioned when the Task Force would consult professional bodies; I believe that it is definitely our next move. That is, we will fully consult all parties concerned, including the Institution of Engineers, the Institute of Architects, and so forth.

MR PATRICK LAU (in Cantonese): *Madam President, I wish to thank the Financial Secretary for the efforts he has made in this respect. Madam President, in this regard, I wish to share with Members some of my personal experience. I found the most difficult part is the land grant, town planning, construction stage and the application for licence as the process is really lengthy and the applicant has to submit applications to different government departments. I think the Financial Secretary should pinpoint the problem by setting up a centralized processing mechanism. May I ask whether the Government would consider merging the two bureaux or adopting other means which will make a single department co-ordinate the work in these four areas for the purpose of business facilitation?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary?

FINANCIAL SECRETARY (in Cantonese): Madam President, Mr Patrick LAU's supplementary is very complicated as it involves the work of several bureaux and government departments dealing with town planning, planning and lands and architectural services. In the review of the SBF, we are concentrating on means to rationalize some repetitive or unnecessary provisions. Our review is conducted in several respects, for instance, in respect of land matters (that is, in respect of lease conditions), after we have reviewed them, the relevant government department's initial consideration is that over 20% of the provisions could be deleted, merged or simplified. For example, a similar provision related to a restriction on the use of water has already been specified in Cap. 102A in the Laws of Hong Kong, thus the relevant provision shall be deleted accordingly.

In this respect, we will carry out the simplification measures under the current framework of bureaux and departments, and then we will look at the possibility of introducing a one-stop process to consolidate the tasks of the relevant bureaux and departments, but it is not a merger at all. I believe it would benefit the entire industry.

PRESIDENT (in Cantonese): Mr Patrick LAU, has your supplementary not been answered?

MR PATRICK LAU (in Cantonese): *Madam President, I really hope the Government will take this into consideration: There used to be a Secretary for Works in the colonial government.....*

PRESIDENT (in Cantonese): You have not mentioned that part in your supplementary. You should repeat the part of your supplementary which the Secretary has not answered.

MR PATRICK LAU (in Cantonese): *He has not answered the part concerning the establishment of a co-ordinating mechanism. I wish the Government will take that into account. We used to have a co-ordinating organization.*

PRESIDENT (in Cantonese): I understand your point, Mr Patrick LAU, this is your suggestion, but it should not be raised during the question time. You can write to the Financial Secretary and raise your proposal outside this meeting. Fine?

MR PATRICK LAU (in Cantonese): *Fine. Thank you, Madam President.*

MS EMILY LAU (in Cantonese): *Madam President, I wish to declare my interest. I am a member of the SBF under the EEC as well as the pre-construction Task Force, so I understand the hardships involved. The Secretary explained that the Task Force had made a number of recommendations*

and it was working with the Housing, Planning and Lands Bureau to identify feasible options for improvement.

Madam President, we will have a meeting with Mr Michael SUEN on the 12th this month. The meeting should have been convened two days ago, but since the Secretary was too busy to attend the meeting, it was therefore postponed. The Financial Secretary should be aware of those recommendations. May I ask whether he knows that his colleague actually has rejected a lot of recommendations? I said earlier that even though we have convened a number of meetings, I believe that by the time Secretary Michael SUEN comes to the meeting, he will only tell the Task Force that the recommendations will not work. Has the Secretary ever considered that many issues mentioned by him are rather complicated? Some even involve technical or legal implications; therefore, will he give the relevant committee or Task Force more support, so that they can make recommendations on a more solid basis, instead of making some recommendations which turn out to be infeasible? I believe no result will come out of the meeting of EEC on 13 June. May I ask the Secretary whether he knows the complexities and difficulties involved? Does he know that it is actually very difficult to move even a single step?

FINANCIAL SECRETARY (in Cantonese): Madam President, I wish to thank Ms Emily LAU for her hard work and the many constructive suggestions with insight that she constantly makes in the EEC and all the subgroups.

Furthermore, as to the six recommendations, some of them are indeed rather innovative and unheard of and beyond imagination in the past. One of the examples is the setting up of an arbitration mechanism. In order to expedite negotiations on regrant premium, the setting up of an arbitration mechanism is perhaps a good solution, but to the Government, it may involve a number of side issues. If the regrant premium issue can be handled by an arbitration mechanism, then should matters in other respects (not necessarily regrant premium) be handled by an arbitration mechanism? Moreover, after arbitration, will the outcome be acceptable to all parties concerned? We can see from the recent example of the Eastern Harbour Crossing that despite the arbitrator handing down a decision which was legal and in compliance with all the franchise provisions in the relevant agreement, the public thought differently

about the outcome. For that reason, we will be happy to consider setting up an arbitration mechanism, but that is not necessarily the most sensible and reasonable approach. Secretary Michael SUEN will meet with the Task Force on 12 May for a preliminary discussion. At that time, we can see what issues the two sides will raise and whether they can be resolved. If they can be resolved, then we will go further and make some more specific and concrete proposals.

With regard to the issue of support, just as I explained earlier, those recommendations are at the conceptual stage, I therefore believe our existing support is adequate. As to the issue of more support being given after some concrete proposals are made, there is no problem at all, and we will give the most appropriate support.

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

DR RAYMOND HO (in Cantonese): *Madam President, with regard to the review mentioned by the Secretary for the Environment, Transport and Works earlier, the industry has all along held that some of the provisions of the Environmental Impact Assessment Ordinance (EIAO) do not necessarily suit our existing situation, I therefore wish to ask the Secretary this question. With regard to the current review, has a thorough review been conducted to identify whether amendments can be made to some provisions of the relevant ordinance in the future in order to improve the current over-stringent regulatory measures?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I wish to explain that the construction stage review Task Force will study six priority areas: First, issues relating to private certification and third party assessment; second, the alignment of key development parameters; third, the tracking of the status of processing building submissions; fourth, the delegation of vetting authority; fifth, centralization of processing (that is, to see whether it is feasible to integrate the processing of different licenses into the processing of building plans); and sixth, an overall review of the regulatory

framework for the construction stage (we still have to look at whether the regulatory strategy and policy are problematic). It does not involve a review of the EIAO. With regard to the EIAO, we have been reviewing the deficiencies of the Ordinance in implementation or ambiguities in the professional and technical instructions on different occasions, while we have also been liaising with professional bodies related to environmental impact assessment all along. Nevertheless, the EIAO is not included in the scope of the review of the Task Force.

PRESIDENT (in Cantonese): Last oral question.

Introduction of Measures to Reduce Various Pollutions

6. **MRS SELINA CHOW** (in Cantonese): *Madam President, concerning the introduction of new measures to reduce various pollutions, will the Government inform this Council:*

- (a) *whether the government departments concerned study which of the new technologies developed overseas to tackle various pollutions, in particular air pollution and sewage, are suitable for introduction into Hong Kong; if so, of the new technologies these departments studied over the past three years, and those they plan to introduce in the next three years; and*
- (b) *as the Scheme of Control Agreements signed between the authorities and the two power companies will expire in 2008, of the clauses the Administration intends to include in the new agreements with a view to reducing the emission of pollutants from power plants?*

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

- (a) The Environmental Protection Department (EPD) and relevant departments always keep abreast of the latest development and

application of pollution control technologies in Hong Kong and overseas. By introducing and revising pollution-related legislation, codes of practice and guidelines, the EPD promotes the application of mature pollution control technologies in specific projects, or requests relevant trades to comply with specified standards based on the new technologies. I have to point out that the Government's strategy on pollution control technology is comprehensive and omni-directional. Apart from research conducted by various governmental departments, we collaborated closely with tertiary institutions and made full use of existing resources and channels. For instance, the Environment and Conservation Fund established in 1994 aims to, as one of its prime objectives, sponsor local educational institutes to conduct research and technology projects related to environmental protection and nature conservation. The Fund recently sponsored researches on the reuse of plastic wastes, recycling of construction wastes, as well as uses of waste tyres. All in all, we adopt an open and pragmatic attitude towards all technologies conducive to environmental improvement and pollution prevention, with key emphasis on their cost-effectiveness.

As far as air pollution is concerned, recent examples of pollution control technologies as investigated by the Government through different channels include the development of environmentally-friendly motor vehicle technologies, cleaner motor vehicle fuels, vapour recovery systems at petrol filling stations, emission reduction techniques by power plants, emissions trading and satellite imaging for the monitoring of the air pollution conditions of the Pearl River Delta.

As far as sewage treatment is concerned, research and development include the state-of-the-art chemically enhanced primary treatment technology as employed in the Harbour Area Treatment Scheme (HATS) Stage I, pilot plant trials on compact sewage treatment technologies (including the advanced biological aerated filter technology recommended by the International Review Panel), and a pilot scheme for effluent reuse at the Ngong Ping Sewage Treatment Plant on Lantau Island upon its completion in end 2005. Incidentally, the employment of biotechnology to remove sludges at the Shing Mun River is also a successful example.

In terms of renewable energy, studies as conducted by the Electrical and Mechanical Services Department (EMSD) include those on photovoltaic system, on-site wind recording system and assessment on the environmental impacts of wind systems, and so on. We also invite the two power companies to explore the construction of wind turbines for commercial application. To promote energy efficiency, the EMSD has approved buildings at various districts to use water-cooled air conditioning system, which is more effective than air-cooled system, and is also studying the feasibility of regional cooling system.

In the next few years, the EPD and relevant departments will continue to keep abreast of the latest advancements in air pollution control, sewage treatment and other technologies in the world which can help improve the environment, and consider the feasibility of their application in Hong Kong, including:

- (i) the possibility of earlier implementation of Euro V specifications for motor vehicle fuel, and the monitoring of the progress of the biodiesel study in Japan;
- (ii) new exhaust emissions reduction devices, including continuously regenerating traps;
- (iii) development of vehicle emissions monitoring technologies, including remote sensors targeted at diesel vehicles;
- (iv) to continue to urge the power companies to install more desulphurization systems and low-NO_x burners as appropriate to reduce sulphur dioxide and nitrogen oxides emissions;
- (v) to study the membrane biological filter and reverse osmosis, and implement a demonstration scheme on reclaimed water uses in the North District; and
- (vi) to study hybrid technology for sewage treatment and membrane biological reactor technology, and so on.

- (b) To achieve the 2010 emission reduction targets agreed between the Hong Kong and Guangdong authorities, we will impose caps on the total emissions of the power companies, make it a policy to require the power companies to maximize the use of natural gas in power generation and develop renewable energy, in accordance with the objectives set out in the 2005 policy address. The Stage I public consultation on the future development of the post-2008 electricity market has just ended on 30 April 2005. The Economic Development and Labour Bureau will consider the views received, map out the framework for the development of the post-2008 electricity market, and consult the public again on the framework at Stage II of the consultation in the latter half of this year. The Government, in formulating the framework for development and the regulatory arrangements for the future electricity market, will consider, *inter alia*, how to reduce power generation emissions and develop renewable energy to achieve the objective of sustainable development.

MRS SELINA CHOW (in Cantonese): *Madam President, I was glad to hear the Secretary say that the authorities would adopt an open and pragmatic attitude, with key emphasis on cost-effectiveness. Although it has been listed in the main reply that numerous studies have been conducted, my main question is about what new technologies will be introduced in the next three years. The impression we got from the authorities is that they will continue to conduct studies but no decision has been made on the introduction of new technologies. They will only keep on researching. May I ask the Secretary if she could give us a specific answer as to what new schemes the authorities have introduced, and what desired effects have been achieved?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): *Madam President, I am glad to see that Mrs Selina CHOW is so interested in pollution reduction and environmental protection. Lately, I have learned from the newspapers that Mrs Selina CHOW is very much interested in research on new sewage treatment systems. In fact, every day, many experts will suggest to us some treatment processes using advanced technologies,*

therefore, we are not only doing researches. When we come across projects suitable for application of such technologies, we will immediately employ them for application. For example, in the coming three years, we will introduce chemical treatment technology for HATS, and in respect of abating colibacillosis, we will also introduce some disinfection technology. As for the treatment of sludges like the case at Shing Mun River, we are persistently studying the methods already employed. For instance, although biotechnological treatment is successful to a certain extent, it may not be used for treating sea water. It is true that we intend to employ these technologies, but some modifications are still necessary. Therefore, it is difficult to give an account on each and every plan. For example, we will bring in the Euro V standard for motor vehicles, and with regard to the catalyst system for reducing vehicular emissions, we will continue to introduce the latest standards and technologies in order to conform with the current global standards.

MRS SELINA CHOW (in Cantonese): *The Secretary has failed to answer specifically what schemes have been introduced. Of course, I understand that she cannot list them out seriatim here, but if possible, could the Secretary follow up by giving me a written reply, that is, informing me what specific plans there will be in the next three years?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, I do not think we have plans to bring in technologies in the next three years because this will limit the kinds of technologies we can choose in the future. Even if we are talking about one year later, there can be great advances in technologies, thus, if we come to a certain project then, we will make considerations. Right now, we have to consider several large sewage projects, and we have almost decided what technologies to employ. I can provide Mrs Selina CHOW with information in this regard. (Appendix IV)

MS MIRIAM LAU (in Cantonese): *Madam President, in other places, including Europe and the United States, many medium and heavy vehicles will*

use alternative environmentally-friendly fuels. One example is the single-decker buses in California which use methanol, and many medium and heavy vehicles in Europe use natural gas. May I ask the Government if research has been made in this respect? Can medium vehicles in Hong Kong, including the 7 000-odd coaches or non-franchised buses and the franchised single-deckers, use alternative environmentally-friendly fuels? The gas company has announced that it will use natural gas, therefore, natural gas may be introduced into Hong Kong. Is there a chance for these medium and heavy vehicles to switch to alternative environmentally-friendly fuels so that the air quality in Hong Kong can be further improved?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the EPD has a special division to study vehicular fuel. They have researched on liquefied petroleum gas (LPG) buses, vehicles running on natural gas and other vehicles running on batteries, as well as some biofuels, such as methanol mentioned by Ms LAU just now. However, LPG buses are not popular in the international community and according to what we have gathered from our researches, the power output of most single-decker buses will be weakened once the air-conditioning system is turned on. Moreover, we have made reference to the new LPG buses in Beijing and discovered that they have the same power problem. Since Hong Kong has numerous steep roads, we may have to conduct further studies.

As regards natural gas, its technology is more mature. Many cities in the United States (such as Los Angeles) are using natural gas buses, but this involves the introduction of an alternative gas, that is, infrastructural facilities for the entire project must be in place. We have embarked on the study of bringing in natural gas, but unlike LPG, natural gas requires the signing of contracts of huge value spanning a decade or two. Furthermore, there must also be a storage for natural gas itself or appropriate pipes, just as what the CLP Power Hong Kong Limited (CLP) has now. Therefore, more time is required for studies on infrastructure. We are looking for places to store natural gas for the power companies, but despite spending much time, we have come up with few suitable places.

Therefore, in respect of gases, Hong Kong in fact is mainly restricted by its infrastructure. As a result, we have switched our research to the use of hydrogen vehicles. Infrastructure for hydrogen is simpler because it can be manufactured on the spot. Nonetheless, hydrogen also has its danger, that is, safety considerations. Despite this, hydrogen vehicles have been tried out in Vancouver, Canada, with good results. I myself have also driven several hydrogen vehicles in San Francisco, California. I found that the vehicles have sufficient horsepower with near-zero pollution. Therefore, having considered these few gases, we consider that we should concentrate on carrying out studies on the use of the latest technology and the kinds of fuel which will produce the least pollution, rather than introducing a different gas each and every time.

In a place as small as Hong Kong, it is really relatively difficult to build supporting infrastructural facilities. LPG taxis are also facing the problem brought about by the location of filling stations. Since the filling stations are located in places farther away from residential areas, drivers find them very inconvenient. Therefore, distribution, rather than number, is the problem. Although we have many filling stations, drivers will only visit one or two of them to top up their tanks. In view of this, we have to look at the problem from an overall angle. Apart from technology, there is still the problem of practicality which we must consider, that is, we have to consider how the technology can be applied in the environment of Hong Kong.

Besides, with regard to methanol mentioned by Ms LAU, some countries have been using it, but according to our research findings, the level of nitrogen oxides produced by methanol is higher, and nitrogen oxides are exactly the most serious pollutants in Hong Kong. Although it is not impossible to switch to methanol which may be advantageous to ameliorating problems caused by particulates, it however brings about the problem of nitrogen oxides at the same time. As for hybrid application, it may not be suitable for the engine parts of some vehicles. Therefore, even though we have conducted studies in this respect, we have not accorded priority to it.

MR FRED LI (in Cantonese): *Madam President, I would like to ask the Secretary about pollutant emissions of the two local power companies. It is*

mentioned in the last part of the main reply that: "..... impose caps on the total emissions to require to maximise the use of natural gas in power generation". However, the Secretary should know that the supply of natural gas is dwindling. With the CLP case, supply is already shorter than its expectation, and since the amount of electricity sold to Guangdong is increasing, the amount of coal used will also see a substantial increase. This is also one of the reasons for our rising level of pollutant emission. Since some environmental protection organizations are saying that the restrictions set by the Government are too lenient, the amount of pollutants emitted by the CLP has increased. In this connection, can the Secretary review whether the current caps on the total emissions are too lenient and whether there is a need to further tighten them, so that the pollutant emission situation in Hong Kong will not be this serious?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, emissions from power companies are regulated by the Specified Process under the Air Pollution Control Ordinance. The power companies will have their licences renewed at certain intervals, with the kinds of pollutants allowed for emission specified in the licences. However, the emission standard then adopted was based on concentration, that is, the quantity which can be emitted per minute. The reason for this is to limit the concentration to a certain quantity, so that the pollutants can be dispersed by way of dilution to reduce air pollution. Under such circumstances, even if the power companies use a large quantity of coal, so long as they comply with the emission standard and the concentration remains compliant, we will have to let them continue with production no matter how much coal they burn.

The new system currently adopted has specified the caps for emissions. Unlike before, every company has a fixed cap on total emissions; the company has to look for the equilibrium to decide how much natural gas should be used to reduce the pollution level of its emissions, and in which parts of its production should coal be used. When burning coal, the resultant pollution level should not exceed this standard level of emission. We are now working in this direction, that is, first of all, we will control the companies through licensing. However, we are still in the process of discussion.

As Members are aware, pollution control will at the same time affect cost, and this will be reflected in tariffs. We of course have to discuss with the Economic Development and Labour Bureau to determine what the most effective ways to control air pollution are. From my angle, I of course hope that only natural gas will be used because this can reduce pollutants to the minimum, but the Government has to find an equilibrium in its various policies. In the last two years, the ratio of coal-burning for the CLP was higher than before, and one of the reasons is the reduced supply of natural gas. Nonetheless, from the angle of doing business, since supply has decreased, the CLP should look for new suppliers instead of neglecting the situation on the excuse that the supplier has reduced supply. We will not accept such an excuse. Thus, we have urged the CLP to look for new suppliers of natural gas.

On the other hand, we are reviewing the control on the CLP with regard to coal-burning, that is, whether the restriction on the sulphur content of coal-burning is set at too high a level and whether the level can be lowered. Actually, if the level is restricted to 0.5%, the power companies will normally keep the level below 0.5%. Therefore, we hope to further lower this restriction so that air pollution can be ameliorated.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. I can only allow one last supplementary question from Members.

MR VINCENT FANG (in Cantonese): *Madam President, in her reply earlier, the Secretary said that the world is changing fast, and a lot of new skills and technologies have emerged. May I ask the Secretary whether the Government has set up a task force of experts to decide which technologies are worth introducing and which are not?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, at present, we do not have Scientific Officers who are the equivalent of scientific experts in the past. The SAR Government

has not created this post, thus, all experts on environmental protection matters are scattered in the different divisions of the EPD.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Government Services Vying with Private Sector for Profits

7. **MR CHIM PUI-CHUNG** (in Chinese): *Madam President, regarding the criticism against Radio Television Hong Kong that its broadcast of horse racing programmes is "vying with the private sector for profits", will the Government inform this Council whether other government departments have reviewed if their services involve "vying with the private sector for profits"; if they have, of the review results; if the review results reveal no such competition, how the authorities can prevent the occurrence of such phenomenon?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in the absence of Secretary for Commerce, Industry and Technology) (in Chinese): Madam President, the Government believes that the economy must be market-led and upholds the principle of "big market, small government". Generally, there is a difference in the nature of operation of government departments and the private sector. The need of the public is our fundamental consideration in the provision of public services whereas the activities of the private sector are essentially driven by commercial considerations. We also strive to ensure that the public sector does not consume too much of the community's resources, allowing the private sector to function as the engine of wealth creation and economic development. On the other hand, we will make use of market forces and strengthen our co-operation with the private sector to provide better and more efficient services to the public through various means.

When the public and private sectors are providing similar services in specific areas, the relevant government departments will keep under regular

review the scope of concerned services in accordance with the abovementioned principles.

Construction of Pedestrian Walkway at Wu Chung House Across Queen's Road East

8. **MR ALAN LEONG** (in Chinese): *Madam President, in approving the development plan of Wu Chung House, the Town Planning Board (TPB) required the developer of the building (the Developer) to construct a pedestrian walkway (the Walkway) at Wu Chung House across Queen's Road East and connecting Inland Lot No. 7781 (IL7781). Such requirement is also stipulated in the land lease conditions and the planning permission for Wu Chung House. However, since the completion and occupation of Wu Chung House in 1992, the Walkway has not yet been constructed. In reply to my question at the Council meeting on 20 April 2005, the Government pointed out that as the construction of the Walkway was proposed by the Developer who undertook to commence the construction works upon completion of the land exchange procedures for a large hotel project, it was therefore stipulated in the land lease that "The portion of the pedestrian walkway to be constructed across Queen's Road East to IL7781 shall be completed within 12 months from the date of handover to the Grantee of IL7781 by the Government". In this regard, will the Government inform this Council:*

- (a) *in deciding to approve the development plan of Wu Chung House, whether the TPB had considered the planning merits anticipated to be brought about by the completion of the Walkway, the improvements to the environment, pedestrian flow and road traffic, as well as other additional benefits to the local community;*
- (b) *whether it has assessed if the Developer, after being granted the development right of Wu Chung House, may decide unilaterally to terminate or suspend discussions with the Government on the land exchange arrangements for the above hotel development project; whether the construction of the Walkway will be terminated or postponed as a result of the Developer's decision, and the*

Government's strategies for handling such situation; if it has, of the assessment results; if not, the reasons for that; and

- (c) *of the actions taken by the Buildings Department and relevant government departments, in issuing the occupation permit and certificate of compliance for Wu Chung House, to ensure that the scheme plan to develop Wu Chung House complied with all the requirements under section 16 of the Town Planning Ordinance, and whether they had consulted the Planning Department, the Lands Department and the Transport Department on the application; if they had, of the replies from those departments; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):

Madam President, my reply to the three-part question is as follows:

- (a) The planning application for Wu Chung House development was approved by the TPB with conditions on 22 April 1986. Revised proposals were further considered by the TPB in 1987 and 1988. As part of the development scheme, the Developer proposed an elevated footbridge system across Queen's Road East to IL7781. In considering the development scheme, the TPB accepted the proposed footbridge system because the Board recognized that the system would reduce the need for pedestrians to cross Queen's Road East at ground level and hence facilitate separating pedestrian flow from that of vehicle.
- (b) According to the lease conditions of Wu Chung House, the Developer needs to construct the proposed footbridge upon the completion of the land exchange for a large hotel development; however, the land exchange itself has not yet materialized. Should the Developer decide to defer or not to proceed with the large hotel development, the requirement to construct the footbridge would be postponed or fall away. As the land exchange for the large hotel development is being processed, the Government has not devised a

strategy on the assumption that the Developer would withdraw the land exchange application regarding the large hotel development. It should be noted that the footbridge across Queen's Road East was proposed by the Developer to cater for its nearby developments and the proposed hotel mentioned above and not a government proposal.

- (c) Under section 16(1)(d) of the Buildings Ordinance, the Building Authority may refuse to approve any plans of building works where the carrying out of building works shown thereon would contravene any approved or draft plan prepared under the Town Planning Ordinance. In the processing of building plans of Wu Chung House, the Buildings Department had consulted the Planning Department to ensure that the building plans to develop Wu Chung House did not contravene the draft plan prepared under the Town Planning Ordinance.

In accordance with established procedures, upon receipt of the application for occupation permit for Wu Chung House, the Buildings Department had informed the Lands Department, who could then examine whether the lease conditions had been complied with. The Buildings Department had not informed the Transport Department and the Planning Department as the processing of the occupation permit did not require input from the two Departments.

Regarding the issue of Certificate of Compliance, although the planning approval for Wu Chung House development did not specify a completion date for the footbridge, it did require that the pedestrian circulation system and routings be to the satisfaction of the Highways Department. According to the lease of Wu Chung House, the Developer needs to construct the proposed footbridge upon the completion of the land exchange for a large hotel development; the land exchange itself has not yet materialized. Before the Certificate of Compliance was issued, the Lands Department had consulted the Highways Department, the Registrar General, the Drainage Services Department and the Architectural Services Department in accordance with established procedures on

the fulfillment of the obligations under the lease by the Developer, and the departments gave positive confirmation in this regard.

Tiles Falling off from Walls of Public Housing in Tin Shui Wai

9. **DR JOSEPH LEE** (in Chinese): *Madam President, it has been reported that since February this year, there have been over 500 incidents of tiles falling off from walls of lift lobbies and corridors in public housing and Home Ownership Scheme (HOS) buildings in Tin Shui Wai. Many residents say that they have lodged numerous complaints with the Housing Department (HD) but such incidents have continued to take place. In this connection, will the Government inform this Council:*

- (a) *of the number of relevant complaints received by the HD from residents in the district in the past two months, with breakdowns by the progress of the repair works and the estimated completion time;*
- (b) *of the respective numbers of tile de-bonding incidents in individual public housing/HOS estates in the district in the past two months, and the details of such incidents, including the locations of occurrence as well as the areas and extents of the de-bonding;*
- (c) *of the respective numbers of tile de-bonding incidents in individual public housing/HOS estates in the district in the past five years; the average monthly number of such incidents, the average time taken to complete the repair works, and the time lapse from the completion of the building concerned to the occurrence of the first tile de-bonding incident in each public housing/HOS estate;*
- (d) *whether the HD has arranged inspections for signs of loose tiles in the common areas of those buildings at regular intervals and during humid weather; if it has, of the schedule; and*
- (e) *whether it has analysed the causes of continual tile de-bonding in those buildings and formulated measures to solve the problem; if so, of the results of the analyses and details of the measures?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
Madam President, my reply to the five-part question is as follows:

- (a) In the past two months, the HD received 122 reports on tile de-bonding in Tin Shui Wai. Together with the 920 cases identified by the HD staff during their daily patrol, there were 1 042 cases in total. Repair works have been completed for 82 cases. Repairs for 419 cases and inspections on 541 cases are still in progress. In general, repair works take one to two months to complete but for estates and courts built some time ago, it may be necessary to procure matching tiles, which takes three to four months.
- (b) Out of the 1 042 de-bonding cases, 575 occurred in public rental housing estates and 467 in HOS courts. Most of the cases occurred in common areas, such as walls of corridors and lift lobbies. The size of the affected areas varies widely. There are also a few cases where de-bonding occurred on the internal walls of bathrooms and kitchens of the flats. Details are at Annex A.
- (c) De-bonding occurred relatively frequently only in the past couple of years. Before then, such incidents were rather infrequent and sporadic. They were usually followed up and repaired immediately and no detailed records were kept for these sporadic incidents. De-bonding cases that took place in public rental housing estates and HOS courts in Tin Shui Wai in the past three years are detailed at Annex B. As de-bonding usually occurs sporadically and de-bonding incidents within a building usually occurs within a short span of time, it is inappropriate to calculate an average figure, which may be misleading.

As mentioned above, the time needed for repair works depends very much on the availability of matching tiles. If suitable tiles are readily available, repairs can usually be completed in one to two months. Less time is required for repairing the internal walls inside flats, which on average takes about a month.

The time lapse from the date of building completion to occurrence of the first incident of de-bonding varies widely. No particular pattern can be discerned. Generally speaking, most de-bonding occurs after drastic changes in temperatures.

- (d) Estate management staff examine the walls in common areas of housing estates during their daily patrol. Loose tiles are removed immediately and prompt inspections will also be conducted on other floors of the same building to ensure that tiles are in good condition.
- (e) The causes of tile de-bonding are complex. It can be attributable to design, choice of materials, workmanship, structural, environmental factors, and so on. There is no consensus among the trade. The exact causes can only be determined by detailed investigations in the light of the actual circumstances on site.

To strive for continuous improvement in building quality, we have enhanced the technical specifications with reference to international best practices and in conjunction with the industry. We have also asked the industry to improve the adhesive material and laying methods. These more stringent specifications have been applied to a number of projects with promising results. Since the end of 2004, we have also required contractors to provide a seven-year warranty for tiles. This not only encourages contractors to upgrade their workmanship and continuously improve their laying techniques, but also reduces disputes over repair responsibilities and hence expedites repairs. Moreover, with wider adoption of paintwork in common areas of most domestic projects since 2003, the use of tiling has been reduced. Where tiling is specified, ceramic tiles are used instead of homogeneous tiles, which are more demanding in terms of workmanship, to reduce incidences of de-bonding in future.

For internal walls inside flats, we are piloting pre-cast structural walls with tiling done in a factory environment where control over tile quality and workmanship is more effective.

Tile De-bonding Cases in Public Rental Housing Estates and HOS Courts in Tin Shui Wai in February and March 2005

| <i>HOS courts/ Public rental housing estates</i> | <i>Total number of cases</i> | <i>Means by which cases were identified</i> | | <i>Location and size of affected areas</i> | | | <i>Progress of follow-up actions</i> | | | |
|--|--------------------------------------|---|----------------|--|------------------------------------|--|--------------------------------------|--------------------------------|------------------------------|---|
| | | <i>Estate patrols</i> | <i>Reports</i> | <i>common areas</i> | | <i>Internal walls of kitchens and toilets (No. of cases)</i> | <i>Inspections in progress</i> | <i>Repairs in progress</i> | <i>Repairs completed</i> | <i>Expected completion date³</i> |
| | | | | <i>No. of cases</i> | <i>Area² (sq m)</i> | | | | | |
| HOS courts ¹ | 467 | 456 | 11 | 464 | 3 049 | 3 | 467 | 0 | 0 | Varies |
| Public rental housing estates | 575 | 464 | 111 | 470 | 5 110 | 105 | 74 | 419 | 82 | As follows: |
| Tin Yiu (I) Estate | 5 | 5 | 0 | 5 | 90 | 0 | 0 | 5 | 0 | July 2005 |
| Tin Yiu (II) Estate | 46 | 46 | 0 | 46 | 517 | 0 | 0 | 46 | 0 | June 2005 |
| Tin Shui (I) Estate | 7 | 4 | 3 | 4 | 43 | 3 | 0 | 1 | 6 | June 2005 |
| Tin Shui (II) Estate | 36 | 20 | 16 | 20 | 48 | 16 | 3 | 13 | 20 | June 2005 |
| Tin Wah Estate | 174 | 168 | 6 | 168 | 2 200 | 6 | 6 | 168 | 0 | July 2005 |
| Tin Tsz Estate | 138 | 58 | 80 | 58 | 989 | 80 | 0 | 82 | 56 | September 2005 |
| Tin Chak Estate | 4 | 4 | 0 | 4 | 371 | 0 | 4 | 0 | 0 | August 2005 |
| Tin Yat Estate | 3 | 3 | 0 | 3 | 10 | 0 | 3 | 0 | 0 | June 2005 |
| Tin Yuet Estate | 58 | 58 | 0 | 58 | 417 | 0 | 58 | 0 | 0 | August 2005 |
| Tin Heng Estate | 104 | 98 | 6 | 104 | 425 | 0 | 0 | 104 | 0 | August 2005 |
| Total | 1 042 | 920 | 122 | 934 | 8 159 | 108 | 541 | 419 | 82 | - |

1 HOS courts include Tin Oi Court, Tin Fu Court, Tin Chung Court and Tin Shing Court. The number of cases for individual courts is not disclosed at the request of the courts.

2 Figures to be finalized upon completion of inspections.

3 Refers to the expected date of completion for all repairs within the estate. Individual repairs will be completed earlier if the affected area is small and if matching tiles are readily available. Procurement of matching tiles takes about three to four months.

Tile De-bonding Cases in Public Rental Housing Estates and HOS Courts in Tin Shui Wai from 2002 to 2004

| <i>HOS courts/ Public rental housing estates</i> | <i>2002</i> | | <i>2003</i> | | <i>2004</i> | |
|--|---|---|---|---|---|---|
| | <i>Common areas² (Area) (sq m)</i> | <i>Residential flats³ (No. of cases)</i> | <i>Common areas (Area) (sq m)</i> | <i>Residential flats (No. of cases)</i> | <i>Common areas (Area) (sq m)</i> | <i>Residential flats (No. of cases)</i> |
| HOS courts ¹ | 1 440 | 0 | 3 455 | 0 | 6 307 | 4 |
| Public rental housing estates | 133 | 157 | 351 | 321 | 1 028 | 251 |
| Tin Yiu (I) Estate | 0 | 0 | 0 | 0 | 0 | 0 |
| Tin Yiu (II) Estate | 0 | 0 | 10 | 0 | 20 | 0 |
| Tin Shui (I) Estate | 0 | 0 | 0 | 0 | 0 | 0 |
| Tin Shui (II) Estate | 0 | 0 | 0 | 0 | 0 | 0 |
| Tin Wah Estate | 35 | 2 | 75 | 3 | 140 | 2 |
| Tin Tsz Estate | 60 | 155 | 65 | 318 | 155 | 249 |
| Tin Chak Estate | 38 | 0 | 0 | 0 | 30 | 0 |
| Tin Yat Estate | 0 | 0 | 201 | 0 | 252 | 0 |
| Tin Yuet Estate | 0 | 0 | 0 | 0 | 25 | 0 |
| Tin Heng Estate | 0 | 0 | 0 | 0 | 406 | 0 |
| Total | 1 573 | 157 | 3 806 | 321 | 7 335 | 255 |

¹ HOS courts include Tin Oi Court, Tin Fu Court, Tin Chung Court and Tin Shing Court. The number of cases for individual courts is not disclosed at the request of the courts.

² De-bonding in common areas is recorded in terms of affected area.

³ The area of de-bonding in flats is usually small. Thus, the number of cases is recorded instead of affected area.

Different Interpretations of Basic Law Provisions by the Mainland and Hong Kong

10. **MR FREDERICK FUNG** (in Chinese): *Madam President, in her statement on the term of the new Chief Executive on 12 March this year, the Secretary for Justice pointed out that the Basic Law was the interface between two systems under one country, and it was unavoidable that the mainland organs and legal sectors and the local institutions and legal sectors would sometimes have different interpretations of the provisions of the Basic Law. Given the common goal of preserving the stability and prosperity of Hong Kong, there should not be any difference that could not be resolved through mutual understanding, empathetic accommodation and frank communication. Moreover, continuing dialogue and communication were the best means by which a consensus on the implementation of the Basic Law by legal professionals of the two jurisdictions could be cultivated. The Government of the Hong Kong Special Administrative Region would endeavour to achieve this. In this connection, will the Government inform this Council whether it has studied if:*

- (a) the authorities' current interpretation of the provisions of the Basic Law, other than those relating to the term of office of the Chief Executive, is different from their previous interpretation, and if the literal meaning of such provisions contradicts the legislative intent;*
- (b) the authorities' interpretation of such provisions of the Basic Law is different from that of the Central People's Government; and*
- (c) in implementing such provisions of the Basic Law, some circumstances have arisen which had not been envisaged at the time these provisions were drafted;*

if it has studied the above and the results indicate the existence of the situations described in parts (a) to (c), of the provisions concerned and the authorities' measures to address the situations; if it has not, the reasons for that and, given that the authorities have to conduct the above study before engaging in communication and dialogue with the Mainland on those provisions which are interpreted differently in Hong Kong and in the Mainland, whether the absence of such study is consistent with the authorities' endeavour to cultivate, through communication, a consensus between the two jurisdictions on the implementation of the Basic Law?

SECRETARY FOR JUSTICE (in Chinese): Madam President, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was promulgated by the National People's Congress on 4 April 1990 after four years and eight months of effort made by the Drafting Committee, and two extensive consultations conducted through the Hong Kong Basic Law Consultative Committee formed of people from all walks of life in Hong Kong. During the period of more than four years, the Drafting Committee held nine plenary sessions, there were 25 meetings of the Chairman and Vice-Chairman and two enlarged meetings of the Chairman and Vice-Chairmen, the General Working Group held three meetings, and the Special Groups met 73 times before the draft was presented to the National People's Congress on 28 March 1990. Approximately one third of the members of the Drafting Committee members were Hong Kong residents. One of the purposes of the Basic Law was to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong, and such policies had been elaborated by the Chinese Government in the Sino-British Joint Declaration. It was therefore a piece of legislation passed in accordance with the Constitution of the People's Republic of China, based on the Sino-British Joint Declaration and with the participation of Hong Kong people.

Like all constitutional instruments, it could only set out the broad principles, leaving details to be implemented through domestic laws. In the course of drafting, views were expressed over the brevity of certain articles, but it was decided that policies rather than details should be adopted.

The dispute over Article 53 para 2 of the Basic Law illustrates how one may not be able to identify any differences in understanding of the Basic Law until the question comes up in a real situation. The recent discrepancy only became apparent when a vacancy in the office of Chief Executive arose from the resignation of the former Chief Executive. It is not possible to scrutinize the Basic Law clause by clause and seek the opinions of mainland experts on abstract issues. A real life situation which gives rise to a dispute may throw up factors which could not be foreseen during an abstract consideration. Since the reunification, more than one third of the Basic Law articles have been interpreted by the Courts of Hong Kong and three Interpretations have been issued by the Standing Committee of the National People's Congress (NPCSC). All these help to enrich our understanding of the Basic Law and, when more precedents are accumulated, we will be better able to master the meaning of the Basic Law.

In answer to the specific questions of Mr Frederick FUNG:

- (a) The Government is not aware of any other article in the Basic Law in respect of which our current understanding differs from our original understanding, or in respect of which the literal meaning contradicts the original legislative intent;
- (b) The Government is not aware of any article in the Basic Law in respect of which its interpretation differs from the interpretation by the Central Authorities;
- (c) In the implementation of the Basic Law, there is one set of circumstances that does not appear to have been envisaged at the drafting stage. The election of the second term Legislative Council preceded the election of the second term Chief Executive. However, Annex II of the Basic Law provides (in effect) that the Election Committee for the second term Legislative Council should be that for the second term Chief Executive. This gave rise to some concerns as to how these provisions should be implemented. The Legislative Council (Amendment) Ordinance 1999 and the Chief Executive Election Ordinance were enacted in the years 1999 and 2001 respectively to enable the Election Committee to be formed for the election of six Members of the Legislative Council and for that Election Committee to be continued and regarded as having been constituted as the first Election Committee under the Chief Executive Election Ordinance. Insofar as the Legislative Council Ordinance is concerned, the Election Committee is no longer relevant, since no further Members were returned by the Election Committee in the third term Legislative Council election in 2004. Regarding the Chief Executive Election Ordinance, Members were fully aware that there might be a vacuum of approximately 18 months during which no Election Committee would exist. If any need for another election of the Chief Executive arises in the 18 months period from 13 July 2005, we could consider forming another Election Committee. But we would not take such a decision lightly, as we do not wish to hinder the review of the method for selecting the Chief Executive in 2007. If no such need occurs, there will be convergence of the term of the Election Committee and of the third term Chief Executive in the

year 2007. This also shows how an anomaly in the Basic Law may be resolved without seeking an interpretation of the Basic Law by the NPCSC.

Illegal Posting of Advertisements in Public Places

11. **MR ALBERT CHAN** (in Chinese): *Madam President, recently I have received complaints from the public that illegal posting of advertisements in public places is rampant, adversely affecting the cityscape. In this connection, will the Government inform this Council:*

- (a) of the number of complaints about illegal posting of advertisements in public places received by the authorities in each of the past three years;*
- (b) of the respective numbers of prosecutions instituted for illegal posting of advertisements and those resulting in the conviction of offenders in each of the past three years, as well as the fines imposed and the legal costs involved; and*
- (c) whether there are measures to ameliorate the problem of illegal posting of advertisements in public places; if so, of the details; if not, the reasons for that?*

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

- (a) The Food and Environmental Hygiene Department (FEHD) received around 500, 800 and 1 100 complaints about unauthorized display of commercial bills/posters in 2002, 2003 and 2004 respectively.
- (b) The FEHD takes enforcement action against unauthorized display of bills/posters in accordance with the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) and sections 104A and 104D of the Public Health and Municipal Services Ordinance (Cap. 132). The statistics for 2002 to 2004 are:

| Year | Fixed Penalty Notices* | Prosecution by summons (the number in bracket refers to successful prosecutions ¹)* |
|------|------------------------|---|
| 2002 | 400 ² | 410 (380) |
| 2003 | 650 ³ | 230 (190) |
| 2004 | 650 | 90 (80) |

* The above figures are rounded to the nearest ten.

¹ Prosecution of some successful cases might not have been initiated in that year.

² The fixed penalty system was launched in late May 2002. The fixed penalty was \$600 at that time.

³ The fixed penalty has been increased from \$600 to \$1,500 since late June 2003.

The total amount of fines amounted to over \$2.4 million, including over \$1.8 million from Fixed Penalty Notices (FPNs) and around \$620,000 from the successful prosecutions by summonses. The latter's average penalty was about \$970.

Normally, no legal cost is incurred for issue of FPNs except when the offender disputes the notice concerned. Prosecution of unauthorized display of bills/posters by summonses and dispute cases on FPNs are mainly handled by the FEHD staff who are also vested with other responsibilities. There is no breakdown on the costs specific to the handling of these cases.

- (c) The FEHD will continue to tackle the problem of unauthorized display of bills/posters through cleansing services and enforcement. The Department will allocate additional resources in 2005-06 to engage cleansing workers of contractors to clear illegal bills/posters at black spots in districts. Besides, the Department will continue to deploy uniformed and plain clothes officers to patrol black spots and take out prosecutions as appropriate.

University Students Employing Others to Do Assignments

12. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that it has become a common phenomenon among university students to plagiarize assignments and hire "ghostwriters" to do the assignments for them. Some university students hired other persons to do their assignments throughout the three-year studies and escaped notice. They even graduated with high scores. In this connection, will the Government inform this Council whether it knows:*

- (a) *the numbers of cases in the past three years involving plagiarism and hiring of "ghostwriters" by students of various local universities, and whether the students involved were punished; if so, of the details;*
- (b) *the guidelines issued by local universities to their teaching staff on handling cases involving such practices, and the details of the relevant monitoring mechanism; and*
- (c) *the measures adopted by local universities to improve the situation?*

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

- (a) According to the information provided by the University Grants Committee (UGC)-funded institutions and The Open University of Hong Kong (OUHK), the number of cases involving plagiarism by undergraduate and postgraduate students in the past three years is as follows:

| <i>Academic Year</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> | <i>2004-05 (up to 15 April 2005)</i> |
|-----------------------|----------------|----------------|----------------|--|
| Total number of cases | 33 cases | 41 cases | 66 cases | 22 cases |

Given that plagiarism and "ghostwriting" are difficult to distinguish, most of the institutions do not classify "ghostwriting" cases separately and therefore no statistics on this can be provided.

Plagiarism cases detected by institutions usually involve copying or using others' materials without proper acknowledgement or permission, submitting projects or papers that were previously submitted by other students, and copying assignments from each other. Punishment levied on the students involved in such cases varies, depending on the circumstances and seriousness of the offences. Broadly speaking, punishment can take the following forms:

- (i) termination of study and expulsion;
 - (ii) suspension of study, postponement of graduation, or withholding transcripts and academic awards;
 - (iii) oral or written reprimand, or demerit on student record;
 - (iv) a lower grade or a failure grade to be awarded to the assignment or the course concerned;
 - (v) suspension or withdrawal of privileges, rights, and benefits; and
 - (vi) fine.
- (b) All UGC-funded institutions and OUHK have their own regulations and guidelines on academic integrity, which cover plagiarism and hiring of "ghostwriters". In general, faculties and departments are reminded to alert their students to the importance of academic integrity; to draw students' attention to the regulations and guidelines; and to advise students on ways to prevent plagiarism and other dishonest acts. Teaching staff should report to the academic department concerned suspected cases of dishonest acts for investigation and follow-up action. The department can escalate it to the faculty concerned or other appropriate body within the institution for further action or disciplinary action.
- (c) Although the above statistics do not suggest that plagiarism and the hiring of "ghostwriters" have become a common phenomenon in the higher education sector, all our institutions consider plagiarism a serious misconduct. They are taking positive measures to uphold academic honesty and prevent possible deterioration of the situation.

Institutions adopt a two-pronged approach: by offering education and deterrents. On education, students are taught academic honesty and proper citation through various channels, such as student handbooks, notices, student newspapers, workshops, and so on. Students are also required by some institutions to sign a

declaration or undertaking to the effect that they will be honest in their studies.

If necessary, the institutions will also adopt measures which have a deterrent effect on plagiarism and "ghostwriting":

- (i) with the proliferation of information and availability of "ghostwriting" services on the Internet, institutions are using special software and other web-based services to detect plagiarism and "ghostwriting", and prevent copying of library materials;
- (ii) faculties are reminded to stay alert and work out appropriate mechanisms to prevent and detect dishonest acts. For example, coursework can be designed so that copying is difficult; and
- (iii) publication of cases involving plagiarism and hiring of "ghostwriting" services and the penalties imposed.

Air Quality Objectives

13. **MS EMILY LAU** (in Chinese): *Madam President, regarding the Air Quality Objectives (AQOs), will the executive authorities inform this Council:*

- (a) *given that the Secretary for the Environment, Transport and Works advised this Council on 10 November last year that "considerations such as the prevailing exposure levels, technical feasibility, source control measures, abatement strategies, and social, economic and cultural conditions should be taken into account when setting air quality standards for a particular place", whether the Administration will review the AQOs, adopted since 1987, based on such considerations; if so, of the scope and timetable of the review; if not, the difficulties in carrying out a review based on such considerations (particularly social, economic and cultural conditions);*

- (b) *given that the percentages of time at which Hong Kong air complied with the short-term AQOs were 94% and 86% in 2003 and 2004 respectively, whereas those which complied with the long-term AQOs during the same periods were 62% and 15% respectively, of the reasons for the discrepancies between the percentages of time which complied with short-term AQOs and those complied with long-term AQOs;*
- (c) *of the measures to help members of the public to distinguish between long-term and short-term AQOs; and*
- (d) *of the respective total numbers of times in 2003 and 2004 at which "the hourly average concentration of sulphur dioxide" and "the daily average concentration of respirable suspended particulates", as recorded by the monitoring stations of the Environmental Protection Department, exceeded the relevant standards set by the AQOs, as well as the follow-up actions taken when such standards were exceeded?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) The Government has been closely monitoring the reviews of air quality standards conducted elsewhere. We will make reference to the results of the reviews in the United States, European Union and other developed countries, in conjunction with information obtained from ongoing local studies, when considering the need for revising Hong Kong's AQOs from a scientific perspective. Due consideration will be given to all relevant factors, including the prevailing exposure levels, technical feasibility of new objectives, effectiveness of source control measures, progress in the implementation of abatement strategies, and economic and social implications. According to the latest information, the European Union review and the United States review are expected to be completed in the latter half of 2005 and by the end of 2007 respectively. We will draw up a concrete timetable for reviewing the local AQOs after considering the results of these reviews.

- (b) Long-term AQOs refer to the permissible limits on the annual average concentrations of pollutants, whereas short-term AQOs are the permissible limits on the one-hour and 24-hour average concentrations of pollutants.

The low compliance rate with the long-term AQOs at air quality monitoring stations in 2004 was chiefly attributable to worsening regional air pollution. As the background concentrations of pollutants in the region increased, the readings at many monitoring stations exceeded the long-term AQOs. As for short-term AQOs, they were exceeded mainly when the wind was weak or the meteorological conditions favoured the formation of photochemical smog. As such weather conditions only occurred occasionally, the percentage time in the year that the short-term AQOs were met was higher than the compliance rate with the long-term AQOs.

- (c) On its website, the Environmental Protection Department has explained in detail the AQOs, the computation of Air Pollution Indices and their health implications. The information includes the different implications of the long-term and short-term AQOs and the compliance status of these AQOs at monitoring stations. Members of the public may visit the following website:

< http://www.epd.gov.hk/epd/english/environmentinhk/air/air_quality/air_quality.html >

- (d) In 2003 and 2004, the hourly average concentrations of sulphur dioxide recorded by all monitoring stations in Hong Kong were within the permissible limit. No exceedance was recorded.

As for respirable suspended particulates (RSP), statistics on the exceedances of the daily average limit are as follows:

| Year | <i>Number of Monitoring Stations Recording Exceedances of RSP Daily Average Limit</i> | | | | |
|------|---|----------------|-----------------|-------------------|---------------------------|
| | <i>Never</i> | <i>One Day</i> | <i>Two Days</i> | <i>Three Days</i> | <i>Four Days or above</i> |
| 2003 | 2 | 4 | 6 | 2 | 0 |
| 2004 | 5 | 2 | 5 | 2 | 0 |

Although weather conditions play a part in causing exceedances of the AQOs, the ultimate solution to our air pollution problem is to reduce emissions of pollutants. To address the problem, the Government has taken measures to control local emissions and strengthened its co-operation with the Guangdong Provincial Government in reducing air pollutant emissions in the Pearl River Delta Region with the aim of achieving good air quality in Hong Kong as soon as possible.

Processing of New Territories Small House Applications

14. **MR LAU KONG-WAH** (in Chinese): *Madam President, with respect to the processing of New Territories small house applications by the Lands Department (LandsD), will the Government inform this Council:*

- (a) of the average time taken to process such applications;*
- (b) of the number of processed applications in each of the past three years, broken down by the number of years taken to process them, as well as the reasons for the longer processing time in some cases;*
- (c) of the existing staff establishment for processing such applications in various District Lands Offices (DLOs); and*
- (d) whether staff of the DLOs concerned have complained or reflected to the authorities that their offices are understaffed for processing such applications, and whether the authorities have reviewed the staffing resources in this respect?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
Madam President, my reply to the four parts of the question is as follows:

- (a) Due to the large number of small house applications received in the past, applicants have to wait for some time before their applications can be processed. The waiting time ranges from one to three years, depending on the number of outstanding applications in the district. The actual processing time also varies, depending on the

complexity of individual cases. Normally, it takes about one year to process a case. Complicated cases need longer processing time.

- (b) In the past three years, the number of cases handled by the LandsD is as follows:

| <i>Year</i> | <i>Number of cases handled</i> |
|-------------|--------------------------------|
| 2002 | 2 130 |
| 2003 | 2 132 |
| 2004 | 2 178 |

The LandsD does not have the relevant statistics on the breakdown of cases in terms of the number of years taken to process them.

Some cases need longer processing time mainly due to the existence of more complicated circumstances. Examples include problems associated with the emergency vehicular access, technical matters such as drainage and geotechnical problems, insufficient documents of the applicants to prove their indigenous villager status, or objections to the applications. Under these circumstances, the applicants will need more time to consider ways to overcome the problems or seek professional advice to resolve them. Also, the DLOs will have to co-ordinate with government departments concerned with a view to resolving the problems.

- (c) The deployment of manpower is mainly based on the number of small house applications handled by the DLOs. The staff deployed to process small house applications are as follows:

| <i>DLOs</i> | <i>Number of Staff Responsible for Processing Small House Applications</i> |
|--------------------------|--|
| Islands | 9 |
| North | 14 |
| Sai Kung | 10 |
| Sha Tin | 10 |
| Tai Po | 24.5 |
| Tsuen Wan and Kwai Tsing | 4 |
| Tuen Mun | 5.5 |
| Yuen Long | 28 |

- (d) The LandsD has received requests from the staff for increasing manpower in the past. It also reviews the manpower deployment on processing small house applications from time to time. However, as resources are limited, the LandsD has to balance the distribution of resources among different areas of work. As such, it has no plan to increase the manpower to process small house applications for the time being. Nevertheless, the LandsD is now reviewing, in consultation with the Heung Yee Kuk, the procedures for processing small house applications with a view to streamlining them so that the waiting and processing time can be shortened.

Medical Fee Waiver Mechanism

15. **MS EMILY LAU** (in Chinese): *Madam President, in April 2003, the fees for medical services provided by public hospitals were adjusted upwards, together with enhancement of the Medical Fee Waiver Mechanism, under which public hospital patients who could not afford the medical fees may apply to the medical social workers (MSWs) stationed in the hospitals for waiver of fees. In this connection, will the executive authorities inform this Council:*

- (a) *of the total amount of medical fees waived since April 2003;*
- (b) *whether guidelines on the execution of the waiver mechanism have been issued to the MSWs; if so, of the contents of such guidelines;*
- (c) *of the measures in place to monitor the execution of the waiver mechanism by the MSWs; and*
- (d) *of the appeal channels available to patients whose applications have been rejected?*

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

- (a) The total amount of medical fees and charges waived by the Hospital Authority (HA) since April 2003 is \$1,033 million.

- (b) The MSWs are given clear guidelines for the assessment of waiver applications.

According to the guidelines, all recipients of Comprehensive Social Security Assistance (CSSA) are given waivers for their medical fees and charges at public hospitals and clinics.

For non-CSSA recipients, the guidelines provide for a set of assessment criteria, which are given in the Annex. There are financial and non-financial criteria. Applicants who satisfy both the income and asset criteria are eligible for a waiver. Applicants who do not may still apply, and the MSWs will assess their applications taking into account the non-financial criteria and the special needs of the elderly and patients with chronic illness.

- (c) The head of the MSW team in each public hospital is responsible for ensuring compliance of the assessment guidelines by the MSWs through, for example, regular reviews of case records. In addition, waiver applications exceeding the amount of \$7,000 have to be endorsed by the head of the MSW team and approved by the Hospital Chief Executive.
- (d) Applicants may appeal to the hospital against the decision of the MSWs. If an applicant is not satisfied with the decision of the hospital, he/she may further appeal to the Public Complaints Committee of the HA.

Annex

Assessment Criteria for Non-CSSA Recipients

Non-CSSA recipients who could not afford medical fees can apply for a fee waiver at the MSWs of public hospitals and clinics. The MSWs would assess the application with due consideration given to the financial, social and medical condition of the applicants on a household basis.

Financial consideration

Patients who meet both of the following two financial criteria are eligible to apply for a fee waiver under the enhanced mechanism (patients who do not

meet these criteria could provide other non-financial factors for the consideration of MSWs):

- (i) The patient's monthly household income does not exceed 75% of the Median Monthly Domestic Household Income (MMDHI) applicable to the patient's household size, and
- (ii) The value of the patient's household asset is within a certain limit applicable to their household size. It should be noted that the residential property owned and occupied by the patient's household will not be counted towards this asset limit, and households with elderly members will enjoy a higher asset limit than those without (taking into account the fact that most elderly citizens will no longer earn any income and have to depend on their personal savings).

MMDHI By Household Size — 4th Quarter 2004

| <i>Household Size</i> | <i>MMDHI</i> | <i>75% of the MMDHI</i> | <i>50% of the MMDHI</i> |
|-----------------------|--------------|-------------------------|-------------------------|
| One | \$6,000 | \$4,500 | \$3,000 |
| Two | \$12,000 | \$9,000 | \$6,000 |
| Three | \$16,000 | \$12,000 | \$8,000 |
| Four | \$18,500 | \$13,875 | \$9,250 |
| Five | \$23,000 | \$17,250 | \$11,500 |
| Six or above | \$26,200 | \$19,650 | \$13,100 |

Source: General Household Survey, Census and Statistics Department. The figures would be adjusted according to the regular release of the updated MMDHI by the Census and Statistic Department.

Asset Limit for Waiving of Medical Charges

| <i>Household Size</i> | <i>Asset Limit (with no elderly member)</i> | <i>Asset Limit (with one elderly member)</i> | <i>Asset Limit (with two elderly members)</i> |
|-----------------------|---|--|---|
| One | \$30,000 | \$150,000 | - |
| Two | \$60,000 | \$180,000 | \$300,000 |
| Three | \$90,000 | \$210,000 | \$330,000 |

| <i>Household Size</i> | <i>Asset Limit (with no elderly member)</i> | <i>Asset Limit (with one elderly member)</i> | <i>Asset Limit (with two elderly members)</i> |
|-----------------------|---|--|---|
| Four | \$120,000 | \$240,000 | \$360,000 |
| Five | \$150,000 | \$270,000 | \$390,000 |

Note: The asset limit is raised by \$120,000 for each elderly member (that is, age > 65) in the patient's family.

For patients whose monthly household income does not exceed monthly CSSA payment applicable to their household size (at present it is approximately at the level of 50% of the MMDHI); and pass the asset limit test, they will be considered for full waiving of their medical fees at public clinics/hospitals.

Non-financial consideration

The MSWs would also consider the following non-financial factors besides the financial factors of household income and asset:

- (i) The patient's clinical condition as defined by the patient's frequency of use of the different public medical services, and severity of the illness;
- (ii) Whether the patient is a disabled person, single parent with dependent children, or from other vulnerable groups;
- (iii) Whether a fee waiver could provide incentive and support to solve the patient's family problems;
- (iv) Whether a patient has any special expenses that make it difficult to pay for his/her medical fees at public clinics/hospitals; or
- (v) Other justifiable social factors.

The MSWs would consider the above factors to ensure elderly or chronic patients who are frequent users of public medical services could obtain a fee waiver if needed. This list is not exhaustive and the MSWs will exercise their discretion to grant waivers, where appropriate, to a patient with special difficulties (even if he/she fails to meet the financial criteria) on a case-by-case basis.

Maintenance of Franchised Buses

16. **MR LAU KONG-WAH** (in Chinese): *Madam President, with respect to the maintenance of franchised buses, will the Government inform this Council whether it knows:*

- (a) the number of cases last year in which franchised bus services were interrupted due to breakdowns of buses in service; if so, please provide a breakdown by month, the franchised bus company involved and bus route;*
- (b) the number of complaints received from the public by the authorities concerned last year about buses breaking down while in service, and the actions taken to follow up such complaints;*
- (c) the procedure and timetables for bus maintenance currently adopted by the various franchised bus companies;*
- (d) if the franchised bus companies have instructed their bus captains to check their buses for proper functioning before pulling them out to provide service; if they are required to do so, of the details; and*
- (e) the respective numbers of buses withdrawn from service by the various franchised bus companies last year for reasons that they had reached the specified service age, or their maintenance costs were too high?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) During the period from 1 April 2004 to 31 March 2005, about 0.045% of the total number of bus trips involve breakdown of buses leading to interruption of franchised bus services. Breakdown of the cases by month and franchised bus company is shown at Annex. Bus companies do not have readily available information about the bus routes involved.

- (b) A total of 20 complaints were received from the public during the same period about buses breaking down while in service. In handling this kind of complaints, the Transport Complaints Unit or the Transport Department (TD) will refer the case to the concerned bus companies for their investigation and report. The TD will examine the findings provided by the bus companies and conduct surprise checks on concerned vehicles if necessary. The TD will also monitor the trend of bus breakdown rates and where appropriate require bus companies to formulate action plans to enhance bus reliability.
- (c) Safety and reliability of bus services are of prime concern to bus operators. All bus companies follow a comprehensive programme of vehicle maintenance and servicing regime which includes daily, monthly and yearly maintenance to ensure bus safety and roadworthiness.

Daily maintenance activities include top-up of lubricating oil and coolant, refueling, and inspection of tyres and obligatory driving lights. During the monthly maintenance, a list of safety items including the engine and gearbox will be checked and all defects fixed. In the yearly overhaul, the bus will be fully examined and serviced to prepare for annual examination by the TD. The TD will not license a bus if it fails in the examination.

- (d) All franchised bus companies have issued clear guidelines to their drivers to conduct routine checks before the first departure every day to ensure that the bus is in suitable operating condition. These include visual check of the bus body, lightings and tyres. Drivers are also required to check if the brakes, air-conditioning system, and bus doors are functioning properly.
- (e) A total of 270 buses were taken out of service during the period from 1 April 2004 to 31 March 2005 because they had reached their scrapping age. Details are given in the table below.

| <i>Bus Company</i> | <i>No. of buses taken out from service</i> |
|--|--|
| Kowloon Motor Bus Company (1933) Limited | 268 |
| CityBus Limited | 0 |
| New World First Bus Services Limited | 0 |
| Long Win Bus Company Limited | 0 |
| New Lantao Bus Company (1973) Limited | 2 |
| Total | 270 |

Annex

**Cases in which franchised bus services
were interrupted due to breakdowns of buses
(1 April 2004 to 31 March 2005)**

| | <i>KMB</i> | <i>CTB(F1)</i> | <i>CTB(F2)</i> | <i>NWFB</i> | <i>LW</i> | <i>NLB</i> |
|----------------|--------------|----------------|----------------|--------------|------------|------------|
| April 2004 | 578 | 245 | 63 | 307 | 29 | 11 |
| May 2004 | 673 | 326 | 64 | 363 | 24 | 9 |
| June 2004 | 685 | 331 | 70 | 408 | 31 | 14 |
| July 2004 | 656 | 314 | 82 | 379 | 28 | 11 |
| August 2004 | 661 | 408 | 73 | 428 | 36 | 11 |
| September 2004 | 583 | 324 | 49 | 379 | 36 | 3 |
| October 2004 | 500 | 217 | 67 | 306 | 38 | 12 |
| November 2004 | 467 | 218 | 54 | 288 | 17 | 7 |
| December 2004 | 392 | 228 | 48 | 246 | 22 | 3 |
| January 2005 | 446 | 219 | 44 | 255 | 33 | 3 |
| February 2005 | 396 | 196 | 31 | 197 | 24 | 4 |
| March 2005 | 458 | 234 | 61 | 238 | 29 | 4 |
| Total | 6 495 | 3 260 | 706 | 3 794 | 347 | 92 |

Note: the total number of bus trips during 1 April 2004 to 31 March 2005 is 32 350 423

Abbreviation: KMB – Kowloon Motor Bus Company (1933) Limited
 CTB (F1) – CityBus Limited (Franchise 1)
 CTB(F2) – CityBus Limited (Franchise 2)
 NWFB – New World First Bus Services Limited
 LW – Long Win Bus Company Limited
 NLB – New Lantao Bus Company (1973) Limited

Corporatization and Merger of Government Departments and Outsourcing of Government Services

17. **MR CHIM PUI-CHUNG** (in Chinese): *Madam President, will the Government inform this Council of its current short-, medium- and long-term plans in corporatizing government departments, merger of bureaux and departments and outsourcing of government services, and so on, together with the implementation timetable of such plans?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): Madam President, the Government is firmly committed to delivering efficient and quality public services. To achieve this, we have the responsibility to make the best use of both the public and private sectors skills and resources to ensure that government activities do not absorb more of the Gross Domestic Product than is optimal for economic success. This is fundamental to realizing the underlying principle of the Administration's governance philosophy of "small government, big market".

There is a wide range of options for the delivery of government services to the community, from direct service delivery by civil servants and trading fund operations to outsourcing, corporatization and privatization. A decision on which option to take will depend on many issues, including the circumstances and the nature of the services concerned.

An indicative programme showing individual departments and bureaux outsourcing of government services in 2005-06 is at Annex 1.

There are currently no proposals for the establishment of Trading Fund Units nor are there plans involving corporatization of existing departments. The Government will continue to explore opportunities to improve the efficiency of service delivery by engaging the private sector through Public Private Partnership (PPP) arrangements in suitable circumstances.

In recent years, particularly since the introduction of the Accountability System, a number of bureaux have merged with departments under their control. This is consistent with efforts to control the size of the Government. The overall objective is to streamline structures and processes, and to facilitate better

integration of policy formulation and implementation. All Bureau Directors have reviewed the operations associated with their bureaux and departments within their purview. Ten merger exercises involving 20 bureaux and departments as listed in Annex 2 have been completed in the last two years. Bureaux and departments will continue to review the effectiveness of their organization structure as an ongoing process.

The Government is currently considering a merger of the Broadcasting Authority and the Office of the Telecommunication Authority, and plans to conduct public consultation in mid-2005. If the proposal is supported and is to be implemented, there will be a need to reorganize the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority.

Annex 1

Outsourcing Programme of Government Services in 2005-06

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|--|---|
| Agriculture, Fisheries and Conservation Department | 1. Management and operation of the Hong Kong Wetland Park |
| Census and Statistics Department | 1. The Supply of the Data Capturing System and Related Services for the 2006 Population By-census |
| | 2. Implementation of the Internet Applications for the 2006 Population By-census |
| | 3. Replacement of the Quarterly Survey of Construction Output System and the Wage and Payroll System and Development of Common Data Processing and Analysis Tools |
| | 4. Provision of services for conducting the Thematic Household Survey |
| Correctional Services Department | 1. Guarding services for Lo Wu Correctional Institution |
| | 2. Provision of driving services for non-custodial duties |

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|--|--|
| Drainage Services Department | 1. Term Contract for operation and maintenance of various sewage treatment facilities in Tsuen Wan, Tsing Yi and Outlying Islands (2005 to 2008) |
| Economic Development and Labour Bureau | 1. Study on Hong Kong Port Cargo Forecasts 2005-06 |
| | 2. Ecology study at Northwest Lantau for Potential Port Development |
| | 3. Consultancy study on the Auto-Fuel Retail Market |
| Education and Manpower Bureau | 1. Centralized scheme of music training for senior secondary students |
| | 2. Learning and teaching strategies for New Senior Secondary (NSS) Curriculum |
| | 3. Assessing student learning in NSS Curriculum |
| | 4. Enriching Knowledge for the NSS Curriculum |
| | 5. The adaptation, publication and distribution of Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV) (Hong Kong Version) |
| | 6. Provision of cleansing and supporting services for the Education Resource Centre at Kowloon Tong |
| | 7. Provision of security guard services for the Education Resource Centre at Kowloon Tong |
| Environmental Protection Department | 1. Waste tyres recycling services |
| | 2. South East New Territories Landfill Extension - Feasibility Study |
| | 3. Extension of Island East Transfer Station - Feasibility Study |
| | 4. West New Territories Landfill Extensions - Feasibility Study |
| | 5. Re-opening of Kowloon Bay Transfer Station - Feasibility Study |

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|---|---|
| Food and Environmental Hygiene Department | 1. Provision of street cleansing service for Penny's Bay and Sunny Bay in Lantau Island |
| | 2. Provision of cleansing service for Tai Kok Tsui Market in Mong Kok District |
| | 3. Provision of waste collection service for Tuen Mun District |
| Highways Department | 1. Term Management Contract (Maintenance of High Speed Roads in New Territories East and Hong Kong Island 2005 to 2013) |
| | 2. Highways Department Term Contract (New Territories West 2005 to 2009) |
| | 3. Highways Department Term Contract (Kowloon East 2005 to 2009) |
| | 4. Widening of Castle Peak Road (San Tin Section) near Tsing Lung Tsuen, Yuen Long |
| | 5. Public Transport Interchange at Sai Kung Town North |
| | 6. Dualling of Hiram's Highway between Clear Water Bay Road and Marina Cove and improvement to local access to Ho Chung - Design and Construction Consultancy Agreement |
| | 7. Construction of access road at Lung Mei, Tai Po |
| | 8. Minor road projects in New Territories - Third Contract |
| | 9. Rehabilitation of Broadcast Drive, Marconi Road and Fessenden Road |
| | 10. Link bridge over Tsing Lun Road at Tuen Mun Hospital |
| | 11. Covered walkway between Elegance Garden and Wan Tau Street, Tai Po Market, Tai Po |
| | 12. Upgrading and improvement of roadside slopes/retaining walls on Hong Kong Island (2005 to 2008 Programme) |

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|------------------------------|---|
| Highways Department (Cont'd) | 13. Corrosion protection for Island Eastern Corridor, Stage 1 |
| | 14. Provision of lifts to two footbridges on Hong Kong Island |
| | 15. Provision of lifts to five footbridges in New Territories |
| | 16. Tuen Mun Eastern Bypass - Feasibility Study |
| Home Affairs Department | 1. Consultancy Services for Information Systems Strategy Study |
| Hong Kong Police Force | 1. Crime Radio System Maintenance Services |
| | 2. Third Generation Integrated Communications System Maintenance Services |
| | 3. Outsourcing the preparation and implementation of Living-the-Values workshop |
| | 4. Outsourcing the preparation and implementation of Service Quality Awards |
| | 5. Outsourcing the research duties of Service Quality Wing |
| | 6. Psychological Competency Training |
| | 7. Provision of training services for Recruit Police Constables |
| | 8. Provision of cleaning services to the New Territories South Police Regional Headquarters in Tsuen Wan |
| Immigration Department | 1. Provision of property management services for the Immigration Service Institute of Training and Development and Castle Peak Bay Immigration Centre |
| Inland Revenue Department | 1. Workflow Management System Implementation and Maintenance |
| | 2. Taxpayer Portal Feasibility Study |
| Judiciary | 1. Provision of Paper Document Conversion Services |

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|--|---|
| Leisure and Cultural Services Department | 1. Management services of Fa Yuen Street Sports Centre |
| | 2. Management services of Tai Kok Tsui Sports Centre/Swimming Pool |
| | 3. Management services of Wong Chuk Hang Sports Centre |
| | 4. Management services of the Hong Kong Heritage Resource Centre |
| Marine Department | 1. Provision of marine refuse cleansing and marine oil pollution cleansing services |
| Office of the Government Chief Information Officer | 1. Provision of hosting services for Departmental Information Systems currently operated in the Central Computer Centre of the Office of the Government Chief Information Officer |
| Planning Department | 1. System analysis and design and implementation of Land Supply Information System and Core Planning Data Hub |
| | 2. Development of Planning Submissions and Enforcement Cases Monitoring System |
| Rating and Valuation Department | 1. Printing and enveloping of demand notes for rates and government rent |
| Social Welfare Department | 1. Hiving-off of Wai On Home for Women, a refuge centre for women, to an non-governmental organizations |
| Trade and Industry Department | 1. Provision of on-site document reproduction service for MC6 |
| | 2. Fitting out works for conference venue for MC6 |
| | 3. Provision of ground transportation for World Trade Organization staff and MC6 participants |
| University Grants Committee Secretariat | 1. Review of the costing and funding methodology of the University Grants Committee-funded sector |
| | 2. Tender on air ticket purchase |

| <i>Bureau/Department</i> | <i>Contract Title</i> |
|---------------------------|---|
| Water Supplies Department | 1. Replacement and rehabilitation of Water Mains Stage 2 - Mains in New Territories West - Investigation, Design and Construction |
| | 2. Replacement and Rehabilitation of Water Mains Stage 2 - Mains on Hong Kong and Islands - Investigation, Design and Construction |
| | 3. Improvement to Hong Kong Central Mid-level and High Level Areas Water Supply - Remaining Works - Design and Construction |
| | 4. Replacement and Rehabilitation of Water Mains Stage 2 - Mains in New Territories East - Investigation, Design and Construction |
| | 5. Water Supply to Housing Development near Choi Wan Road and Jordan Valley - Construction of Service Reservoirs, Pumping Station and Associated Mainlaying |

- Note: (i) Renewal of existing contracts not included.
(ii) Only projects of a value expected to exceed \$1.3 million are included.

Annex 2

Major Merger Exercises in 2003 and 2004

1. Merger of the Education and Manpower Bureau and the Education Department into a new Education and Manpower Bureau
2. Reorganization of the former Housing Bureau and the Housing Department
3. Merger of the Government Land Transport Agency, the Government Supplies Department and the Printing Department into a new Government Logistics Department

4. Incorporation of the Official Languages Agency into the Civil Service Bureau
5. Merger of the Labour Branch of the Economic Development and Labour Bureau and the Labour Department
6. Incorporation of the Civil Service Training and Development Institute into the Civil Service Bureau
7. Merger of the Economic Analysis Division of the Financial Services and Treasury Bureau (Financial Services Branch) and Division 4 of the Commerce, Industry and Technology Bureau (Commerce and Industry Branch) to form a new Economic Analysis and Business Facilitation Unit in the Financial Secretary's Office
8. Merger of the Civil Engineering Department and the Territory Development Department into a new Civil Engineering and Development Department
9. Merger of the Information Technology Services Department and the information technology-related divisions of the Commerce, Industry and Technology Bureau (Communications and Technology Branch) to form a new Office of the Government Chief Information Officer in the Commerce, Industry and Technology Bureau
10. Merger of the Environment Branch of the Environment, Transport and Works Bureau and the Environmental Protection Department

Statistics on CSSA Scheme

18. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, regarding the statistics on the Comprehensive Social Security Assistance (CSSA) Scheme, will the Government inform this Council of the following figures over the past 10 years:*

- (a) *the number of CSSA cases at the end of each year, together with a breakdown by their categories (old age, permanent disability,*

temporary disability/ill health, single parent family, low earnings, unemployment and others), and, in respect of each category:

- (i) the number of recipients;*
 - (ii) the annual CSSA expenditure and its growth rate; and*
 - (iii) the percentage of the CSSA expenditure in the overall CSSA expenditure of that year; and*
- (b) the number of CSSA recipients at the end of each year, together with a breakdown by their sex, ethnicity, the age group (below 15, 15 to 24, 25 to 34, 35 to 44, 45 to 59 and 60 or above) to which they belonged and the local administration district in which they lived, and, in respect of each group of recipients:*
- (i) the annual CSSA expenditure and its growth rate; and*
 - (ii) the percentage of the annual CSSA expenditure in the overall CSSA expenditure of that year?*

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

- (a) In respect of the statistics on the CSSA Scheme in the past 10 years, we have observed a generally increasing trend in both the CSSA caseloads and recipients in all categories. The annual CSSA expenditure also rose by about 260% during the same period. Fortunately with the improvement in the economy, and our efforts in helping able-bodied recipients to find work and achieve self-reliance, we have observed a decrease in unemployment caseloads in the past year. But we have also observed an increase in low-earnings caseloads in recent years.

Detailed breakdown of the CSSA statistics according to case categories, and in respect of each case category, the number of recipients, the annual CSSA expenditure and year-on-year rate of

change, and the estimated percentage of CSSA expenditure for each case category in the overall CSSA expenditure is at Annex 1.

- (b) Regarding a breakdown of the CSSA recipients in the past 10 years according to sex, ethnicity, age groups, and location by geographical district, breakdowns according to available statistics are at Annex 2. In respect of the request to obtain the annual CSSA expenditure estimates of these recipients according to the requested breakdowns, since CSSA is paid on a household basis, we do not have the requested estimates.

Annex 1

Number of CSSA Cases over the Past 10 Years by Case Categories

| Year | Case category | | | | | | | Total |
|------|---------------|----------------------|-------------------------------------|----------------------|--------------|--------------|--------|---------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| 1995 | 80 882 | 9 679 | 13 767 | 8 268 | 1 656 | 8 816 | 6 177 | 129 245 |
| 1996 | 95 104 | 11 407 | 17 217 | 12 340 | 2 871 | 14 185 | 6 713 | 159 837 |
| 1997 | 109 150 | 12 801 | 20 438 | 15 849 | 4 148 | 16 976 | 7 570 | 186 932 |
| 1998 | 121 778 | 14 932 | 25 089 | 24 595 | 7 348 | 30 290 | 3 422 | 227 454 |
| 1999 | 133 613 | 11 732 | 19 946 | 25 476 | 8 008 | 28 085 | 3 821 | 230 681 |
| 2000 | 134 230 | 12 243 | 19 800 | 25 902 | 8 432 | 23 573 | 3 880 | 228 060 |
| 2001 | 138 232 | 13 522 | 19 705 | 28 504 | 9 008 | 28 886 | 3 816 | 241 673 |
| 2002 | 142 762 | 14 717 | 20 874 | 33 156 | 10 607 | 40 513 | 3 942 | 266 571 |
| 2003 | 147 032 | 15 697 | 22 198 | 37 301 | 13 534 | 50 118 | 4 326 | 290 206 |
| 2004 | 149 821 | 16 764 | 23 201 | 39 536 | 16 176 | 45 231 | 4 965 | 295 694 |

Note: Figures refer to end of the year.

Number of CSSA Recipients over the Past 10 Years by Case Categories

| Year | Case category | | | | | | | Total |
|------|---------------|----------------------|-------------------------------------|----------------------|--------------|--------------|--------|---------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| 1995 | 82 742 | 11 703 | 25 607 | 24 606 | 8 008 | 12 298 | 9 191 | 174 155 |
| 1996 | 96 978 | 15 862 | 28 728 | 36 605 | 13 041 | 19 724 | 12 446 | 223 384 |

| Year | Case category | | | | | | | Total |
|------|---------------|----------------------|-------------------------------------|----------------------|--------------|--------------|--------|---------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| 1997 | 116 977 | 18 708 | 39 825 | 47 868 | 18 590 | 28 117 | 12 538 | 282 623 |
| 1998 | 145 049 | 18 937 | 43 946 | 68 155 | 28 412 | 58 771 | 5 353 | 368 623 |
| 1999 | 159 860 | 15 906 | 37 947 | 68 848 | 30 737 | 56 988 | 6 221 | 376 507 |
| 2000 | 163 058 | 16 860 | 36 958 | 67 374 | 31 412 | 43 500 | 6 023 | 365 185 |
| 2001 | 172 644 | 19 950 | 38 785 | 73 764 | 33 276 | 53 189 | 5 860 | 397 468 |
| 2002 | 184 267 | 22 624 | 42 600 | 86 918 | 39 688 | 84 509 | 6 262 | 466 868 |
| 2003 | 192 458 | 24 504 | 45 199 | 96 957 | 50 146 | 106 348 | 6 844 | 522 456 |
| 2004 | 199 085 | 26 342 | 47 458 | 102 623 | 59 852 | 98 565 | 8 092 | 542 017 |

Notes: (1) It should be noted that CSSA is assessed on a household basis and cases are categorized according to the principal reason of receiving CSSA. As such, recipients under a specific category could not be entirely treated as having the same characteristics as indicated by the nature of the case. For example, some recipients under the old age category may be non-elderly members in the household.

(2) Figures refer to end of the year.

Annual CSSA Expenditure and Year-on-year Rate of Change over the Past 10 Years by Case Categories

| Year | Case category | | | | | | | Total |
|-----------|------------------|----------------------|-------------------------------------|----------------------|-----------------|------------------|-----------------|-------------------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | |
| 1995-96 | 2,705 (29.4%) | 348 (39.0%) | 604 (44.4%) | 609 (58.6%) | 97 (88.0%) | 237 (109.3%) | 232 (93.3%) | 4,831 (41.0%) |
| 1996-97 | 3,592 (32.8%) | 470 (35.2%) | 905 (49.9%) | 1,041 (71.0%) | 207 (113.9%) | 535 (125.8%) | 378 (62.9%) | 7,128 (47.5%) |
| 1997-98 | 4,570 (27.2%) | 585 (24.4%) | 1,199 (32.5%) | 1,482 (42.4%) | 340 (64.4%) | 784 (46.6%) | 482 (27.5%) | 9,441 (32.5%) |
| 1998-99 | 6,124 (34.0%) | 730 (24.6%) | 1,550 (29.3%) | 2,345 (58.2%) | 573 (68.7%) | 1,537 (96.2%) | 169 (-64.8%) | 13,029 (38.0%) |
| 1999-2000 | 7,030 (14.8%) | 599 (-17.8%) | 1,357 (-12.4%) | 2,317 (-1.2%) | 624 (8.9%) | 1,495 (-2.7%) | 200 (17.9%) | 13,623 (4.6%) |

| Year | Case category | | | | | | | Total |
|---------|------------------|----------------------|-------------------------------------|----------------------|------------------|-------------------|----------------|-------------------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | (\$Mn) | |
| 2000-01 | 7,209 (2.5%) | 641 (7.0%) | 1,334 (-1.7%) | 2,275 (-1.8%) | 650 (4.1%) | 1,251 (-16.4%) | 201 (0.6%) | 13,560 (-0.5%) |
| 2001-02 | 7,535 (4.5%) | 741 (15.6%) | 1,363 (2.2%) | 2,479 (9.0%) | 674 (3.7%) | 1,418 (13.4%) | 195 (-2.7%) | 14,405 (6.2%) |
| 2002-03 | 7,872 (4.5%) | 821 (10.8%) | 1,466 (7.6%) | 2,838 (14.5%) | 755 (12.1%) | 2,173 (53.2%) | 205 (5.2%) | 16,131 (12.0%) |
| 2003-04 | 8,030 (2.0%) | 877 (6.8%) | 1,506 (2.7%) | 3,022 (6.5%) | 923 (22.3%) | 2,731 (25.7%) | 217 (5.5%) | 17,306 (7.3%) |
| 2004-05 | 8,021 (-0.1%) | 914 (4.2%) | 1,552 (3.0%) | 3,176 (5.1%) | 1,132 (22.6%) | 2,586 (-5.3%) | 252 (16.2%) | 17,631 (1.9%) |

- Notes: (1) % in brackets denote the year-on-year change.
(2) Figures may not add up to total due to rounding.

Estimated Percentages of CSSA Expenditure of the Overall CSSA Expenditure Over the Past 10 Years by Case Categories

| Year | Case category | | | | | | | Total |
|-----------|---------------|----------------------|-------------------------------------|----------------------|--------------|--------------|--------|--------|
| | Old age | Permanent disability | Temporary disability/ Ill health | Single parent family | Low earnings | Unemployment | Others | |
| 1995-96 | 56.0% | 7.2% | 12.5% | 12.6% | 2.0% | 4.9% | 4.8% | 100.0% |
| 1996-97 | 50.4% | 6.6% | 12.7% | 14.6% | 2.9% | 7.5% | 5.3% | 100.0% |
| 1997-98 | 48.4% | 6.2% | 12.7% | 15.7% | 3.6% | 8.3% | 5.1% | 100.0% |
| 1998-99 | 47.0% | 5.6% | 11.9% | 18.0% | 4.4% | 11.8% | 1.3% | 100.0% |
| 1999-2000 | 51.6% | 4.4% | 10.0% | 17.0% | 4.6% | 11.0% | 1.5% | 100.0% |
| 2000-01 | 53.2% | 4.7% | 9.8% | 16.8% | 4.8% | 9.2% | 1.5% | 100.0% |
| 2001-02 | 52.3% | 5.1% | 9.5% | 17.2% | 4.7% | 9.8% | 1.4% | 100.0% |
| 2002-03 | 48.8% | 5.1% | 9.1% | 17.6% | 4.7% | 13.5% | 1.3% | 100.0% |
| 2003-04 | 46.4% | 5.1% | 8.7% | 17.5% | 5.3% | 15.8% | 1.3% | 100.0% |
| 2004-05 | 45.5% | 5.2% | 8.8% | 18.0% | 6.4% | 14.7% | 1.4% | 100.0% |

Note: Percentages may not add up to 100 due to rounding.

Number of CSSA Recipients by Sex over the Past 10 Years

| <i>Year</i> | <i>Sex</i> | | <i>Total</i> |
|-------------|-------------|---------------|--------------|
| | <i>Male</i> | <i>Female</i> | |
| 1995 | 87 572 | 86 583 | 174 155 |
| 1996 | 113 140 | 110 244 | 223 384 |
| 1997 | 137 698 | 144 925 | 282 623 |
| 1998 | 180 051 | 188 572 | 368 623 |
| 1999 | 182 853 | 193 654 | 376 507 |
| 2000 | 175 611 | 189 574 | 365 185 |
| 2001 | 190 677 | 206 791 | 397 468 |
| 2002 | 225 069 | 241 799 | 466 868 |
| 2003 | 251 891 | 270 565 | 522 456 |
| 2004 | 259 108 | 282 909 | 542 017 |

Note: Figures refer to end of the year.

Number of CSSA Recipients Reporting Country of Origin* Being Places Other Than China by Country of Origin, 2001 to 2004

| <i>Year</i> | <i>Country of origin*</i> | | | | | | <i>Total</i> |
|-------------|---------------------------|------------------|-----------------|-------------------|-----------------|---------------|--------------|
| | <i>India</i> | <i>Indonesia</i> | <i>Pakistan</i> | <i>Philippine</i> | <i>Thailand</i> | <i>Others</i> | |
| 2001 | 561 | 839 | 2 546 | 341 | 845 | 2 571 | 7 703 |
| 2002 | 786 | 1 139 | 3 126 | 616 | 1 047 | 3 151 | 9 865 |
| 2003 | 971 | 1 373 | 3 389 | 905 | 1 209 | 3 557 | 11 404 |
| 2004 | 1 005 | 1 543 | 3 596 | 997 | 1 298 | 3 758 | 12 197 |

- Notes: *
- (1) The above statistics should be interpreted with caution as the data field on "country of origin" is compiled based on information reported by CSSA recipients and no documentary proof is required to substantiate their claims. It should be noted that country of origin does not necessarily correspond to the place of birth.
 - (2) Statistics available starting from 2001.
 - (3) Figures refer to end of the year.

Number of CSSA Recipients by Age in the Past 10 Years

| <i>Year</i> | <i>Age</i> | | | | | | <i>Total</i> |
|-------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------|--------------|
| | <i>Below 15</i> | <i>15 to 24</i> | <i>25 to 34</i> | <i>35 to 44</i> | <i>45 to 59</i> | <i>60 or over</i> | |
| 1995 | 31 348 | 8 522 | 7 048 | 18 315 | 16 794 | 92 128 | 174 155 |
| 1996 | 44 453 | 12 788 | 10 751 | 24 860 | 21 520 | 109 012 | 223 384 |
| 1997 | 57 694 | 18 223 | 13 611 | 32 605 | 29 568 | 130 922 | 282 623 |
| 1998 | 84 064 | 27 185 | 19 638 | 48 091 | 41 496 | 148 149 | 368 623 |
| 1999 | 84 964 | 30 170 | 17 284 | 47 190 | 44 097 | 152 802 | 376 507 |
| 2000 | 81 014 | 29 661 | 14 845 | 42 767 | 43 431 | 153 467 | 365 185 |
| 2001 | 88 978 | 34 213 | 16 732 | 46 929 | 50 662 | 159 954 | 397 468 |
| 2002 | 106 680 | 43 857 | 22 337 | 57 611 | 65 931 | 170 452 | 466 868 |
| 2003 | 118 864 | 53 263 | 26 084 | 64 667 | 80 325 | 179 253 | 522 456 |
| 2004 | 121 762 | 58 219 | 25 781 | 65 107 | 86 340 | 184 808 | 542 017 |

Note: Figures refer to end of the year.

Number of CSSA Recipients by Geographical District, 2000 to 2004

| <i>Geographical district</i> | <i>2000</i> | <i>2001</i> | <i>2002</i> | <i>2003</i> | <i>2004</i> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|
| Central and Western | 5 227 | 5 362 | 5 875 | 5 917 | 5 859 |
| Eastern | 18 638 | 20 081 | 23 026 | 25 455 | 25 817 |
| Islands | 3 359 | 5 822 | 7 938 | 9 675 | 11 770 |
| Kowloon City | 21 970 | 22 394 | 23 239 | 23 788 | 23 588 |
| Kwai Tsing | 30 401 | 34 080 | 43 328 | 50 370 | 53 320 |
| Kwun Tong | 41 793 | 44 715 | 53 778 | 60 569 | 64 789 |
| Mong Kok | 11 665 | 11 399 | 11 511 | 12 283 | 12 323 |
| North | 19 810 | 21 301 | 24 058 | 26 452 | 26 685 |
| Sai Kung | 11 756 | 14 072 | 17 285 | 21 696 | 24 227 |
| Sha Tin | 26 914 | 28 300 | 32 554 | 36 798 | 37 383 |
| Sham Shui Po | 29 743 | 32 652 | 37 158 | 39 886 | 40 813 |
| Southern | 12 322 | 12 787 | 14 049 | 14 811 | 14 706 |
| Tai Po | 17 331 | 17 600 | 19 798 | 21 805 | 21 596 |
| Tsuen Wan | 11 048 | 12 074 | 13 299 | 14 452 | 14 999 |
| Tuen Mun | 26 651 | 30 563 | 36 416 | 39 654 | 41 101 |

| <i>Geographical district</i> | <i>2000</i> | <i>2001</i> | <i>2002</i> | <i>2003</i> | <i>2004</i> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|
| Wan Chai | 4 332 | 4 177 | 4 043 | 4 247 | 4 091 |
| Wong Tai Sin | 32 473 | 35 285 | 41 605 | 45 698 | 46 122 |
| Yau Tsim | 6 395 | 6 427 | 6 794 | 6 957 | 6 550 |
| Yuen Long | 31 293 | 35 942 | 48 358 | 59 083 | 63 375 |
| Others* | 2 064 | 2 435 | 2 756 | 2 860 | 2 903 |
| Total | 365 185 | 397 468 | 466 868 | 522 456 | 542 017 |

- Notes: (1) *Including cases of Portable CSSA Scheme with recipients living in Guangdong.
- (2) Statistics available starting 2000.
- (3) Figures refer to end of the year.

Excavation Permits

19. **MR ABRAHAM SHEK:** *Madam President, under the Land (Miscellaneous Provisions) (Amendment) Ordinance 2003, which came into operation on 1 April 2004, holders of excavation permits (XPs) or emergency XPs, known as permittees, may nominate their contractors as nominated permittees (NPs), subject to the authority's approval and the consent of the contractors to the nomination and their agreements to comply with the conditions in XPs. In this connection, will the Government inform this Council:*

- (a) *of the number of cases, since 1 April 2004, in which permit conditions have been breached, together with a breakdown of such cases by the nature of breaches, whether nominations of NPs were made, whether the offenders were permittees or NPs, and the fines imposed on the offenders;*
- (b) *of the respective numbers of XPs issued and nominations of NPs received by the authority since 1 April 2004, together with a breakdown by types of applicants (public utilities, private developers, and so on); and*
- (c) *whether it will carry out a review on the nomination requirements; if it will, of the timing of the review; if it will not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:
Madam President,

- (a) There have been 17 convictions relating to eight cases under section 10 of the Land (Miscellaneous Provisions) Ordinance (LMPO) since 1 April 2004. The level of fines charged per conviction ranged from \$500 to \$3,500. Street excavation promoters and contractors shared the number of convictions almost equally. A breakdown of these cases is set out at Annex.
- (b) The breakdown of street XPs issued between the period 1 April 2004 and 31 March 2005 by type and by number of NPs is as follows:

| | <i>Promoter</i> | |
|--|-----------------------|-------------------------------|
| | <i>Private Sector</i> | <i>Government Departments</i> |
| Number of XPs issued | 11 782 | 29 011 |
| Out of the above, the number of XPs with NPs | 9 147 | 25 501 |

- (c) Since January 2004, the Highways Department (HyD) has set up a Standing Committee which meets regularly to monitor and review all issues on the implementation of the amended LMPO. The Standing Committee is chaired by an Assistant Director of the HyD with members coming from the utility undertakers, government departments and construction associations. Nomination requirements and other reform initiatives are discussed and reviewed by the Standing Committee as and when required.

Annex

**Breakdown of Convictions under LMPO for the period
from 1 April 2004 to 20 April 2005**

| <i>HyD Case No.</i> | <i>Summonses issued to offenders</i> | | | <i>Nature of offences</i> | <i>Convictions obtained</i> | <i>Level of fines per conviction</i> |
|---------------------|--------------------------------------|--------------------|----------------------|-------------------------------|-----------------------------|--------------------------------------|
| | <i>Promoters</i> | <i>Contractors</i> | | | | |
| | | <i>Nominated</i> | <i>Non-nominated</i> | | | |
| 023/04 | - | - | 1 | - Excavation without valid XP | 1 | \$,3000 |

| HyD Case No. | Summonses issued to offenders | | | Nature of offences | Convictions obtained | Level of fines per conviction |
|--------------|-------------------------------|-------------|---------------|--|----------------------|-------------------------------|
| | Promoters | Contractors | | | | |
| | | Nominated | Non-nominated | | | |
| 081/04 | 2 | - | 2 | - Contravention of permit conditions on technical issues: For example: Notice board of works not complying with HyD Standard Drawings; excavations not properly fenced off with temporary barriers; hazard warning lanterns not fixed according to the "Code of Practice for Lighting, Signing and Guarding of Roadworks" issued by the HyD. | 4 | \$1,500 - \$3,000 |
| 057/04 | 1 | - | | | 1 | \$3,500 |
| 142/04 | 2 | - | 2 | | 4 | \$3,000 |
| 140/04 | 1 | - | 1 | | 2 | \$500 |
| 137/04 | - | 1 | - | | 1 | \$500 |
| 162/04 | 1 | - | 1 | | 2 | \$500 |
| 201/04 | 1 | - | 1 | | 2 | \$3,500 |
| Sub-total: | 8 | 1 | 8 | | -- | |
| Total: | 17 | | | | 17 | |

WTO Services Negotiations

20. **MR FREDERICK FUNG** (in Chinese): *Madam President, it has been reported that, to prepare for the World Trade Organization (WTO) services negotiations in the Sixth Ministerial Conference of the WTO to be held in December this year, 148 WTO Members (including Hong Kong) are required to submit by May this year lists of initial requests for other WTO Members to open their markets and initial offers of commitments to open their own markets. In this connection, will the Government inform this Council:*

- (a) *of the details of the above lists of initial requests and offers of commitments submitted by the Hong Kong authorities; and*
- (b) *whether it will consider seeking public views on the lists and offers mentioned in (a); if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, first of all, I would like to clarify that the May 2005 timeline referred to in the question applies to the tabling of revised offers, not initial offers, for further liberalization in trade in services in the current round of WTO negotiations. There is no requirement or timetable for the tendering of revised requests. Initial requests and offers of WTO Members have already been required to be made at earlier stages of the negotiations.

Turning to the specific questions above, my reply will cover the initial requests and offers as well as the revised offers as follows:

(a) *Initial Requests*

We tendered Hong Kong, China's (HKC's) initial requests for further liberalization in trade in services to 20 WTO Members during the period of July 2002 to March 2003. In the light of our strong export potential in services and our liberal services market, our requests were comprehensive in nature, seeking market access commitments in areas where our services industries have expressed interest or enjoy competitive advantage, such as logistics-related services, tourism, telecommunications, audio-visual services, professional services, financial services, and business services. We also requested other WTO Members to remove discriminatory measures that are inconsistent with the most-favoured-nation principle, and to ensure that their domestic regulations would not cause unnecessary barriers to trade.

To protect HKC's interests in the negotiations, we have not made public the details of our requests, which are the subject matters of ongoing bilateral negotiations between HKC and the concerned WTO Members. Given the delicate and sensitive nature of the negotiations, disclosure of details of our requests to certain WTO Members may prejudice the negotiation process and jeopardize the interests of HKC, especially for those requests that involve commercial sensitivity.

Initial Offers

HKC tabled its initial offers on further liberalization of services to the WTO in April 2003. Our offers are comparable to those of our major trading partners and commensurate with our free and open

trading regime. A detailed summary of HKC's existing commitments and initial offers is available at the website of the Trade and Industry Department: < http://www.tid.gov.hk/english/trade_relations/tradefora/files/hkc_services_commitment.pdf > . In brief, we have indicated in our initial offers the possibility of making new commitments in services areas where we have competitive advantage, including environmental services and a number of business services such as technical testing and analysis, and packaging. We have also indicated the possibility of making new or improved or broadened commitments in telecommunications, financial, maritime transport and distribution services.

Revised Offers

Pursuant to the timeline set by the WTO, we aim to table our revised services offers to the WTO by end May 2005. As before, we will publicize information on our revised offers at the website of the Trade and Industry Department after tabling.

- (b) To prepare for the current round of WTO services negotiations, we have conducted two public consultation exercises so far, one from May to June 2002 and the other from February to March this year. On both occasions, we invited about 400 organizations (including the chambers of commerce, major trade and industrial organizations in respective sectors, academic institutions and civil society groups) and the general public to express their views on the objectives and priorities for HKC in the negotiations. In parallel, we have also consulted bureaux and departments responsible for the different services sectors. Where appropriate, the relevant bureaux and departments have also sought views from the major stakeholders in their respective sectors.

The views collected have formed, and will continue to form, the basis for drawing up HKC's requests and offers as well as our negotiating positions. The services negotiations are an ongoing process and will only be concluded upon the completion of the current round of WTO negotiations. We welcome any further views from any interested parties and will take them into account in our continuing negotiations in the WTO.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bills: First Reading.

**REVENUE (PERSONALIZED VEHICLE REGISTRATION MARKS)
BILL 2005**

**PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL
2005**

CLERK (in Cantonese): Revenue (Personalized Vehicle Registration Marks)
Bill 2005
Public Health and Municipal Services (Amendment)
Bill 2005.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

**REVENUE (PERSONALIZED VEHICLE REGISTRATION MARKS)
BILL 2005**

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move the Second Reading of the Revenue (Personalized Vehicle Registration Marks) Bill 2005 (the Bill).

The purpose of the Bill is to implement the Personalized Vehicle Registration Marks (PVRMs) Scheme proposed in the 2004-05 Budget with a view to allowing for more choice for participating vehicle owners and generating revenue. The Bill will amend the Road Traffic Ordinance and the Road Traffic (Registration and Licensing of Vehicles) Regulations so as to introduce the PVRMs Scheme in addition to the existing arrangements for allocating and auctioning vehicle registration marks (VRMs). Vehicle owners may design their own VRM combinations and use them upon balloting, approval of their applications and bidding.

To allow for more choice and add to the attraction of the PVRMs Scheme, the Government proposes to relax the restrictions on the VRMs. A PVRM may have a combination of up to a maximum of eight letters of the alphabet, numerals or blank spaces. This arrangement will encourage creativity.

We propose to revise the deposit for PVRMs from the original level of \$20,000 to \$5,000 to enable more people to participate in the PVRMs Scheme. However, an unlimited supply of PVRMs at this relatively low deposit level might add pressure to the existing bidding of VRMs, and substantial increase in the number of applications for PVRMs will lead to an increase in administration cost. We therefore propose that the Transport Department should set a limit on the number of applications to be processed each time. The applications will be balloted if the number of applications exceeds the set limit. The applicants will pay the deposit before their applications are processed and the bidding is arranged. All PVRMs approved will be made available for auction. The \$5,000 deposit will be the reserve price. If a PVRM is auctioned to a person other than the applicant, the deposit will be refunded to the applicant.

We place strong emphasis on ensuring that the PVRM combinations will not bring about difficulties in law enforcement. Therefore, the Police Force and the Transport Department have been closely involved in formulating the PVRMs Scheme. It is proposed in the Bill that any PVRM combinations that are confusing for law enforcement or detrimental to road safety will not be approved. In order to avoid problems in law enforcement, the letters "I", "O" and "Q", as is the case at present, will not be allowed (but they can be replaced with the numerals "1" and "0" that are similar in form) and there should be no more than four identical letters or numerals placed side by side in a PVRM.

The Commissioner for Transport will assess PVRM applications in accordance with the conditions and criteria to be set out in the legislation with the assistance of the Police Force, the Home Affairs Bureau, any other concerned departments and non-officials.

We also propose that PVRMs may be transferred together with the vehicles to which they are assigned. The mechanism will be similar to that for transferring the existing Ordinary VRMs (OVRMs). The Commissioner for Transport may recall a PVRM after allocation should it be found afterwards that the mark is inappropriate or is no longer appropriate for allocation.

There are views that the PVRMs Scheme may affect the protection of intellectual properties (IP). In this regard, legal advice is that as PVRMs do not include symbols, no question of copyright should arise and that it is unlikely that the use of a PVRM will constitute an infringement of a trademark. If a PVRM is used in such a manner as to infringe on IP rights, an IP owner is fully protected by existing IP laws.

The revenue generated from the auctions of OVRMs and Special VRMs (SVRMs) will continue to be credited to the Lotteries Fund. As PVRMs are different from the existing OVRMs and SVRMs in terms of features, we expect that PVRMs, SVRMs and OVRMs would appeal to different vehicle owners and have different markets.

As the PVRMs Scheme is new, the revenue to be generated from auctioning PVRMs is difficult to estimate. The ballpark estimate having regard to the likely demand is \$70 million a year. The eventual outturn would depend on the popularity of the PVRMs Scheme.

The proposed PVRMs Scheme would give vehicle owners more choice in VRMs. It would not only encourage creativity but also generate revenue for the public coffers without adversely affecting livelihood.

With these remarks, I appeal for Members' support for the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue (Personalized Vehicle Registration Marks) Bill 2005 be read the Second time.

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

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2005

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the Public Health and Municipal Services (Amendment) Bill 2005 (the Bill) be read the Second time.

The object of the Bill is to improve the existing provisions so that the Government may better deal with the problem of mosquito breeding.

Pursuant to section 27(1) of the Public Health and Municipal Services Ordinance (the Ordinance), where there is or is likely to be an accumulation of water in any premises, including land or building, with the risk of mosquito breeding, the Food and Environmental Hygiene Department (FEHD) shall issue a notice requiring the occupier, owner (where the occupier cannot be found or ascertained) or contractor (where the premises concerned are a construction site) of any premises to (a) remove the accumulated water, if any; (b) take steps to prevent any accumulation of water; or (c) take other steps to prevent mosquito breeding. Failure to comply with the notice is an offence. The FEHD may take action to remove the accumulated water and may recover the costs from the owner, occupier or contractor.

The FEHD has encountered the following constraints in its mosquito control operation in accordance with the existing provisions. First, the procedures are time-consuming. Under the existing law, if there is an imminent risk of mosquito breeding in private premises, such as a massive accumulation of water, the FEHD normally has to serve a notice on the occupier or owner of the premises requiring him/her to take mosquito control measures. The FEHD can take clearance action only if the occupier or owner fails to comply with the notice. To identify the occupier/owner for serving notice when dealing with private agricultural land and abandoned huts is often a lengthy and fruitless

process. Unfortunately, these places are highly susceptible to mosquito breeding. According to our information, there are more than 800 abandoned huts in Hong Kong.

Second, common parts in multi-storey buildings also present a problem. Our experience shows that the common parts of a building such as car parks and planters have a higher risk of mosquito breeding. In the absence of an owners' corporation, common parts of a building will be under the joint care of all occupiers/owners of the building or the management body. The FEHD has to go through the lengthy process of identifying all the occupiers/owners for the purpose of issuing a notice to each of them before anti-mosquito actions are taken. It is presently not possible for the FEHD to take enforcement action against the persons in charge of a management body, since section 27 of the Ordinance only imposes legal liability upon the occupiers, or in their absence, the owners of the premises concerned. The FEHD can only seek the co-operation of the management body to take remedial actions to prevent mosquito breeding. To impose a legal duty upon the management body will make it discharge its due responsibility.

Third, breeding grounds for mosquitoes. The existing Ordinance does not specify clearly whether the FEHD is fully empowered to remove media identified as potential breeding grounds for mosquitoes, such as containers, pots or articles in abandoned/dilapidated huts and used tyres.

Fourth, the difficulties in recovering costs. The FEHD may only recover the cost of mosquito control work from the occupier or owner or the premises if a notice has been served before the clearance action. In other words, in an abandoned hut where the risk of mosquito breeding is considered high, the FEHD may act on public health ground and apply for an order from the Court to enter the premises and take immediate anti-mosquito action as the Department cannot afford to wait for the processes of identifying the owner and serving the notice to complete. In such circumstances, it will not be possible for the FEHD to recover the costs from the occupiers/owners afterwards and such a situation encourages some selfish occupiers/owners to shed their responsibility and rely on the Government to do the work for them.

We propose that section 27 of the Ordinance be amended as follows to strengthen the effectiveness in the prevention of mosquito breeding:

- (a) Where the FEHD has reasonable cause to believe that any accumulation of water or any other media that may become potential mosquito breeding grounds found in any premises poses a mosquito-related hazard, the FEHD may apply to the Court for an order to enter the premises with or without a notice issued to the occupier or owner of the premises or the management body, or the appointed contractor of a building site to remove such accumulation of water or any article (such as used tyres, flower pots and buckets), that may be a potential breeding ground for mosquitoes or take any other action to prevent mosquito breeding. The FEHD may recover the costs of taking the above measures from the persons concerned; and
- (b) Apart from the occupier or owner, or the appointed contractor in a building site, the FEHD may hold the management body or company legally liable for mosquito breeding. The management body or company may also be required to remove any accumulation of water or any article that may be a potential breeding ground for mosquitoes, properly maintain or manage the premises and to take other steps to prevent mosquito breeding.

We aim to introduce the above measures in summer 2005.

Madam President, in recent years, mosquito-borne diseases such as dengue fever and Japanese encephalitis have caused great public concern. In 2004, five local cases of Japanese encephalitis were found and one person died from the disease. The monthly ovitrap indices which reflect the extent of distribution of *Aedes albopictus*, a vector for dengue fever, in the territory, have showed consistently high figures during rainy seasons.

I therefore hope that Members can support the Bill to enable us to take timely and proper actions to remove accumulated water and bring the mosquito problem under control, hence ensuring public hygiene and protecting the health of the public.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Public Health and Municipal Services (Amendment) Bill 2005 be read the Second time.

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

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) Regulation 2005 and the Poisons List (Amendment) Regulation 2005.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the Poisons List (Amendment) Regulation 2005 and the Pharmacy and Poisons (Amendment) Regulation 2005 as set out under my name in the paper circulated to Members be approved.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescriptions from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations for the purpose of imposing control on six new pharmaceutical products.

The Pharmacy and Poisons Board (the Board) proposes to add six new substances to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations so that pharmaceutical products containing such substances must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

The two Amendment Regulations are made by the Board, which is the statutory authority established under section 3 of the Pharmacy and Poisons Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

With these remarks, Madam President, I move the motion.

The Secretary for Health, Welfare and Food moved the following motion:

"RESOLVED that —

- (a) the Pharmacy and Poisons (Amendment) Regulation 2005;
and
- (b) the Poisons List (Amendment) Regulation 2005,

made by the Pharmacy and Poisons Board on 9 April 2005, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' BILLS

First Reading of Members' Bills

PRESIDENT (in Cantonese): Member's Bill: First Reading.

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 2005

CLERK (Cantonese): Federation of Hong Kong Industries (Amendment) Bill 2005.

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

Second Reading of Members' Bills

PRESIDENT (Cantonese): Member's Bill: Second Reading.

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 2005

MR ANDREW LEUNG (in Cantonese): Madam President, I move the Second Reading of the Federation of Hong Kong Industries (Amendment) Bill 2005. The purpose of this Bill is to amend and substitute the existing badge used by the Federation of Hong Kong Industries, repealing the Fourth Schedule to the Federation of Hong Kong Industries Ordinance (Cap. 321), and substituting it with the new badge. I hope Members will support the motion on this Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Federation of Hong Kong Industries (Amendment) Bill 2005 be read the Second time.

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

PROPOSED RESOLUTION UNDER THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

MR JASPER TSANG (in Cantonese): Madam President, I move that the motion to amend the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region, as printed on the Agenda, be passed.

At the House Committee's invitation, the Committee on Rules of Procedure (RoP) reviewed Rule 64 of RoP. Under Rule 64, withdrawal or postponement of bills which have already been tabled may only take place at the beginning of proceedings for its Second or Third Reading.

After studying the relevant provision, the Committee on RoP recommended that Rule 64 be amended to the effect that apart from withdrawal at the beginning of Second Reading and Third Reading, bills could be withdrawn at the beginning of Second Reading (debate resumed) on the condition that it conforms to Rule 76(9) of RoP. Rule 76(9) prescribes that a Bills Committee should, as soon as it has completed consideration of a bill, notify the House Committee and then report further to the Council.

Moreover, Rule 21(4) of RoP stipulates that whenever a report of a Bills Committee has been laid on the Table of the Council, the Member presenting it may, with the permission of the President, address the Council on the report at the commencement of the resumption of the Second Reading debate on the relevant bill. After considerations, the Committee on RoP recommended that insofar as the withdrawal of bills was concerned, the address by the Member presenting a Bills Committee report on the bill concerned should be made under "Tabling of Papers" on the Agenda of the relevant Council meeting. The address would be subject to Rule 21(6) of RoP, that no debate may arise on the address. For that reason, the announcement to withdraw a bill should be made by the Member or public officer in charge of the bill at the beginning of the resumption of the Second Reading debate. The Member or public officer in charge of the bill may speak on matters relevant to the withdrawal, including the Bills Committee's report.

Madam President, under the two abovementioned circumstances, other Members would not be allowed to speak on the relevant Bills Committee's report or bill.

The Committee on RoP also recommended that such withdrawal should not be allowed at the beginning of its Second Reading process. In giving notice of the resumption of the Second Reading debate on a bill for the purpose of withdrawal, the Member or public officer in charge of the bill should state that the purpose of the resumption was for making an announcement for withdrawal of the bill. For that reason, the form for giving notice of the resumption of the Second Reading debate has been modified.

For the purpose of implementing the above proposal, the Committee on RoP recommended amendments to Rules 21 and 54 in addition to amendments to Rule 64. The House Committee has accepted such recommendations.

I therefore implore Members to support the resolution. Thank you, Madam President.

Mr Jasper TSANG moved the following motion:

"RESOLVED that the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended —

(a) in Rule 21 —

(i) in subrule (3), by repealing "subrule (4)" and substituting "subrules (4) and (4A)";

(ii) in subrule (4), by repealing "Whenever" and substituting "Subject to subrule (4A), whenever";

(iii) by adding —

"(4A) Where the purpose of the resumption of the second reading debate on a bill is for making an announcement for the withdrawal of the bill in accordance with Rule 64 (Withdrawal or Postponement of Bills), the Member presenting a report of the Bills Committee on the bill at the meeting of the Council at which such an announcement is to be made may, with the permission of the President, address the Council thereon at the time when the report is laid on the Table of the Council.";

(iv) in subrule (6), by adding ", (4A)" after "(3)";

(b) in Rule 54(7), by adding "(other than resumption for the purpose of making an announcement for the withdrawal of a bill in accordance with Rule 64 (Withdrawal or Postponement of Bills))" after "At the resumption of the second reading debate on a bill";

- (c) in Rule 64 —
- (i) by renumbering it as Rule 64(1);
 - (ii) in subrule (1), by repealing "by announcement in Council" and substituting "by an announcement made in Council";
 - (iii) by adding —

"(2) The Member or public officer in charge of a bill may, by an announcement made in Council at the beginning of proceedings for the resumption of the second reading debate on the bill, withdraw the bill if —

- (a) the purpose of the resumption is for making such an announcement; and
- (b) such purpose has been so stated in the notice of the resumption of debate given under Rule 54(5) (Second Reading).

(3) The Member or public officer in charge of a bill may, in making an announcement for the withdrawal of the bill under subrule (2), address the Council on matters relevant to the withdrawal but no debate may arise on such an address. ". "

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee on the time limits for speeches by Members. Since Members are familiar with the time limits, I will not repeat them here. 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 protection of wages on insolvency system.

REVIEWING THE PROTECTION OF WAGES ON INSOLVENCY SYSTEM

MR JASPER TSANG (in Cantonese): Madam President, I move that the motion of "Reviewing the protection of wages on insolvency system", as printed on the Agenda, be passed.

This motion pinpoints the problem of abuse of the Protection of Wages on Insolvency Fund (PWIF). Public attention has recently been drawn to the abuse of the PWIF as a result of the closing down of the Ocean Palace Restaurant in Tsim Sha Tsui in the middle of last month. According to press reports, the said restaurant closed down because the landlord refused to renew its lease, not because its business had failed. As a matter of fact, according to some workers,

in the few months preceding its closure, the restaurant was still doing fairly good business, regularly making a sizeable profit every month. Unable to go on doing business, the restaurant proprietor, on the excuse of having incurred debts in excess of assets, was only prepared to pay wages in arrears, but refused to give the employees severance payments. This closure of business affected some 230 employees, with severance payments totalling \$8.5 million. Refusing to make severance payments, the proprietor told the employees to apply for *ex gratia* payments from the PWIF in a bid to avoid responsibility by getting the severance payments from the PWIF.

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

A public outcry was further sparked following a report that for some time before the closure of business, the restaurant proprietor had been surreptitiously transferring from the restaurant valuable stuff including famous brand wines, dried seafood, silverware and even furniture to a new restaurant where the same proprietor was planning to start afresh. So, even though the proprietor declared bankruptcy, there are not sufficient assets in the old restaurant to cover the severance payments made by the PWIF on his behalf. Naturally, the case evoked strong criticisms from the public. At a regular meeting held last week, this Council's Panel on Manpower also specifically discussed the issue. There the Government presented a paper spelling out its position and measures.

Madam Deputy, my purpose in moving this motion today is to let Honourable colleagues speak their minds. Also, making use of the opportunity, I would like to urge the Government to step up measures to crack down on abuse of the PWIF in order that the Fund can operate in a healthy way for the protection of employees' rights and benefits.

The case of the Ocean Palace Restaurant is, in fact, not an isolated one. All along there have been frequent incidences of abuse of the PWIF. There are bound to be other cases following that of the Ocean Palace Restaurant. In the days when the economy fared better, the Fund had more resources in dealing with fewer applications. Consequently, abuse did not draw sufficient attention. With applications on the increase, the abuse issue started to catch people's attention.

In late 2002, an inter-departmental Task Force was formed among the Labour Department (LD), the Commercial Crime Bureau (CCB) of the Hong Kong Police Force, the Official Receiver's Office (ORO), and the Legal Aid Department to step up the prevention of and the crackdown on abuse of the Fund. According to government figures, in the two-odd years from the inception of the Task Force in late 2002 to the middle of last month, the LD has referred to the Task Force altogether 65 cases of suspected abuse. In connection with seven cases of the 65, the CCB has arrested 50 persons, of whom a director and an employee have already been convicted. The charges against them include that of giving fraudulent information to the PWIF. With the exception of the 13 cases that were closed on account of insufficient evidence, the other 40-odd cases are still under investigation.

Some people may say that over the period between the year 2003-04 and the first few months of the current year, there have been some 38 000 applications to the PWIF. In the year before last, there were more than 20 000 applications while there were more than 10 000 applications last year, and some 2 000 applications in the first few months of this year. Given the fact that only a few scores out of a total of more than 30 000 applications are suspected cases, some might wonder if the incidence is only very low. Is not the abuse not that serious? Is it really necessary for us to be so edgy? However, we are of the view that we can not afford to take lightly the impact caused by those cases of abuse.

Surely, we believe that most business operators, regardless of their trades, are decent businessmen who naturally will not do things to break any rules of law or business integrity. This is certain. It is so in most cases. Otherwise, it is impossible to keep the PWIF going. However, there are a very few so-called bad eggs who have abused the protection of wages on insolvency system. In our opinion, the impact so caused is rather serious. Abuse does great injustice to decent operators and has adversely affected their reputation. Following the incident of the Ocean Palace Restaurant, everybody started to investigate the situation. It came to light that many in the catering industry, especially those operating restaurants, often applied to the PWIF. Probably because of some special operation reasons, restaurants have made more claims to the PWIF. However, this does not necessarily mean that they are more prone to abuse it; nor does it mean that those restaurant operators are less ethical and are intent on breaking the law with abuse. However, it has definitely given people an

impression, causing them to wonder why there are so many claims to the PWIF from restaurants. Is abuse of the PWIF common in connection with restaurants?

As a matter of fact, this is not just about reputation. We may recall that a major source of revenue for the PWIF is a levy on the Business Registration Certificates. The said levy was raised the year before last, and the increase was quite big. If the abuse of the PWIF persists, it may be necessary to raise the levy again. I believe some Members are going to make the suggestion that the levy should be raised specifically for trades that are particularly prone to abuse the PWIF, or having made a particularly high number of claims to the PWIF. In other words, operation costs will have to rise. For the reason that some persons are making improper use of the system, it is likely that the whole industry will have to shoulder heavier costs.

For employees, their interests are in fact being jeopardized by such cases of abuse. According to our information, in many cases, even though it is necessary for employers to pay their employees on time under the Employment Ordinance, and it is against the law to hold payment of wages in arrears for a period exceeding the limit set by law, we often heard employers approach their employees telling them to relax. As their company was in trouble, they would not get paid for the time being but they would suffer no loss even if the business eventually was wound up as the PWIF was there to help. For the Fund would pay wages to the employees. However, if the employees lodged any complaint, the company would get into trouble and had to close down right away, then they would have to sustain heavier losses. Such examples are not fresh to our ears. Under such circumstances, if we have the impression that the PWIF can indeed "underwrite all payments" and it is really fine for employers not to pay wages, then employees definitely will not be alert to wage offences committed by the employers, which may lead to a serious problem of moral risks.

Surely, furthermore, if we tolerate such illicit practices of abuse to go on, and impose no curb or sanction, we are actually spreading in the community a message that people may forget all about business ethics, or even how to be law-abiding. All that they know may be "making no use of something is to lose out". Some people even refer to the PWIF as the ATM of those unscrupulous employers. With an ATM standing there, it is indeed a loss not to use it. In this way, it will have an enormous impact on the community.

Therefore, we think it is essential to address the issue squarely. It is essential to make business operators and members of the public realize that our Government does have the determination and the ability to crack down on and put an end to such practices which abuse a system safeguarding employees' rights and benefits.

Madam Deputy, last week, at the meeting of the Panel on Manpower, the Government presented to the Panel a paper outlining some new measures for more effective prevention of abuse of the PWIF by irresponsible employers. Among them are five immediate measures to be adopted by the LD in the short term and six longer-term measures that require further study. I believe there is not going to be much controversy with regard to the five immediate measures proposed by the Government. These include recruiting experienced police officers to assist in the LD's investigation, strengthening the LD's early warning system on non-payment of wages in the catering industry, stepping up enforcement against restaurants, helping individual restaurants to improve their management, and establishing good management practices. I think there is not going to be disagreement with regard to these measures. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) offers our full support. It is hoped that there can be further reinforcement and expeditious implementation.

With regard to the six longer-term measures proposed by the Government, we believe the business sector and the trade unions may hold different views. These proposals include a bank guarantee system, different levy rates, and the establishment of separate funds for certain industries. It is our belief that every proposal now presented by the Government may have certain effect. However, for each proposal, there must be a price to pay, which may include higher operating costs, more cumbersome formalities, or heavier administrative costs on the part of the Government. The DAB holds an open mind regarding these proposals.

It is hoped that during the discussion today, Honourable colleagues will express their views on the measures proposed by the Government. In particular, we would like to hear Members representing the business and labour sectors present their views from different perspectives. In the speeches to follow, other Members from the DAB are going to present our views on how to improve the measures for cracking down on abuse of the PWIF. We call upon colleagues to speak up enthusiastically. Thank you, Madam Deputy.

Mr Jasper TSANG moved the following motion: (Translation)

"That this Council urges the Government to expeditiously review the protection of wages on insolvency system and related legislation, so as to safeguard employees' rights and benefits and prevent abuse of the Protection of Wages on Insolvency Fund by employers."

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

DEPUTY PRESIDENT (in Cantonese): Mr Andrew CHENG, Mr LEE Cheuk-yan and Mr WONG Kwok-hing will move amendments to this motion respectively. Their amendments have been printed on the Agenda. The motion and the three amendments will now be debated together in a joint debate.

I will call upon Mr Andrew CHENG to speak first, to be followed by Mr LEE Cheuk-yan and Mr WONG Kwok-hing; but no amendments are to be moved at this stage.

MR ANDREW CHENG (in Cantonese): Madam Deputy, the Democratic Party holds that measures countering the prevailing abuse of the Protection of Wages on Insolvency Fund (PWIF) can be taken at three different levels, which include protecting employees' rights and benefits, cracking down on unscrupulous employers, and reviewing the protection of wages on insolvency system and related legislation in a comprehensive manner.

First of all, let us take a look at protecting employees' rights and benefits. At present, employees claiming wages in arrears following their employer's bankruptcy or their company's winding-up must go through procedures full of twists and turns. What is more, it is time-consuming and leads to little avail. The claimant must, first of all, submit to the Court a bankruptcy or winding-up petition, and, when necessary, seek help from the Legal Aid Department. Upon the issue of a bankruptcy or winding-up order to the debtor by the Court, the Wage Security Division of the LD will then be approached for assistance in order to apply to the Fund for *ex gratia* payments.

The Democratic Party holds that the entire claim procedure now involved in labour dispute cases should be streamlined. The Government should consider earlier intervention in the claim process so as to help employees apply for legal aid and pursue complicated legal proceedings in connection with bankruptcy or winding-up. Such an approach has three advantages. In the first place, it may save employees the trouble of having to hop around different government offices. In the second place, it may reduce the number of appearances for employees to produce evidence or give statements in the course of the claim procedure, which may thus shorten the time for the whole claim process. In the third place, employees' incomes and assets often exceed the ceilings set for legal aid, which may render it necessary for them to file bankruptcy/winding-up petitions themselves. In view of the risk that the legal costs to be paid might outweigh the wages in arrears to be recovered, employees balk at filing bankruptcy petitions or applying to the PWIF for relief. So, the current PWIF figures of applicants probably only represent the tip of the iceberg, not covering employees who, though unpaid, have decided not to file bankruptcy/winding-up petitions against their debtors for reason of their ineligibility for legal aid.

Madam Deputy, the Democratic Party opines that the Government should further review the current system under which employees claim wages in arrears. The reason is that in many cases there is the possibility that employees unpaid still cannot recover their wages in arrears even though they have already won the cases in the Labour Tribunal. So, in the past, in a panel of this Council, we sought to get the Government and the Judiciary to let employees won a judgement in their favour in the Labour Tribunal follow the practices adopted in other jurisdictions, which is to allow employees to have reasonable compensation under the order demanding payment of wages in arrears, and to pursue payment of wages in arrears according to the order.

The third point is about protecting employees' rights and benefits. Madam Deputy, once the PWIF has made *ex gratia* payment to an applicant, it may, by virtue of subrogation right under the Protection of Wages on Insolvency Ordinance, recover the *ex gratia* payment issued to an applicant. In other words, in the proceedings arising from an employer going bankrupt or a company winding up, the PWIF may, by virtue of subrogation right, have priority claim to the sum paid out according to the Bankruptcy Ordinance and the Companies Ordinance. However, at present, the maximum amount that the PWIF may pay out far exceeds the amounts for priority claims stipulated in the

Bankruptcy Ordinance and Companies Ordinance. The Democratic Party's proposal is that both Bankruptcy Ordinance and Companies Ordinance be amended so as to bring the amount for preferential debts on a par with the maximum sum for priority claim payable by the PWIF. The Fund can then recover more of the debt when exercising the subrogation right. It is likely for the number of claims to grow and the sum paid out by the Fund increase upon filing of bankruptcy or winding-up petitions against the persons or companies concerned by the Government on behalf of the relevant claimants. Our proposal can help to ensure the Fund's financial viability.

Regarding the crackdown on unscrupulous employers, Madam Deputy, the Democratic Party has the following proposals. First, heavier punishments should be imposed on employers repeatedly defaulting on the payment of wages so as to achieve greater deterrent effect. In addition, prosecution against unscrupulous employers should be stepped up by applying the provision concerning fraudulent trading by company directors in the course of winding-up proceedings as contained in the Companies Ordinance and that concerning criminal liability on employers defaulting on the payment of wages as contained in the Employment Ordinance. This will put an end to the ruse by which employers actually try to evade personal criminal liability in the disguise of running limited companies.

The employers concerned should be put on a blacklist by the Companies' Registry so as to ban them from serving as directors of limited companies for a certain period of time. This may enhance the deterrent effect and also prevent the employers concerned from defaulting on payment of wages again by resorting to the same ploy. Madam Deputy, during the period between August 2003 and April 2004, a restaurant director successively started and closed down restaurants under three different names at the same address in Mei Foo Sun Tsuen, and intentionally defaulted on the payment of wages to some 180 workers. The PWIF had to settle claims close to \$1 million as a result of this. If the Government puts into effect the aforesaid proposals of the Democratic Party, it is believed that such a scenario may be rooted out.

The Democratic Party calls upon the Government to present to this Council as soon as possible the Companies (Corporate Rescue) Bill, and study in a holistic manner how best the rights and benefits of employees of those companies can be handled during interim supervision. In introducing a corporate rescue procedure, it should be stipulated that directors be held

personally liable for debts not discharged by their companies. This can help to deter directors from fraudulent acts when legal proceedings against the companies are stayed. On the other hand, companies may in this way avoid being wound up, thus reducing the number of PWIF claims.

Madam Deputy, finally I would like to speak on a comprehensive review of the protection of wages on insolvency system. The Democratic Party holds that to address the current issue arising from abuse of the protection of wages on insolvency system, it is necessary to prescribe remedies to the ills by targeting industries making frequent use of the PWIF, which include the catering and construction industries. In the long run, it is necessary to comprehensively review the entire protection of wages on insolvency system so as to safeguard employees' rights and benefits. Some of the measures are proposed by the Democratic Party, while some are proposed by the Government or members of the public.

Measures targeting industries accounting for major shares of claims to and payments from the Fund may include the following: To impose a mandatory requirement on all restaurant operators that, before getting or renewing a licence, the operating company or directors must present a bank guarantee according to the size and payroll of their staff so as to ensure that all the employees' statutory entitlements, such as unpaid wages, severance payments and long service payments will not be in default upon the closure of business.

If the above option is not acceptable, then consideration can be given to making it a mandatory requirement for those restaurant operators previously involved in cases requiring payments from the PWIF that, before getting or renewing a licence, the operating company or directors must present a bank guarantee according to the size and payroll of their staff so as to ensure that all the employees' statutory entitlements, such as unpaid wages, severance payments and long service payments will not be in default upon the closure of business. With this measure, fewer restaurants will be covered.

A further step is to scale the levy rates of Business Registration Certificates according to industries. Employers in industries accounting for major shares of claims to and payments from the Fund should pay higher rates of levy for the Business Registration Certificates, subject to regular reviews. Earlier on, Mr SIN Chung-kai of the Democratic Party raised a written question on this proposal in the Legislative Council. There, however, has been no positive response from the Government.

I have earlier mentioned an option, that is, to establish separate funds for industries accounting for greater shares of claims to and payments from the Fund, whereby employers in the selected industries will self-finance the operations of their respective funds. This is also a plausible option.

In the long run, the entire protection of wages on insolvency system must be reviewed comprehensively. The Government should study measures targeting all industries, and require all employers to reserve funds to cover employees' forthcoming statutory entitlements, such as severance payments, and long service payments.

It is believed that in order to effectively address abuse of the PWIF, it is necessary to adopt a three-pronged approach by comprehensively reviewing three aspects, namely, the protection of employees' rights and benefits, the crackdown on unscrupulous employers, and the protection of wages on insolvency system as well as related legislation.

Madam Deputy, I so submit.

MR LEE CHEUK-YAN (in Cantonese): Madam Deputy, personally I have particularly strong feelings for the Protection of Wages on Insolvency Fund (PWIF), the reason being that it was I who in the 1980s waged the successful struggle leading to the establishment of the PWIF, and had the PWIF payment raised to \$50,000 in the 1990s before 1997. It has always been my view that to employees left unpaid upon the bankruptcy or winding-up of their companies, the protection offered by the PWIF is very important. I do not want to revert to the days in the 1980s when it was necessary to "hop" around to seek out employers for payment of wages. In some measure, the Fund does bring stability to the community. At least I need not stage sit-ins in the streets so often. I have been doing fewer of this in recent years.

However, I notice that another problem has emerged, namely, the abuse of the PWIF. I think that the original intent of establishing the Fund was good. I have to make it clear. I am absolutely in favour of having such protection. However, there has got to be a crackdown on abuse. How is the Fund being abused? We can see that in recent days many catering establishments have

closed down, the Ocean Palace Restaurant being one of them. Today, it is the Crystal Jade Restaurant, and many more before it. Why is there an abuse problem? This is because employers have passed onto the PWIF their responsibilities to pay outstanding wages and severance payments, and looked upon the Fund as the ATM of unscrupulous employers. No matter what happens, if there is money, it goes to the employers; when there is the responsibility to pay wages in arrears, then the payment is to come from the PWIF. An employer is only required to pay \$600 a year, then he can make withdrawals from the ATM. This is what the abuse is about.

Surely, we are absolutely willing to help employees of insolvent employers who have to wind up their businesses because they are in genuine difficulties and cannot shoulder the risks anymore. However, the situation now is different. Why are we saying that there is abuse? Because some unreasonable and unscrupulous cases have come to light. The employer, while saying that "the gates have to be closed" and that the restaurant has to be wound up, is actually starting another restaurant right away. There has been a case in which the same individual, using the same tactic, successively opened three restaurants at the same address. There has also been a case in which one group, using the same tactic, closed down six restaurants at different addresses but is now going to start the seventh and even the eighth restaurants, and it will go on like that. Those whom we should target are employers who are obviously making money and yet still want to "close the gates" and pass the buck to the PWIF.

Where is the second major problem of abuse? Some companies are clearly making money. However, unaccountably, their money just vanishes. This other problem of abuse is about companies which are making money and yet all the money just disappears. How do they transfer their assets? I have talked with the Commercial Crime Bureau. It is sometimes difficult to prove criminal intent on the part of those companies. For example, a cup is definitely worth only \$1, but I sell it to a supplier for \$20. However, the supplier is in fact another firm opened by me. So, the money goes from the left pocket to the right. Then I would say the left pocket is now empty. However, the right pocket has a lot of money. Furthermore, I once made a phone call to Radio Hong Kong. CHAU Yung told me that there is in fact another ploy. He said, when winding-up, a company may hold a final auction to auction off all assets at dirt-cheap prices. But another company owned by the same man will buy all

the things. The company wound up naturally suffers heavy losses, but in the end it manages to have its assets transferred. These are also acts of abuse.

Madam Deputy, the community has now reached a consensus, with everybody agreeing to brook no abuse of the PWIF. The question is how to prevent abuse. This is the focus of our debate today. Before there can be a discussion on how abuse can be prevented, it is necessary, in my opinion, for Mr Tommy CHEUNG to clarify his own words. He once said that wage earners must bear some risks — the risks of bumping into the wrong employers. How can the right and the wrong in this world be so distorted? This is really hard to accept. To him, the abuse of the PWIF is probably not a problem. Instead, it is a problem of wage earners not having an eye for bad guys. It is not right for him to say so. I have raised this on purpose in the hope that he will clarify his words. Sometimes members of the industry that he represents also think that he has ruined their image.

Let us come back to the question of how to prevent abuse of the Fund. In today's amendment, I have proposed what I consider to be the most important measure to prevent abuse of the PWIF, namely, the establishment of a security deposit system. Credit for the idea, I must state here, goes to Permanent Secretary CHEUNG Kin-chung because it is he who first proposed it. I am not collaborating with him. However, I find it necessary to bring up his suggestion. It was hoped that the Government would send some "paparazzi" to lobby for Members' support for my amendment today — but I know that the Government has not done so. I believe a security deposit system can eventually effectively prevent abuse of the PWIF.

Although in my amendment I made no mention of the target industries, I have to make it clear that the system should be confined to the catering industry. Why should it be confined to the catering industry? I am not pinpointing the catering industry. The fact, however, is that the abuse of the PWIF by the catering industry has been most perturbing. Here is an example. In the first quarter of this year, the catering industry accounted for 1 593 applications to the PWIF, representing 55% of the total. In the same period last year, the figure was 1 286, or 34% of the total number of cases. The ratio went up sharply by 70%, which is indicative of the growing severity of the problem. I seek to confine the system to the catering industry mainly because the problem with the

catering industry is more prominent, and pertinent data clearly show that the catering industry accounts for the greatest share of applications to the PWIF.

In my opinion, the whole concept of the security deposit system is to brook no abuse. To a certain extent, the PWIF is an insurance system. However, there is now abuse. So, it has to be modified to give more share of the risk to employers. Under the existing PWIF, the people share out the risk. If a security deposit system is set up for the catering industry, the risk is reverted back to employers in the catering industry. I think that the security deposit system will oblige employers to shoulder in future the risk arising from non-payment of wages in the course of operation. This concept is similar to a landlord requiring a deposit. However, they need not pay deposits in cash. They may buy certificates of guarantee from banks. As an alternative, banks may evaluate the risk and then set prices for issuing certificates of guarantee.

In addition, I have heard that many representatives of employers are asking how small and medium enterprises (SMEs) will be treated. I think we should pinpoint the issue of abuse of the PWIF. Of course, SMEs sometimes do abuse the PWIF. However, by comparison, the abuse by SMEs is definitely less serious in terms of both extent and gravity. The reason is that they at most only hire 10 persons or so each. Even if there are applications to the PWIF, only limited sums are involved. I therefore opine that SMEs hiring not more than 20 persons should be exempted. Some people may ask what will happen if no security deposit can be bought. In that case, then I think members of the industry should look into the need to put forward a proposal for collective insurance. The Government has made the suggestion of narrowing down the scope of eligibility to apply to the PWIF, saying that it is to target companies "with a history" only. I, however, know not how to narrow it down in dealing with applications from companies "with a history". Are "all members of the nine related clans to be punished"? It is very easy for those companies to "resurrect in a new guise." Also, it is not possible for the Government to "punish all members of the nine related clans." I, therefore, do not think that the goal of prevention can definitely be achieved by just targeting companies "with a history."

Now on the second part of the amendment, namely, the question as to whether or not it is possible to require the accountants to work out the company's

contingent liability in respect of severance payments. Then, such liability or debt of the company will be shown in the audited accounts, with amounts of severance payments clearly posted on the ledgers. Surely, merely to have it shown serves little purpose because the company may still be penniless when it closes down. So, here is another thing that I want to accomplish. On showing the said amount, auditors should discuss with the company how to "fetch the bucks" until there is enough money for the company to make severance payments. This is my second major proposal.

Finally, I would like to bring up the point about stringent punishment of employers defaulting on payment of wages. Though the Government says that there definitely will not be any leniency, past record shows that there has been just one case in which a director was punished. According to the Government, it is no longer so. However, there is still only one case. Furthermore, in order to prove that a director has defaulted on payment of wages, it is necessary to prove that he connived at or agreed to the non-payment of wages. It is also necessary to prove that the company has done that deliberately or without reasonable explanation. Only then can the prosecution be made successfully. So, before there can be a successful prosecution against a director, it is necessary to overcome a lot of hurdles. It is, therefore, hoped that the Government will conduct a review here and see how to impose stringent punishment on employers defaulting on payment of wages. Thank you, Madam Deputy.

MR WONG KWOK-HING (in Cantonese): Madam Deputy, the Protection of Wages on Insolvency Fund (PWIF) was set up in 1985 to provide timely relief to employees by granting them *ex gratia* payments from the Fund covering part of the sum due when they have been laid off upon the collapse of the company, and their employer cannot pay them their statutory entitlements, such as wages in arrears, payments in lieu of notice and severance pay.

The PWIF makes available basic protection to workers laid off. For example, following the Asian financial turmoil of 1997 and the SARS attack of 2003, companies were closing down almost every day. Thus the PWIF has maintained deficits for several years. Not until the current year is a surplus recorded. It is understandable that more payments will have to be made from the PWIF when the economy is bad. In recent years, however, even though the

unemployment rate has been dropping and our economy has seen the first beam of dawn, some employers still abuse the PWIF, which is lamentable.

Since the beginning of this year, there has been a non-stop stream of cases in our catering industry in which restaurants closed down and the payment of employees' statutory entitlements was in default. A relatively big case was the Hang Ho group of restaurants which closed down in February. A really fresh case was the Ocean Palace Restaurant, which closed down just last month. According to data from the Labour Department (LD), in the first quarter of this year, 55% of the 2 930 applications received by the PWIF came from the catering industry. Payments made for them took up 30% of the total, higher than that in the same period of last year. Another industry making most of the applications to the PWIF is the construction industry, accounting for 24% of the total applications in 2004. Any denial of abuse is not likely to be convincing.

Clearly, certain industries have looked upon the PWIF as their personal ATM, using the money contributed by all local employers to pay employees' statutory entitlements due from them, such as wages and severance payments. On the one hand, scrupulous employers are required to subsidize the unscrupulous ones, and on the other, employees are rendered empty-handed and helpless at being laid off. This alone gives both employers and employees good justifications to denounce and reprimand them severely.

To plug the loopholes of the PWIF, it is necessary to make concerted efforts and multi-pronged measures. In addition to amending the relevant legislation, there must be stepped up enforcement and prosecution as well as heavier punishment.

It is most common for cases of non-payment of wages or MPF contributions to arise in the restaurant trade and the construction industry. The LD has undertaken to step up inspection of the industries concerned. Given the fact that the LD has to deploy manpower for the inspection of outsourced government services, it is not certain if it will indeed step up the inspection of restaurants and the construction industry.

Besides stepping up inspections, there should, above all, be stepped up prosecution. What the LD ought to give the workers is the assurance that there

will be prosecution against the employers. According to the experience of the Hong Kong Federation of Trade Unions (FTU), when an employer defaults on the payment of wages or other statutory entitlements to workers, the LD has never played the role of initiating prosecutions, but has even asked employees to accept their statutory entitlements, for example, wages, at reduced rates. The LD should take the initiative to beef up its prosecution role instead of tolerating law-breaking employers.

Furthermore, under the current Companies Ordinance and Employment Ordinance, employers defaulting on the payment of wages are criminally liable. However, the Court often concludes such cases by imposing fines, seldom sending offending employers to jail. There was a case in February this year. A restaurant director convicted of defaulting on the payment of wages and other statutory entitlements to workers was sentenced to one month's imprisonment by the judge. However, the sentence was suspended for two years. How can such lenient punishment achieve any deterrent effect?

We, of course, understand that the Judiciary is independent. There is legal basis for each decision of the Court. However, an important function of the Court is to administer justice and protect the people's legitimate rights and interests. With some employers' unlawful practices getting more and more rampant, there can definitely be deterrent effect to others if the Court metes out heavier punishments. The LD and other departments concerned are duty-bound to let the Judiciary know the actual situation and the real facts in the community and certain industries.

My amendment proposes a direction for studying the implementation of a security deposit system. To guarantee the making of severance payments and other statutory compensations, an employer should make security deposits when starting his business. Surely, there are specific details to be studied. However, the security deposit system ought to target industries with more cases of abuse, for example, the catering industry and construction industry. The reason is that employers in other industries have been, for no guilt on their part and with great reluctance, already subsidizing the operations of the catering industry and construction industry.

The abuse of the PWIF by the catering industry is due to the varied quality in restaurant operations and management. According to information from trade

unions and people well-versed in the trade, there are, with the exception of those employers who are genuinely insolvent, primarily four types of PWIF cases of abuse or fraud. The first type are those seeking to make "quick money" by running restaurants. When they "start to gather capital", the cash they put in is already insufficient. They hang on by making no payment on overdue bills and defaulting on the payment of wages. Their restaurants often seek to attract customers with low prices, which is at the expense of employees and suppliers of goods. Having got hold of a sizeable amount of cash after running the restaurants for some time, the proprietors begin to default on the payment of wages and leave bills outstanding. They will linger on for a few more months, and then finish off by "closing down and running away". Having cheated employees of their hard-earned money, the proprietors can then make a fresh start and open new businesses. The idea is to go on and on like that unscrupulously.

In the case of the second type, the operator does not consider running the restaurant as his regular business; he is actually engaged in some clandestine money laundering activities through recycling capital. With no sense of social responsibility at all, the employer will kick down whatever ladder in total disregard of the fate of the employees. The third type of operators have a water-tight plan right from the time the investment is launched, with no intention to shoulder the responsibility of paying the workers their statutory entitlements at the time of winding-up, but only to leave the entire burden to the PWIF. As for the fourth type, when caught in operational troubles, some employers resort to some tricky business registration arrangements to absolve the *bona fide* proprietors of all responsibilities, including that of paying compensations upon winding up. These four are grave vices of the catering industry. In the case of the construction industry, their abuse of the PWIF is attributable to the system of subcontracting. With one level of subcontracting after another, workers cannot get their due wages, and have to apply to the PWIF for *ex gratia* payments.

Of course, not all employers in these industries are unscrupulous. Honest employers will still be subsidizing unscrupulous ones if a levy for security deposits is imposed on all employers in these industries. So, my amendment calls upon the Government to consider establishing a practicable and proper security deposit system by targeting specific problems inherent in certain industries so as to really pinpoint unscrupulous employers with repeated offences and already "have a history," and avoid further burdening other law-abiding

employers. With regard to amending related legislation, Miss CHAN Yuen-han and Mr KWONG Chi-kin will make suggestions and speak on them.

Madam Deputy, I so submit.

MR TOMMY CHEUNG (in Cantonese): Madam Deputy, on many occasions recently we heard that employees from the catering industry were making most of the applications to the Protection of Wages on Insolvency Fund (PWIF). Even the officials concerned frequently made reference to "Chinese restaurants", saying that "Chinese restaurants" were often involved in claims to the PWIF, and made it a point that this industry warrants attention. As a result, employers who run restaurants have somehow become the object of universal condemnation.

However, the so-called "industry that warrants attention" may change as time and environment change, just as in the case of the establishment of the PWIF in 1985 as a result of manufacturing industries moving north of the border and factories closing down one after another. It is just in recent years that claims from the catering industry to the PWIF outnumber all those of others.

Let us get to the root of the issue. We have quite a few old restaurants which are hiring more than a hundred employees each. In size, they are like aircraft carriers. When compared with restaurants of recent years, which are smaller in size and costing less to run, they find competition difficult. So, some have been forced to close down. There have also been cases in which landlords refused to renew the leases, thus forcing them to close down.

What is more, according to police information, between 2003 and March this year, there were only 25 cases of suspected fraud against the PWIF involving the catering industry, which represent about 0.5% of the average annual total of 5 000 claims to the PWIF from the catering industry. In other words, out of all the claims, only a very small portion probably has something to do with unscrupulous employers. In the case of all the remaining 99.5%, employees are jeopardized just because of the limited capability and experience of their employers. The worst that we may say of this group of 99.5% of employers is that they are incompetent, not unscrupulous. So, there is not enough evidence for the Government to prove that the catering industry is abusing the PWIF and warrants special attention or focused action.

I admit that a small number of investors are intentionally abusing the PWIF. Members of the public are finding these trouble-makers unbearable. It is necessary for people to rally together to "buzz" them off, and punish them by kicking them out of the game. However, we are to "buzz" off the stage the abusers, but we should not implicate all the others. The amendments proposed by Mr LEE Cheuk-yan and Mr WONG Kwok-hing respectively are cut from the same piece of cloth, both targeting the catering industry. Mr WONG Kwok-hing's amendment even extends to the construction industry and the import and export sector. Though he made no mention of that earlier on, the import and export sector is the one with the third largest number of claims to the PWIF. With regard to the point on the need to identify other industries that are, so to speak, "abusing" the PWIF, I have strong objection.

As reflected in public opinions, to set up a security deposit system is to "do a disservice out of good intentions". Most restaurants are operating on small budgets. It is very difficult for them to pay huge deposits before starting. This will only cut a big slice off their operation capital, dampen the incentive to invest, and badly impact on competitiveness. For those current operators of restaurants, even though they have made no applications to the PWIF and are not in trouble at all, they may be forced to "fold" too because all of a sudden they are required to spend sums amounting to several million or hundreds of million dollars in security deposits.

Indeed, I welcome any proposal for improvement from you all. For instance, the Government proposes to raise the business registration certificate levy for high-risk industries. If the increase is moderate, then members of the industries, I believe, will find it acceptable.

Incidentally, I would like to point out that it is somewhat controversial for the Government to make the proposal that there should be a mandatory requirement for a company's balance sheet to make provisions for severance payments. The reason is that once this is done, the directors have to bear criminal liability. New investors will probably find that unfathomable. The Government should, therefore, consult, first, with the Hong Kong Institute of Certified Public Accountants, and then with members of the industries thoroughly. Only then should a detailed study into its feasibility be conducted. However, it would rather be feasible if it is voluntary. The Government may consider promoting it. In this way, disruption to be caused to industries doing normal business can be minimized.

With regard to directors of restaurants repeatedly resorting to the PWIF, I agree that there is a need to find ways to punish them. Should employers who have resorted to the PWIF only once be excluded from this so as not to deny unsuccessful young investors a second chance? I have to emphasize that I do not oppose all changes. I just want to stress that any proposal for reform must be proceeded with in great care so as not to victimize the innocent and adversely affect decent businessmen.

Last week, at a meeting of this Council's Panel on Manpower, I personally asked Commissioner for Labour CHEUNG Kin-chung whether there is adequate law to protect employees' wages. At that time he clearly answered in the affirmative. So, the problem does not arise from the inadequacy of law. The trouble is that there is no enforcement even though there is law.

It was just two years ago that the Government set up an inter-departmental Task Force to deal with abuse of the PWIF. So far 65 cases of suspected abuses have been received by way of referral, yet 45 other cases are still under investigation. I have a question here. Given the fact that enforcement has barely started, is it necessary to address the issue by setting into motion the whole series of big moves as proposed by the Government?

On the other hand, with the premise that severance payments can be offset by MPF contributions, I can foresee that in five years, severance payments from the PWIF will drop gradually. If it is coupled with effective enforcement and investigation, the problem will probably be solved largely. We, therefore, definitely should not hasten to target the catering industry, which is providing us with 200 000 posts and bringing in investments amounting to tens of billion dollars a year on average, just for the reason that in recent years the PWIF has to pay, on average, an annual sum amounting to about \$100 million to cover payments due from the catering industry.

I have to stress that the cornerstone of success for Hong Kong is the Company Law, under which directors or shareholders of a limited company, after putting in money as investment, will not lose more than the said registered capital, no matter how much the ultimate loss is. They need not "bear" unlimited debts because of unexpected events. This is the difference between a limited company and an unlimited company. Also, it is this provision that

sustains investors' incentive to invest. So, there should be no rash amendment to the effect that directors are to "bear" the debts when a company "folds".

I am not seeking to refute the responsibility of employers. I also would like to take this opportunity to make an appeal to investors. One knowing how to "set up a stall" should also know how to "fold it up". The approach to investment is to be on the proper track. There is a saying that "Do not put good money into bad money". If business runs aground, then it is advisable to cut the cable expeditiously, just like a brave man cutting off his arm. Need there be the worry that there will be a shortage of firewood so long as the green hill is still there? By green hill, I mean money and reputation. Really do not gamble away employees' wages and one's own reputation. Employees themselves also have their own responsibility. In the event that their employer defaults on the payment of wages, they should, as soon as possible, seek assistance through legal channels so as not to let their loss grow as a result of prolonged delay.

To proactively solve the problem, I am getting in touch with members of the industry for a round-table conference. It is hoped that a solution can be worked out by drawing on collective wisdom to work out strategies to drive that small group of bad elements out of the game in order to raise the quality of operators in the industry.

In fact, some Honourable colleagues said earlier that the problem with the catering industry had been worsening. I would like to cite some figures, all supplied by the PWIF. In the year 2002-03, the PWIF spent \$200 million on the catering industry. In the year 2003-04, the amount was \$150 million. Last year, that is, the year 2004-05, it was \$85 million. The amounts of claims to the PWIF from the construction industry ranged between \$76 million and \$81 million, then went down to \$72 million. In the case of the import and export sector, it ranged between \$36 million and \$56 million, then went down to \$22 million.

Thank you, Madam Deputy.

MS LI FUNG-YING (in Cantonese): Madam Deputy, to safeguard employees' rights and benefits and to guard the Protection of Wages on Insolvency Fund (PWIF) against abuse by employers are not new pleas from the labour sector.

Now the subject is brought up, I recall that way back in the 1980s, when I was still a committee member of the PWIF, I already requested the Government to target employers who abused the PWIF and place them on a list so as to prevent any abuse by employers. However, the Government just turned a deaf ear to my words. Now the closing down of the Ocean Palace Restaurant has aroused extensive public attention. In an unprecedented move, the Government has put forward 11 proposals. It is hoped that they can indeed help safeguard employees' rights and benefits and improve the operation of the PWIF.

At present, the operation of the PWIF has an inherent contradiction. While it provides relief to employees who have their rights and benefits in default, it however lets employers evade their due responsibilities. With regard to employers evading responsibilities, there can be totally different reactions from members of the public. Around May or June in 2002, the group of Treasure Seafood Restaurants closed down, involving 14 branches and 2 100 employees. To settle the workers' unpaid wages, payments in lieu of notice and severance payments, the PWIF had to pay out more than \$60 million. In terms of size, and the amounts of payment and the number of people involved, the closing down of the Ocean Palace Restaurant pales into insignificance in comparison with the group of Treasure Seafood Restaurants. However, at the time when the group of Treasure Seafood Restaurants closed down, the focus of public opinion was not on the employer's responsibilities. That probably had something to do with the atmosphere of the community then prevailing. However, I just wonder that had the shareholders of the Ocean Palace Restaurant not been so brazen and hasty in seeking to start afresh elsewhere as reported by the mass media, would they be well justified in using the PWIF to pay off unpaid wages they owed? Is the accusation of abusing the PWIF only applicable to employers who do not even bother to put on the minimum camouflage? Is it also permissible for employers defaulting on the payment of wages and severance payments on the ground of inept business operation not to bear any responsibility even though the outstanding sums are enormous?

It is not a satisfactory arrangement to cover employees' rights and benefits with the PWIF. As we all know, even if employees are successful in making claims to the PWIF, they cannot get back their rights and benefits in full. So, my sympathy is not with any employer who has to resort to the PWIF, regardless of the reason for winding up. In today's debate, our attention is on the abuse of the PWIF. Surely, it is shameful for employers to abuse the Fund. However,

the more primary issue is the manner in which the PWIF is being used. To prevent employers from resorting to the PWIF, I demand that all incentives of abuse be eliminated.

I support all proposals that can eradicate the issue arising from employers resorting to the PWIF. Therefore, I support the adoption of the system of mandatory bank guarantee. I, however, do not think that the system should be confined to the catering industry. Nevertheless, it can make the catering industry as the starting point, and then extend to other industries gradually. Taking a step back, I also support the idea that employers previously involved in claims to the PWIF should be compulsorily required to present bank guarantees for employees' statutory entitlements. Likewise, such a system should not be confined to the catering industry only. It should be extended to other industries gradually within a specified period of time.

In addition to requiring employers previously involved in claims to the PWIF to provide employees with guarantees, it is equally important to hold employers responsible for payouts from the PWIF. So, my request is that there should be a requirement to the effect that for employers involved in payments from the PWIF, the Government, besides levying profits tax on their business activities, should also impose charges at a rate of amounts paid out by the PWIF for them until full sums so paid and the interest accrued are recovered. At the same time, the Government should amend the ordinance on the PWIF to enable employees to claim from the PWIF their full statutory entitlements.

Madam Deputy, at a meeting of this Council's Panel on Manpower late last month, the government officials responsible appeared to be ambiguous on certain specific proposals, even trying to evade and delay on the excuse of a need to seek employers' consensus and study the impact on the business environment. I was rather disappointed. I know not what sort of business environment the Government is going after. I have to ask this question: Here in Hong Kong, what has been long neglected and has remained in a disadvantageous position? Is it the environment for the rights and benefits of employees, or is it the business environment for employers? The Government never considers the environment for employees' rights and benefits in formulating policies, but often considers matters with regard to employers' consensus and business environment. It is just natural for all policies launched to be so very lopsided. To local employees nowadays, especially the grassroots, this is the greatest sorrow. I so submit.

MR LAU CHIN-SHEK (in Cantonese): Madam Deputy, I started my career in labour services in the early 1970s. It so happened that many labour legislation, I believe, were enacted in that decade. These include those on rest days, severance payment, seven days of paid annual leave, and paid maternity leave for women. Cases in which employers "ran away" and left employees with nothing gave us the greatest headache. Even though we and the workers spent two to three years hopping around the Legal Aid Department, the Official Receiver's Office and the High Court to process complicated procedures, few, if any, could eventually be successful in their claims. That is to say, those who did succeed only represented a very small portion.

"To toil without getting paid" is most unfair to wage earners. Even if we manage to secure more legal protection for them, all legislation will exist in name only so long as they cannot get their wages or receive their statutory entitlements. In 1982, one case of non-payment of wages took place at the "Lai Lee Toys Factory" in Tuen Mun, involving a record number of employees. Some 1 400 employees did not get paid. After much effort by labour groups and workers of the toys factory plus pressure of public opinions, the colonial government finally set up a working group in 1982 to study ways to deal with non-payment of wages in insolvency cases. One year later, the former governor, Sir Edward YOUDE, announced acceptance of the recommendation of the working group that a Protection of Wages on Insolvency Fund (PWIF) be established for the making of *ex gratia* payments to workers affected by levying a charge of \$100 on every business registration certificate. Relevant legislation was passed in July 1984 and again in April 1985. Only then was there a breakthrough in the problem of non-payment of wages, one that had hitherto long troubled workers. Also, only then was there a break for me and my colleagues.

However, Madam Deputy, when the PWIF was about to mark its 20th anniversary of formal operation, there came the closing down of the Ocean Palace Restaurant and its non-payment of severance payments to workers. This stirred up public concern once again over the possible abuse of the PWIF. It is especially so in the case of restaurants and catering establishments.

I would like to point out that the PWIF is a scheme of collective insurance beneficial to both employers and employees. Although employers have a statutory obligation to pay workers their wages and statutory entitlements, such as long service payments and severance payments, the law does not require employers to set aside sufficient cash for this purpose at all times. The reason

is that such a requirement may affect employers' flexibility in deploying their capital, which may not be in the best interest of both employers and employees. However, when employers are given greater flexibility, there is a higher risk for workers to get no pay. The establishment of the PWIF is to give employers some flexibility and yet at the same time assure workers' protection.

Like all schemes of collective insurance, it is possible for the PWIF to be abused. At present, a small number of employers are bent on "taking advantage", looking upon the PWIF as their personal ATM, and thinking that the PWIF is "obliged to cover it all". If the situation continues to deteriorate, then it is possible for the entire protection of wages on insolvency system to collapse just because of that. It is not an issue merely involving the PWIF's financial health. It is also a matter about political support. Because honest employers may ask why they are required to subsidize a small number of unscrupulous employers.

Madam Deputy, there are primarily three approaches to prevent abuse of the PWIF: first, to step up enforcement; second, to increase employers' responsibility; and third, to foster self-discipline within the industry.

First, on stepping up enforcement. I am very pleased to note that colleagues in the Labour Department have changed their past practice and refrained from being lenient towards employers suspected of intentional non-payment of wages. When there is evidence of violation on the part of employers, they will initiate prosecutions preemptorily.

However, we must note one point. In criminal prosecution, the onus of proof is very strict. After-event investigation and collection of evidence are tough tasks. Many can slip away even if the strength of law-enforcement officers is doubled. Surely, no matter how tough the tasks may be, work in this area should brook no relaxation because it not only serves to deter abuse of the PWIF by employers but also plays a key role in upholding the rule of law and justice.

Madam Deputy, now on the second point, namely, to increase employers' responsibility. Earlier on Mr LEE Cheuk-yan proposed that employers be required to reserve funds for long service payments and severance payments for eventual use. This is one of the solutions. In this way, there will be fewer employers seeking to "take advantage" by abusing the PWIF. Consequently,

there will be less incentive for abuse. Moreover, at present workers of longer service often cannot get back their severance payments in full from the PWIF. Such an arrangement is more equitable to them. It is worthy of the Government's consideration.

Another way is to establish a security deposit system. Theoretically, the most appropriate and equitable approach is to require operators "with a history" to secure bank guarantees before starting their businesses. However, there will be a lot of problems in actual implementation. For instance, proprietors or directors "with a history" are likely to "resurrect in a new guise" by applying for permission to start businesses in other people's names. Unless the Government is to "punish all members of the nine related clans", otherwise it is most unlikely for such a requirement to be effective.

There is another point seldom mentioned by people, and that is, self-discipline within the industry. Some industries have also set up schemes of collective insurance like that of the PWIF. The Travel Industry Compensation Fund is one example.

The situation of the travel industry and that of the catering industry are utterly different. Food premises far outnumber travel agencies. It is very difficult to set up a scheme like that of the Travel Industry Council. I, however, am of the view that representatives of the catering industry should at least find ways to curb the "advantage-taking" practice among members of the industry. Do not let the practice of abusing the PWIF become a regular practice of the catering industry. If eventually it becomes necessary to impose on the catering industry more stringent control detrimental to its flexibility, the representative of the catering industry, I believe, is not going to absolve himself of the blame.

Finally, I would like to speak on streamlining the PWIF application procedures. The authorities should introduce a one-stop service and should not require applicants to apply to the Legal Aid Department. Instead, they should be allowed to make applications direct to the Labour Department which should help them arrange for the winding-up. In this way, time can be saved. Also, the applicants can take the relevant steps without going through the means test of the Legal Aid Department.

Thank you, Madam Deputy.

MR ANDREW LEUNG (in Cantonese): Madam Deputy, in the case of the winding-up of the Ocean Palace Restaurant, the employer treated the Protection of Wages on Insolvency Fund (PWIF) as its "ATM". In fact, this is not the first of its kind. Because of that, honest employers have to subsidize the unscrupulous ones. There is also collusion between employers and employees in abuse of the PWIF. All these are indeed infuriating.

Now the Government has put forward "five immediate" and "six longer-term" measures. I strongly support the five measures that can be implemented immediately. However, the six longer-term measures are obviously problematic. My worry is that a panic prescription of remedies may not only do injustice to individual industries but also run counter to the Government's principle of improving the business environment.

The proposed security deposit system and bank guarantee system are sugar-coated poison. Take security deposit as an example. According to the Government's proposal, the calculation of the relevant amount should be based on the floor area and staff size of a catering establishment. Come to imagine this. It is common for a restaurant to hire dozens or even well over a hundred workers, so its security deposit will have to be in excess of \$1 million. In the case of major chains, it has to be to the tune of more than \$100 million. Given the enormity of the amounts, its implementation will render it impossible for restaurants to survive.

As for the bank guarantee, it is also a big difficulty to the small and medium enterprises (SMEs). If a company has not got sufficient reputation or "bricks and mortar" to substantiate its financial standing, no bank will issue a certificate of guarantee. The threshold for starting a business will inevitably be raised, thus denying the people the chance to launch their own business so as to improve their lot and move up socially.

In Hong Kong, 98% of the local companies are SMEs, all doing business on a small scale. The two aforesaid proposals can only burden every trade and industry with heavy shackles, and fetter the flexibility of SMEs in their deployment of funds. In the long run, investors will even reduce their investments. There will be fewer jobs too. Ultimately, wage earners will suffer too.

Madam Deputy, the PWIF was set up in 1985. After all these years, it is time to conduct a review. The first task is to examine how enforcement can be stepped up. The Liberal Party and I think that the existing systems and legislation are, in fact, sufficient in protecting employees.

As explicitly stated in section 23 and section 25 of the Employment Ordinance, it is unlawful for an employer to deliberately and for no reasonable explanation fail to pay wage or other payments due within seven days on the expiry of the last day of the wage period or upon the termination of the contract of employment. The maximum penalty is a fine of \$200,000 and one year's imprisonment. This can achieve very good deterrent effect so long as there is earnest enforcement by the Government.

I also have to point out that the problem is that some employers defaulting on the payment of wages are taking advantage of the convenience of "limited companies" so as to shoulder just limited liability. Making use of that grey area, they abuse the PWIF. However, section 64B of the Employment Ordinance also states explicitly that it is unlawful for the director, manager or secretary of an incorporation to connive at any wage offence. It is even a criminal offence. The Companies Ordinance also has a similar provision.

There is adequate protection for employees under current legislation. Why is it necessary to bring forth such disturbing measures? At present, the problem is just that enforcement is too slack. Here is an example. It was with considerable difficulty that the authorities succeeded in bringing prosecution against the director of a limited company. Finding him guilty, the Court yet only sentenced him to one month's imprisonment that was suspended for two years. That inevitably gives unscrupulous employers a false impression and makes them feel free to continue with their abuse of the PWIF.

Secondly, for recalcitrant employers who are bent on cheating, we should particularly conduct a review to examine how punishments can be toughened so as to stop the abuse. For instance, punishments should be increased so as not to allow employers repeatedly defaulting on payment of wages to again serve as directors or similar office-bearers in the relevant industry.

Thirdly, the Government should conduct a review to see how best co-ordination can be effected among different departments for proper law

enforcement, especially so with the Official Receiver's Office. The said Office should carefully check company accounts to examine whether or not a company has transferred outward huge amounts of cash before going bankrupt in a bid to feign insolvency, and illegally transfer funds. The authorities should target that loophole, and severely crack down on the practice of "fudging accounts".

Fourthly, at present, many companies have already adopted the practice of making provisions to meet the liability of severance payments. The Liberal Party, therefore, is in favour of the practice that members of the accounting profession list in the books of each company an entry showing the amount of severance payments.

As a matter of fact, with regard to today's debate, the difference between employers and employees is not big. They actually share common grounds. We also want to crack down on abuse of the PWIF and unscrupulous employers. It is necessary to solve the problem with focused measures.

With regard to the question as to which approach should be taken ultimately, I think it all depends on the wholehearted co-operation and consensus among the three parties, namely, the Government, employers and employees. Only with that can an all-win solution be worked out for the protection of employees, for the protection of honest employers and for the preservation of the business environment. It is hoped that the Labour Advisory Board can present to us positive proposals as soon as possible.

I so submit in support of the original motion as well as the amendment proposed by Mr Andrew CHENG for a review of the PWIF. I, however, oppose the amendment of Mr LEE Cheuk-yan and that of Mr WONG Kwok-hing.

Thank you, Madam Deputy.

MR LI KWOK-YING (in Cantonese): Madam Deputy, the original purpose of establishing the Protection of Wages on Insolvency Fund (PWIF) is to give wage earners protection so that there can be timely relief for them when their employers become insolvent. However, coming one after another in quick succession in recent years were cases in which restaurants or catering

establishments suddenly closed down. Moreover, employees' wages and severance payments were left unpaid. We cannot help suspecting that the PWIF has loopholes in its system, and is even being abused.

Lately, the most ridiculous case that overshadows all others is the much-talked-about winding-up of the Ocean Palace Restaurant. Before the restaurant's closure, the management made it known to all staff that claims had to be made to the PWIF, saying that the proprietor could not afford to pay wages and make severance payments. It can be seen from this individual case that restaurant proprietors simply look upon the PWIF as their shield, and seek to evade their most basic duty as proprietors, namely, to pay wages to employees.

Some have directed their attack at members of the catering industry, holding that they are those regularly dipping into the PWIF. The representative of the catering industry found it necessary to defend the industry against injustice, and vehemently maintained that the winding-up of the Ocean Palace Restaurant was just an isolated incident. In all fairness, over the last decade, the catering industry has been the industry that makes the most claims to the PWIF. In the first quarter of this year, there was a drop in the total number of claims received by the PWIF. However, the number of claims to the PWIF from the catering industry still made up 55% of the total, representing an increase of more than 20% over that for the same period of last year. With the amounts involved totalling more than \$20 million, it tops all the others.

Madam Deputy, to quote Chairman HO Sai-chu of the PWIF, on average, each day witnesses the closing down of two catering establishments, and one of them, for financial reasons, requires payments from the PWIF to cover payment of wages. The annual sum involved totals \$100 million. The situation can be considered very serious. If the current situation persists, it is just natural for people to worry that the PWIF will simply not be sustainable.

First of all, I have to make it clear that I am not targeting the catering industry. In my opinion, to protect the PWIF against abuse, the Labour Department (LD) must step up enforcement and prosecution. At the same time, there ought to be encouragement and assistance for employees to report non-payment of wages. I have learnt that the LD has put into effect several immediate measures to crack down on ill-intentioned employers. This is very applaudable. Among these is the measure requiring the LD to review if there is

sufficient arrangement to help employees report non-payment of wages in order to be able to effect timely intervention and enable employees to press for payment of overdue wages before employers close their businesses as by then they will be wasting time to no avail.

As the saying goes, it takes more than one cold day for a river to freeze three feet deep. There are often signs before an employer closes his business. There is a very good example in the case of the Ocean Palace Restaurant. Whether or not employees are prepared to come forward to testify against their employers is another issue. To consider establishing a security deposit system and to require employers to reserve funds to meet future liability in respect of employees' severance payments and long service payment are measures worth supporting.

Some may criticize that such a system will scare investors away from the catering industry, and is unfair to employers who are now law-abiding. In all fairness, at present the catering industry takes out a certain amount from the PWIF, which is derived from the business registration fees levied on employers of every industry or profession. Have those employers not raised an outcry against the unfairness of the existing system?

Had the claims to the PWIF from the catering industry been less than those from other industries, the Government probably would not have considered the idea of establishing a security deposit system, adding to the administrative cost. At a time when there is a popular call in the community for corporate responsibility, responsible employers must see to it that employees are given due protection. No employee is willing to choose a bad employer. However, many a time the inadequacy of a system and objective circumstances can make many good employers turn bad.

To establish a security deposit system is precisely a sound strategy to get wage earners out of harm's way. It is, of course, necessary for the Government to study carefully for risks may come with the establishment of a security deposit system. While protecting employees against the non-payment of wages, it is also necessary to exercise caution so as not to let new proposals fetter the business environment of restaurant operators. It is essential to strike a balance between the protection of employees' rights and benefits and the protection of employers' rights and benefits.

To sum up, ours is a society upholding the rule of law. It is the Government's responsibility to create a favourable business environment for investors, and protect wage earners. It is hoped that the Government can work out a win-win proposal for both wage earners and employers in a setting of extensive consultation with members of the industries.

Madam Deputy, I so submit.

MISS TAM HEUNG-MAN (in Cantonese): Madam Deputy, the recent closure of the Ocean Palace Restaurant and its failure to make severance payments to its employees once again focus public opinions on the protection of wages on insolvency system (the protection system). Many people wonder why a restaurant making profits every month and enjoying a fairly large patronage could not even settle employees' severance payments when it closed down. Thus there came a question. Are there inherent loopholes in the existing protection system which offer unscrupulous businessmen opportunities of abuse. This is indeed a problem as the protection system is an important system protecting every citizen in Hong Kong.

The biggest concern aroused by the present case of the Ocean Palace Restaurant is the question as to whether or not the restaurant proprietor had defaulted on the payment of wages and severance payments through illegal transfer of assets. The authorities ought to face up to the problem so as to address the concern of the public and work on a fundamental solution. Only in this way can the best interests of employers and employees be protected. Appropriate punishments should be meted out to unscrupulous businessmen on the condition that there should be no adverse impact on decent businessmen. At the same time, employees' maximum rights and benefits ought to be safeguarded as far as possible. This, in my opinion, should be the primary principle underlining any solution to the problem.

Under the principle proposed by me, the most pressing issue for the Government is, in my opinion, to review the existing protection system and the related legislation to look for possible loopholes and then introduce legislative amendments accordingly. When there are fewer, or even no more loopholes in the protection system, it is going to be harder for those unscrupulous businessmen, who intentionally default on the payment of wages and seek to use

public funds to free themselves from financial responsibilities, to abuse the Protection of Wages on Insolvency Fund (PWIF).

To review the legislation and plug loopholes is like mending the fold after a goat is lost. It can effectively guard the system against abuse by business operators in jeopardizing employees and cheating the Government. However, when making legislative amendments, we must also conduct a review of enforcement. There are bound to be people trying to defy the law, no matter how water-tight our law is. For the sake of short-term benefits, some people are still prepared to ignore the law and the interests of employees. To tackle this, we have to start with enforcement. Only by stepping up enforcement and toughening punishments can there be the effect of deterring many with the execution of one.

With regard to stepping up enforcement, I suggest that the Government put in more resources so as to conduct in-depth investigation into every fishy claim to the PWIF. Special attention should be given to the question as to whether or not there is illegal transfer of assets by the employer with a view to passing responsibility onto the Government on the ground of inability to discharge his responsibility to the employees at winding-up. It is totally irresponsible and detestable to do so. The Government has got to be firm in dealing with that. We have to attach weight to these issues and see to it that bad elements intentionally neglecting workers' rights and benefits and making wrongful use of social resources are sanctioned through clear legal proceedings.

Madam Deputy, according to the suggestions of some Members, in order that there may be money to cover wages in arrears and severance payments upon the winding-up of a company, there should be a security deposit system or a mandatory requirement for employers to reserve funds in the company's accounts. On the face of it, such a practice provides employees with protection. But is this fair to those law-abiding employers? Have we thought about this?

If we agree that a security deposit system should be established, are we looking upon all employers as unscrupulous employers? Is such a sweeping approach reasonable? To label in the system all employers as unscrupulous employers will only weaken the mutual trust between employees and employers. Moreover, I opine that the Government of today tends to harbour the mentality of

finding an easy way out and avoiding the tough one in dealing with things. Granting that the security deposit system is implemented, will the Government promise that there will be real efforts to review the relevant legislation in the near future? This is an issue worthy of our careful consideration.

There is one more problem connected with the establishment of a security deposit system, namely, the assumption that there must be non-payment of wages whenever a company closes down. It also implies that every company is going to close down. While doing business, most businessmen will not even think of the day of closure. Are they to consider how to deal with winding-up on the very first day they start their business? Is that a reasonable line of thinking? Even if they indeed have to be so prepared, how much money must they reserve in preparation? How do I know how many employees I may have and how much wages are payable to them upon winding-up? If the estimate cannot be made accurately, then how can I decide on the amount to be reserved? If it is not possible to fix the operation cost, how can one plan one's business with peace of mind?

Madam Deputy, given the many problems in the protection system, we ought to start with the fundamental problem. The fundamental problem is that the protection system has inherent loopholes. It is necessary to conduct a review. And in enforcement, it is necessary to conduct investigations at greater depth and impose stricter punishments. So, the examination has to be made along this line. In my opinion, a solution using security deposit or similar financial arrangements as remedy is an approach treating only the symptoms but not curing the disease. Are we to witness employers pass onto their employees the cost of security deposits?

In order to safeguard employees' long-term interests without affecting our business environment, the best strategy is to start with the system. With regard to a security deposit or a system of insurance, we may first look into the practices in other jurisdictions, and then make further consideration. A hasty implementation of a security deposit system might yield an outcome falling short of expectations. So, I today urge the Government to immediately review the protection system so as to make real efforts to immediately do something solid for the rights and benefits of several million of wage earners in Hong Kong. I so submit. Thank you, Madam Deputy.

MR PATRICK LAU (in Cantonese): Madam Deputy, after many years of hard work by the labour sector (Mr LAU Chin-shek included) a set of legislation has already been established for the protection of workers. However, in the construction industry, there is still inadequate protection for sub-contractors and suppliers of materials. As a result, those ultimately victimized are still workers drawn into this when their employers are forced to wind up, owing them wages and severance payments. Furthermore, it has created the present problem concerning abuse of the Protection of Wages on Insolvency Fund (PWIF). Madam Deputy, I would like to put forth some points concerning our construction industry in respect of today's motion.

We have had economic contraction for some years, with public finance heavily in the red and the local construction industry similarly out of balance structurally. Both government and private sectors have significantly slashed the budgets and projects for new buildings, public works projects, and the renovation, repairs and maintenance of existing buildings. The construction industry, once a major pillar of the local economy, is in the bitter winter of recession. Many companies have closed down. Many, in order to survive, have scaled down their business. There has been a succession of unhappy incidents, in which the persons in charge just disappeared, leaving construction costs, material costs and wages all unpaid.

Because of loopholes in the law, some construction companies premeditatedly defaulted on the payments due on sub-contracted work or materials supplied long before they closed down, and even embezzled the total sums paid by property owners before declaring closure or filing for bankruptcy in a bid to avoid payments for sub-contracted work or materials supplied. Such a practice has dealt heavy blows to the finance of both sub-contractors and suppliers. Many companies have thus been forced to wind up and are unable to settle employees' wages and severance payments, thus constituting a threat to social stability.

To safeguard the payments to sub-contractors and suppliers in the construction industry so as not to render them unable to pay wages to their employees, and to reduce the pressure on the PWIF, I would like to make two proposals.

Here is the first proposal. The architect must be given more power to monitor the main contractor so as to see to it that sub-contracted work and material cost are paid in accordance with the progress stated in the agreement of sub-contracting and the agreement of material purchase. At present, the architect can only monitor the payments made by the property owner to the main contractor. So, in the event that the contractor, for no good reason, refuses to make the relevant payments, the architect should have the power to ask the property owner to directly release construction fees and pay the sub-contractors and suppliers in accordance with the agreements. If a main contractor has repeatedly defaulted on payments, and it has been proved to be so, the architect may inform the property owner to temporarily disqualify the main contractor for making tender. His eligibility may be reinstated if he can produce documentary evidence showing improvement and approval received after scrutiny.

Secondly, in addition to the PWIF, there can be consideration of the idea of securing some insurance arrangements to give sub-contractors and material suppliers in the construction industry "protection for project payments." The relevant insurance plans must be designed and executed by actuaries.

Madam Deputy, these two proposals may not be able to totally eradicate the problem of main contractors knowingly defaulting on payments due on sub-contracted work or materials supplied. However, they can at least produce some deterrent effect, and, in the short term, help to prevent the situation from worsening, thus mitigating the problems of insolvency and non-payment of wages due to sub-contractors and suppliers being forced into winding-up. For the long term, in order to reduce the number of innocent victims, the Government must expeditiously formulate a sub-contracting system and a protection of wages on insolvency system that are really sound.

It is, therefore, hoped that the scrutiny of the Construction Industry Council Bill can be completed as soon as possible, and that a sounder sub-contracting system protected by law can be established. Striking a right balance between a convenient business environment for the industry and protection of employees' interests will help the long-term development of the construction industry, and also foster better development of the overall economy. Madam Deputy, when the economy is good, there will naturally be less cases of insolvency and non-payment of wages. When there is a good system, there will be no cheating for money's sake. Thank you, Madam Deputy.

DR FERNANDO CHEUNG (in Cantonese): Madam Deputy, if I were to shoot a documentary on the winding-up of the Ocean Palace Restaurant, I definitely would have named it "The Absurd Story of a Case of Pre-announced Bad Debts". Assuming a "So, what!" attitude, a shameless restaurant boss made it known to his employees well in advance that he had no money to make severance payments and compensations, and told them to submit claims to the Protection of Wages on Insolvency Fund (PWIF). At the same time, a shareholder of the restaurant was making preparations to start a new restaurant in Hung Hom, giving former employees priority to apply for posts. These shameless businessmen not only evade the due responsibility of employers, but also freely help themselves to the PWIF. Their acts are really infuriating.

According to records looked up us, over the past decade, the catering industry has always "ranked the top", being the industry most profuse with claims to the PWIF. Take the year 2004 as example, of the 13 631 applications to the PWIF, nearly 40% came from the catering industry, showing an increase of 24% over the figure of the previous year. Of the \$382 million paid out from the PWIF in the year 2004, the catering industry also accounted for 30%. Of course, this is no proof that all restaurant bosses are set on cheating. Most of them, I believe, are not like that. However, we have seen repeatedly how restaurant bosses, using different restaurant names, successively started and closed businesses. When they closed down, they refused to compensate their employees. As a result, the PWIF has become their ATM. This inevitably gives the public a very bad impression of the catering industry.

Pinpointing such a situation, many people have suggested that catering establishments be required to pay, before the start of business, security deposits according to their staff sizes so as to ensure that in the event of their closing down, employees so affected may get payments equivalent to their wages or be compensated accordingly. I strongly support this suggestion as a security deposit system can give employees protection and there can be no transfer of responsibility from the employers onto the Government. If an employer closes his business in the normal manner, there will be a refund of the security deposit. It is not different from savings. This can be considered a feasible way out.

(THE PRESIDENT resumed the Chair)

Besides, I am of the view that, to protect the PWIF against abuse, the Government may consider stepping up deterrents targeting employers from defaulting on payment of wages. Under the current legislation, directors and shareholders of a limited company are not held personal liable for non-payment of wages. That is to say, they can still get away even though they intentionally default on the payment of wages. Having nowhere else to turn to for help, employees can only submit claims to the PWIF. Therefore, I am in favour of legislative amendment making it necessary for directors and shareholders to be liable for non-payment of wages.

I have learned through the mass media that the Honourable Tommy CHEUNG is very much against the proposal. According to him, to do so will dampen the incentive to invest and some decent employers will even be victimized. He even said that the Government and the labour sector were working together, "officials and workers being in collusion" in a bid to help workers oppress employers. In the opinion of Mr Tommy CHEUNG, when a worker accepts an appointment, he, to a certain extent, has to bear the risk of getting no pay from the employer. This is most flabbergasting. These words of Mr Tommy CHEUNG really puzzle me. Is he saying that when a worker seeks employment, he should refer to a risk index? I wonder if Mr Tommy CHEUNG can provide some "risk analysis on employers"? Are we not told to accept appointments only from employers with low risk, like investing in shares or funds? Honestly, in today's labour market, it is very difficult for workers to find jobs. How can we ask employees to shoulder risk in this respect? What is more, given today's labour relations, employees are often in an unfavourable position. Why did Mr Tommy CHEUNG say that we are oppressing employers? That is really baffling.

The original purpose of setting up the PWIF is to assist employees so as to tide them over financial hardship by allowing them to get the pay to which they are entitled in the event that their employers cannot settle their debts. However, when such a good intention is distorted by some immoral employers, we cannot just sit by and watch. We have got to do something to put an end to it.

Madam President, I speak in support of the motion and the amendments. I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, according to Members from the business sector, cost will rise if a security deposit has to be paid before the start of business. This goes without saying and we all know that. Right? But why is there a proposal for setting such a requirement? It is precisely because many workers cannot get their pay in return for their toil. There have been too many such cases. As a result, the Protection of Wages on Insolvency Fund (PWIF) has almost been exhausted. Only now is there some improvement in the situation.

I have to agree that a requirement for the payment of security deposits as a prerequisite for doing business will indeed deal a fatal blow to many businesses run on small budgets. However, we have to understand that this involves a class theory. Apparently, Hong Kong is now being governed by the capitalist class. The Government is also a capitalist government. Whoever fails to exercise proper control over his employees should be asked the question as to whether or not he has let the community and the workers down. I have put forward one proposal — it is fine even if no security deposit is imposed provided the Government will levy a charge of 1% or 2% on the annual income of every businessman. All should be treated alike. That is to say, if LI Kar-shing makes \$1 billion, the levy on him for this purpose should amount to \$10 million. It has to be so.

In its present state, the Government is worse than that of a triad organization. Even a triad organization has to exercise proper control over their numbers in order to maintain stability. The best approach is that if the leader or political representative of a certain class cannot properly control the bad elements within that class, then he ought to get out. This is nothing new. Right? The Government set up the MPF to force people to make savings. Employees take out 5% to contribute to the fund; so do employers. Why not, as discovered later, use employers' contribution of 5% to offset severance payments? This is at the expense of the workers. Is it not the responsibility of employers to make severance payments? Why should it be offset? To employees, this is "cheating".

I, therefore, would like to say this. If small businessmen find it painful, then they had better relax as the leaders of the class to which they belong are not taking care of them.

Why did the Ocean Palace Restaurant close down? Who caused that? It is precisely because the landlord wanted to raise the rent. He just wanted to "extort" when the economy was beginning to pick up. What is the difference between his doing so and gangsters saying "Business is good, boss. Time to pay protection fee, and more is required"? The landlord probably said, "It is time to raise rent." The operator implored the landlord to let him continue with his business but only got a reply saying that "We want to have a theme mall." The landlord even gave the operator this advice: "You had better go home early and go to bed; your workers also had better go home and go to bed."

Such a situation is also due to the fact that the Government's policy is openly set on shoring up the market, to shore up the property market to revitalize Hong Kong. So there is pressure coming all the way from the top to the bottom. To satisfy their appetite for profit, big landlords ask tenants to pay high rents. Seeing that their business offers no prospects, tenants tell their employees that and ask if they are prepared to accept pay cuts. However, they still cannot break even. So they have to wind up. The existing system is like this.

Why do we not implement a fairer system? There still can be a fairer system within the capitalist class. That is to say, business operators making a lot of money must also contribute 1% of their income, which can greatly beef up the PWIF. LI Ka-shing will definitely speak to all operators, telling them that they have to do better as he has to contribute 1%. This is the best system. Is this system not fairer? I think it is fairer. Under this system, a cafe operator needs not make an out-of-pocket payment of several hundred thousand dollars as security deposit. However, will the Government do so? The Government definitely will not do so because the Government only represents the richest in the capitalist class, not petty members of the class. For petty capitalists, there is only lip service. There will even be the remark, "I am doing work for you; you have to obey my words." It is like that.

Talking about fairness, it is, first of all, necessary to find out who has brought about the situation troubling the majority of the people. If the reasoning should go along this line, then maybe it is reasonable to require those benefiting from the PWIF to provide money for the rescue of others. I find Mr Tommy CHEUNG's worry unwarranted. Hong Kong should implement this system, which, in particular, can address the problems confronting the PWIF as

well as the running away of employers. It is only right and proper for all those doing business to pay one more percent of profits tax and put the money into the PWIF pool. They will not die from the loss of 1%. However, the deprivation of the money can indeed be fatal to workers.

Should a community let those staying high on the social ladder and yet refusing to give up the tiniest thing for the benefit of the universe have a free hand to accumulate great wealth? Should they be allowed to engage in exploitation and create havoc just like vampires? They suck blood. We can do nothing. Nothing can be done now. The reason is that we are being governed by them as 800 persons among them have elected the Chief Executive. But they should at least spill out something in return. They have not done so. What is more, they spit blood onto others, labelling both small businessmen and workers as "bad guys". They are mad. Why do I say so? They are behaving like those boxers. One with no strength cannot hit others, and is just wobbling. Only they have strength. They attack others with the force of the market. Just when our economy improves a little, they make everybody suffer from inflation. The toll increase of the Eastern Harbour Crossing is an example. The Government is accountable for all these things. As the Government is elected by a small number of people, and the people of Hong Kong cannot run away from the fate of "having the majority governed by a man elected by the minority", then the Government should put its act together. This is especially true of Donald TSANG, the Acting Chief Executive. He should launch new policies.

So, my conclusion is very simple. Many say that they are suffering a lot. The fact is that those on the top of the pyramid know not how hot those staying below are as it is so cool up there. So, even if they are not prepared to put into effect the recommendations of this motion, I still request them to pay to the PWIF 1% of their income. An ancient saying puts it this way: "Reluctant to spend money on good causes, yet willing to waste it. But a family with accumulated good deeds shall have plenty of blessings." I call upon those making a lot of money to remember this. They themselves have descendants. Their employees also have descendants. Their tenants have descendants too. They should care for the descendants of every Hong Kong citizen. Therefore, I have spoken in support of the motion. The situation will improve only if all those who are rich pay that 1% of profits tax. Thank you.

MR KWONG CHI-KIN (in Cantonese): Madam President, Mr Jasper TSANG moved this motion, urging the Government to expeditiously review the protection of wages on insolvency system and related legislation so as to guard the Protection of Wages on Insolvency Fund (PWIF) against employers' abuse. We support this motion.

The amendment proposed by Mr WONG Kwok-hing of the Hong Kong Federation of Trade Unions (FTU), in fact, has two main points. The first one urges the Government to step up enforcement and prosecution. The second one calls upon the Government to study the introduction of a security deposit system targeted at employers who have repeatedly evaded their responsibilities or on industries with more cases of abuse. Earlier on, quite a few Honourable colleagues have spoken on the security deposit system. I would like to speak on enforcement.

Madam President, having heard the speeches delivered by colleagues, I believe there is a consensus on stepping up enforcement. There appears to be little disagreement. However, I would like to speak on the technicalities. Under section 64B of the Employment Ordinance, any director, manager, secretary or other similar officer of a limited company shall be held personally liable. Such stipulation is relatively rare in our legal system. The reason is that only in certain fraud cases are directors of limited companies required to be held criminally liable personally. Particularly addressing the point that it is easy for a limited company to evade employer's responsibilities, the Employment Ordinance was given section 64B, whereby in cases arising from non-payment of wages, office-bearers of a company, such as director, manager and secretary, are required to be held criminally liable personally.

According to what Mr LEE Cheuk-yan said earlier on, because of the need to prove consent or connivance on the part of the person-in-charge of a company with regard to non-payment of wages, it is very difficult to initiate prosecution. As a matter of fact, Mr LEE Cheuk-yan missed the point on negligence. It is far easier to prove negligence than consent or connivance. Members with legal background now present will probably agree. I think that this part of the legislation is very clear. The problem is that the Government in the past seldom invoked this piece of legislation. It was learned that in a recent case the provision of this piece of legislation was invoked. A Mei Foo Sun Chuen restaurant, within one single year and at the same address, successively closed

down three times and re-opened three times. Evidence in this respect is very obvious. I think that there is no harm for the Government or the Labour Department (LD) to confidently invoke section 64B to initiate more prosecutions. The fact is that there can still be conviction even without extreme proof, the reason being that apart from consent and connivance, there is also negligence. Non-payment of wages and, subsequently, a great mess on account of incompetent operation on the part of the person in charge of the company might constitute negligence. Conviction is possible. In the case of limited companies, persons in charge even have to bear personal criminal liability. If we manage to secure convictions in a few more cases, then the persons-in-charge in the industries concerned will, I believe, certainly brace up to manage their companies, at least seeing to it that employees "do get paid". Of course, this is not the solution to all problems as the provision is only applicable to non-payment of wages, not covering severance payments and long service payment. Extending its scope to cover severance payments and long service payments is an idea worthy of Government's consideration.

Of the few "tactics" recently suggested by the LD, one, in my opinion, is on the right track. That is to recruit retired police officers for the duty of collecting evidence. I very much welcome such a move. Because the legislation is already there, the question of how prosecution can be initiated depends on the collection of evidence. Staff of the LD are probably not good at this. I believe in dealing with certain persons-in-charge bent on evading the law, it is a helpful approach to recruit retired police officers for the collection of evidence.

Furthermore, I am of the view that the LD should get more staff. For instance, the LD should itself hire accountants and lawyers. The FTU has its full-time legal adviser. The LD should do so too. Reliance on the Department of Justice has the disadvantage that distant water cannot put out a near fire. The LD should set up its own professional team consisting of front-line law-enforcement officers, experienced Labour Officers, retired police officers, accountants and lawyers. They should work as a team to step up prosecution. I can see a lot of room to work within section 64B of the Employment Ordinance.

Moreover, the Companies Ordinance in fact also subject company directors to a lot of restrictions. Directors are given very strict responsibilities. Given those cases concerning Chinese restaurants closing down, we have reasons

to believe that some people have already committed criminal offences. Besides, the legislation on bankruptcy and winding-up also has very strict provisions. Retrospective effect can go back as far as two years. Whenever a restaurant closes down, a file should be opened for serious investigation — there is no intention to treat the honest as the crooked, but there are just too many abusers. Normally, those not feigning failure in business need not be afraid of investigation. If, as mentioned by Honourable colleagues earlier, certain articles were sold at auction for as low as \$1, there should be a claim for the full proceeds.

British law is water-tight. It is a valuable legacy left to Hong Kong. The Companies Ordinance and the legislation on bankruptcy and winding-up are good tools. It is hoped that the Government will make full use of them.

Another amendment proposed by Mr Andrew CHENG seeks to streamline the application procedures for the PWIF. I quite support that. As a matter of fact, at a meeting of the Panel on Manpower, I also raised a similar idea. According to section 24 of the Protection of Wages on Insolvency Ordinance (Cap. 380), the PWIF has subrogation right. That is to say, when a worker applies to the PWIF, he transfers all rights and benefits to the Protection of Wages on Insolvency Fund Board (the PWIF Board). The law in fact has authorized the PWIF Board to take necessary steps to exercise its rights. So, there is no need for workers to present petition for winding-up or bankruptcy. He also need not apply for legal aid. The fact is that a worker is giving his authorization to the PWIF Board once he completes the form. The PWIF Board is already in a position to initiate legal proceedings. Why is it so difficult for workers to apply for legal aid? There is a means test for legal aid application, and the ceiling set for assets is very low. This was mentioned by colleagues earlier on. If a worker himself makes the winding-up petition, it is going to cost a lot. The basic cost is \$35,000. This is not the lawyer's fee, but that of the Government, the minimum gazettal charge being \$35,000. The lawyer will have to charge a few thousand dollars. So, the total has got to be at least in excess of \$40,000. This is absolutely not practical. Under section 18 of the Protection of Wages on Insolvency Ordinance, if it is uneconomical for employees numbering fewer than 20 to make a petition, the Commissioner should exercise more discretionary power to make payments from the Fund (*the buzzer sounded*)

Thank you, Madam President.

MR RONNY TONG (in Cantonese): Madam President, the issue of restaurants closing down and workers' pay in arrears has been a topic arousing much indignation among us lately. Indignant though we are, we have got to be careful. Let there be no knee-jerk reaction — I know not how this is said in Chinese — namely, some sorts of reflex reaction, reaction made without careful consideration. That some restaurant operators are taking advantage of loopholes in the law does not give us the justification to do things we should not do to excessively curb the operation of the catering industry. Here, I only want to speak on two points:

Firstly, the Protection of Wages on Insolvency Fund (PWIF) has been in the red for seven years since its inception, only recording a surplus this year. However, this year has seen far more cases in which restaurants closed down and failed to pay workers wages, casting a shadow on the operation of the PWIF.

With regard to the abuse of the PWIF, in fact there has been an endless stream of such cases over the past few years. Following the establishment of an inter-departmental Task Force by the Government in 2002, there are, according to statistics, 65 suspected abuse cases requiring follow-up. The figure is not big when compared with the average figure of 20 000 applications a year in the last three years. It simply "pales into insignificance by comparison". We, however, think that the actual extent of abuse far exceeds the said figure. As the PWIF derives its income mainly from business registration certificate levies, it can be said to be self-sufficient. However, when it runs into deficit, it is still necessary for the Government to subsidize it with public funds. It is, therefore, necessary for the PWIF to be used with care. It should brook no abuse.

In fact, what we mainly have to guard against are two points — last week, the Labour Department (LD) put forward 11 recommendations on prevention of abuse and Honourable colleagues also made many other proposals — in this respect, I just want to speak on the inspection and prosecution measures as well as on the proposal for security deposit.

First on inspection and prosecution. Of the 11 measures recommended by the LD, three are on stepping up enforcement. In fact, the Government has time and again stepped up enforcement since 2002, setting up, for example, an inter-departmental Task Force consisting of representatives from the Commercial Crime Bureau, the LD, the Official Receiver's Office, and the

Legal Aid Department. Subsequently, in 2003, the LD set up a special investigation team to conduct in-depth investigations into suspected abuse cases. Though the set-up has already been beefed up, the outcome remains not encouraging. Of the 65 suspected cases just mentioned by me, only seven cases did result in arrests. Among them, only one director and one employee were convicted. Of the other cases, investigation of 13 cases was discontinued because of insufficient evidence, and they represent 20% of all the cases.

These figures show that the Government's detection rate is very low. The Government made 50 arrests, but only two were convicted. This is most shocking. As a matter of fact, at present employers set on evading responsibilities can often make use of the ruse of operating as limited companies to evade the obligation of paying in full wages in arrears and severance payments after winding-up.

In fact, if the operator runs his business in the form of a limited company, the Government should consider invoking the provisions contained in the Companies Ordinance. It is a breach against the Companies Ordinance for a director intent on cheating his employees to "play tricks" before winding-up with a view to avoiding paying for employees' rights and benefits, or to continue the business in full knowledge of the inability to settle debts. He can be charged with intent to fraud. In addition to criminal liability, a director also has personal civil liability. In this respect, I think the Government should invoke the Companies Ordinance more often to initiate prosecutions. That may lead to a higher success rate. On the basis of information available to us, we are not able to tell whether or not there are loopholes in the existing legislation. Not until the Government has exhausted every piece of existing legislation for prosecution to no avail can we have clearer evidence that there is a need to amend our legislation.

Moreover, with regard to security deposit, I would like to tell a story, one I read in the *Hong Kong Economic Journal* as told by Mr LAM Hang-chi. I wonder if Honourable colleagues have read it or not. According to the story, a day child care centre in Israel, in a bid to put an end to parents' habit of coming late for their kids, set a rule requiring each parent arriving late to pay a fine at US\$3 for every 10 minutes. That was meant to cover additional costs incurred. What happened ultimately? Following the implementation of the new rule, the number of parents coming late did not drop. On the contrary, it went up. Why? It was because the parents reasoned that even though they did break the

rule, as the matter could be redressed by paying money, they could just get by with payment. When the centre realized that it did not work at all and had the rule abolished, it noticed that parents kept coming late. Because it was no longer necessary to pay a fine as before, the parents found that there was even less need to observe the rule.

I have told this story because I feel that any security deposit might have a similar result. It might make business operators think that the matter can be redressed as long as they pay up, that such a payment can obviate the sense of guilt, and that they need not bother after making the payment. If the requirement to pay a security deposit is eventually abolished, they will consider it to be "to their advantage" as they will no longer be required to pay any money. For the correction of such law-breaking behaviour, this is not necessarily a useful remedy. There is, in my opinion, no reason to ask business operators who have always been law-abiding to be subject to such restriction too. We should only ask business operators who have previously broken the law and who have conviction records to pay a security deposit. This is more appropriate. Thank you.

PRESIDENT (in Cantonese): Mr TONG, your speaking time is up.

MR FREDERICK FUNG (in Cantonese): Madam President, the Ocean Palace Restaurant & Nightclub, the largest Chinese nightclub in Hong Kong, which has a history of 28 years, has recently announced its closure, thus signifying the end of an era. There have also been quite significant changes in the food and entertainment culture of Hong Kong people. In order to cater for and cultivate a diversified taste among Hong Kong people, new small eating establishments catering for the varied tastes of their target clientele have taken advantage of the situation and sprung into life. Though we cannot say whether the new trend is right or wrong, we will always remember the Ocean Palace Restaurant with nostalgia as a symbol for the old days.

To those of us in the Hong Kong Association for Democracy and People's Livelihood (ADPL), the Ocean Palace Restaurant has a special meaning. It has left us with lots of fond memories, for over the past 10 years or so, the ADPL's anniversary celebrations and elderly functions had always been held at the Ocean Palace Restaurant. However, it is a pity that those memories could not end on a

more pleasant note and the employers of the restaurant could not part with their employees in peace in the course of its closure. While we reminisce the past, we see 230-odd restaurant employees losing their jobs and means of living. For them, it can be said that misfortunes never come singly. The management of the restaurant told some employees that the liabilities of the company could not be covered by its assets and that it could not afford severance and long service payments. They indicated that the employees should apply for compensations from the Protection of Wages on Insolvency Funds (PWIF).

What is more ironic is that, while the employer stressed that they could not afford severance payments, some of the shareholders would have enough capital to make plans for opening a new restaurant in Hung Hom. Members of the community and the media were greatly shocked that the restaurant operator would treat the PWIF like an ATM by passing the buck of making severance payments to the Government at winding-up and oblige other employers who have paid business registration fees to shoulder the burden. Our Honourable colleague, Mr LEE Cheuk-yan and the Hong Kong Confederation of Trade Unions have worked hard in fighting for a solution acceptable to both labour and management and helping workers to recover their entitled wages. More importantly, we have to find a feasible solution to prevent employers from abusing the PWIF in the long term.

The relevant authorities were also greatly concerned about this incident and Labour Officers have been sent in as mediators, in the hope that the labour and management could solve the problem on their own, without resorting to the PWIF. An inter-departmental Task Force, with representatives drawn from various government departments, has also held discussions on this incident, to explore possible ways, including requiring eating establishments to provide financial guarantees, and so on, to stop employers from abusing the PWIF.

The ADPL and I are of the opinion that what the proprietors of this restaurant have done is both immoral and unreasonable. Our community definitely does not tolerate such irresponsible acts of abusing the PWIF. The employers have not only acted in their own interests, but they have also deprived workers of their rights in receiving payment for their labour. The relevant law enforcement authority should conduct an in-depth investigation and if it is proven that some people have deliberately evaded their responsibilities, illegally transferred assets and abused the PWIF, then they should be severely punished or even prosecuted, so as to impose a deterrent effect.

The current incident, in which the Ocean Palace Restaurant abused the PWIF upon its closure, is only the tip of the iceberg. In fact, we often learn from television and radio news reports that restaurants were closed down from time to time and there were problems of defaulted wage and severance payments, thus depriving workers of their means of living and leaving them in distress. Last year, applications to the PWIF from all industries amounted to more than \$500 million, with the catering industry accounting for \$116 million of the \$382 million approved, that is, 30% of the total; and of the 13 631 applications received last year, 5 333 cases (39%) came from the catering industry. From this, we could see that the largest number of claims, both in terms of the number of people and amount of money involved, came from the catering industry. Of the 60 cases of suspected deliberate abuses received by the police in the past two years, about 30 cases were related to the catering industry, with a proportion as high as 50%. Therefore, my views are slightly different from that expressed by Mr Ronny TONG earlier, for in fact, half of the 60 cases are related to the catering industry. Mr Matthew CHEUNG, the Permanent Secretary for Economic Development and Labour said, in an interview on the radio, that the Labour Relations Division had been approached at least thrice by 60 Chinese restaurants within a period of six months, for assistance on problems relating to operation, management and labour relations. It could be seen, and we also believe and worry that, incidents similar to that of the closure of the Ocean Palace Restaurant will continue to happen.

Therefore, it is obvious that incidents of abuse of the PWIF do not just happen overnight. The Government should expeditiously come up with solutions to problems in relation to the PWIF. We welcome the 11 measures to further prevent abuse of the PWIF, proposed by the Government at the meeting of the Panel on Manpower on 26 April. Five of those measures are immediate measures to be adopted by the Labour Department in the short term. They include initiatives like recruitment of retired police officers with criminal investigation experience in the short run to assist in intelligence gathering and in identifying and collecting evidence on suspected fraud and deception cases; strengthening the early warning system in respect of the catering industry to remind employees to report cases of default payments without delay and promoting higher standard of management in the catering industry, and so on, which are less controversial.

As regards the longer-term measures, some have met strong objection from members of the catering sector. For example, the consideration being given to requiring employers of the catering industry to present bank guarantees

before a restaurant can obtain or renew a licence, so as to guard against defaults in payment if the restaurant fails to pay its employees on closure; requiring employers to recognize the contingent liability of payable employee benefits on their balance sheets, so as to ensure that the shareholders would use their resources carefully. Furthermore, the Government also plans to introduce the Companies (Corporate Rescue) Bill to make directors and senior management of a company "personally" liable for the debts incurred by the company which continued to trade while insolvent.

We are particularly concerned about the requirement on eating establishments to provide bank guarantees. Some members of the catering sector think that this would seriously threaten the survival of the industry and increase operation costs, while supporters of the school of free economy theory think that increased legislative control would only hinder free market operations and eventually suffocate the whole business environment. I think the above opinions are too far-fetched and while we support a good business environment, we should also protect employees who have laboured for wages but were defaulted payments (including salary and severance payments). Therefore, under such circumstances, I hope that the Government can strike a balance between the business environment on the one hand, and the rights, benefits and salary entitlements of employees on the other. I think the Government should have perseverance in doing so. I support all amendments proposed by other Members. Thank you, Madam President.

DR KWOK KA-KI (in Cantonese): Madam President, today's motion is on reviewing the protection of wages on insolvency system and relevant legislation and how to prevent employers from abusing this system. First of all, we have to look at the purpose of establishing the Protection of Wages on Insolvency Fund (PWIF). In 1985, as many Members have mentioned earlier, the Government established the PWIF under the pressure of public opinion and in response to the request of various industries. Since 1985, the PWIF has really done a lot over the past 10 (*sic*) years in enabling many workers to recover defaulted wages.

Over the past few years and recently, a particular situation has emerged, and that is, individual industries or employers have exploited the protection of wages on insolvency system by taking advantage of loopholes in the system. As some Members have said earlier, such individuals have regarded the PWIF as an ATM. While employers reaped profits, their responsibilities of making

severance payments and settling wages in arrears were wholly passed onto the community.

Many Members have even quoted Mr Tommy CHEUNG's past comments in their earlier speeches, that we should not discriminate against certain industries or be too harsh on them, including the catering industry. However, we should not forget that the PWIF is financed mainly by levies paid by proprietors of small and medium enterprises. In recent years, the Business Registration Fee has continued to increase, and one of the major reasons for the increase is to cope with the pressure arising from sustained deficits in the PWIF. Why should the interests of certain industries be placed above that of others? Why should most SMEs subsidize certain irresponsible industries and employers?

Let us look at some statistics. In 2004, of the 13 631 applications to the PWIF, 55% came from the catering industry. In 2005, of the 2 930 applications received in the first quarter, 1 597 came from the catering industry. The PWIF paid out \$116 million to workers of the catering industry in 2004 for defaulted wage payments, accounting for 30% of the total paid out by the PWIF. I believe that the figures for this year will be even more alarming than that of last year by the time when we "settle the bill" this year.

I agree and also very much support the idea of treating those honest employers, including employers in the catering industry, who have acted responsibly in their business operations. However, while we agree with this idea, we certainly have every reason to impose more severe punishments on certain employers who have taken advantage of the loopholes or grey areas in the legislation to deliberately shirk their responsibility and rely on the PWIF to pay defaulted wages.

Many Members have talked about the proposals in the amendment, including streamlining the application procedures and stepping up prosecution, but I would only like to discuss the part on stepping up prosecutions. In the past, prosecutions pressed by the Labour Department and the Government against such employers who knowingly broke the law were quite inadequate and penalties were also much too lenient. The low prosecution figures and light penalties have absolutely no deterrent effect on these deliberate or intentional acts of taking advantage of the loopholes in the protection of wages on insolvency system to pay defaulted wages.

The Government has made 11 proposals, including the possibility of establishing a security deposit system which is targeted at a certain industry in future. I certainly agree that a security deposit system should be set up, but I am very worried and have doubts on how such a system could be implemented. The reasons are firstly, the security deposit system can only be implemented with the banks' co-operation; secondly, if such unscrupulous businessmen can get away with paying defaulted wages, they can also come up with ways to default on security deposits; and thirdly, in a free economy like Hong Kong, no industry has ever been required to make security deposits before it is allowed to start operations. While I agree to establishing a security deposit system, I actually have doubts as to how the Government can implement it. If this system is only focused at some operators in a certain industry, including employers of the catering industry because it is known that they have deliberately taken advantage of loopholes in the system to reap gains, then I would agree that the Government should only set up an industry-specific PWIF which is targeted at individual industries or industries with a particularly high rate of defaulted wages, and that the levies should be paid by similar industries. I think that this is a relatively reasonable approach under the current circumstance.

Finally, I would like to point out that the PWIF has been abused not by the restaurant industry alone. We could see from applications to the PWIF that a very large percentage of the applications come from the construction industry. One of the major reasons is that the construction industry has a sub-contracting system. This sub-contracting system which has long been the object of public condemnation in Hong Kong has not only created problems like defaulted wage payments, but is also responsible for past accidents, like the short piling incident, and aroused concern in the community. In fact, the sub-contracting system of the construction industry has done nothing to improve the welfare of Hong Kong construction workers and to enhance standards in the industry. It is really a big malignant tumor of the industry. Since the Government is resolved to reform the construction industry, I think that it should start at the root of the problem for this is also very important. We should not focus our attention on the restaurant industry only, and as a more in-depth approach, the Government should review industries with potential risks.

All in all, I support the motion and all amendments proposed by Honourable colleagues. I so submit. Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, Hong Kong claims to be an international metropolis and a society that upholds the rule of law. It also claims to be a financial centre and has often tried to attract world class investors from abroad to come to Hong Kong for investment. When we said that, we are telling others that our legislation does offer adequate protection. If the companies of investors who come to invest in Hong Kong went into debts, their creditors will be protected.

In fact, the employees of a company are also its creditors, and such creditors are offered special protection under the law. Therefore, we really do not have any justifications if our legislation cannot adequately protect employees who are owed wages and if we have to rely on the Protection on Wages Insolvency Fund (PWIF) to make compensations without end. I see that Secretary Frederick MA is in the Chamber and he is the officer in charge of the Company Ordinance. If Members said that there are loopholes in the Company Ordinance and it fails to protect investors and creditors of the companies, then he should be the first person to review the Company Ordinance. Apart from the Company Ordinance, many Members also referred to the Employment Ordinance, which offers employees a lot of protection, in their speeches today. Mr KWONG Chi-kin referred to section 64B of the Employment Ordinance in his speech earlier. In fact, section 31 of the Employment Ordinance provides that: "An employer shall, if he ceases to believe upon reasonable grounds that he will be able to pay all the wages due by him under a contract of employment as they become due, forthwith take all necessary steps to terminate the contract in accordance with its terms." Many of our ordinances offer employees protection and if such ordinances are inadequate, then all officers in charge of labour affairs should review the relevant ordinances and introduce amendments.

In fact, in addition to the Employment Ordinance, under the Company Ordinance which I have mentioned earlier, if a company really must wind up, the liquidator would have great powers. He could require former directors or senior officers of the company to produce accounts, papers, and information; he could also overrule deals involving fraudulent preference, and he could also apply to the Court and require persons who are implicated in malpractices/misconduct to pay back money and return the properties of the company.

Furthermore, Mr Ronny TONG also mentioned in his earlier speech that section 275 of the Company Ordinance is on fraudulent trading. If the business

operator is clearly aware that the liabilities of the company cannot be covered by its assets and that it is unable to repay defaulted wages, contributions to the Mandatory Provident Fund, long service payment or other debts, but carry on with the business, then the liquidator, may in accordance with section 275, request the Court to declare fraudulent trading and this director shall be personally responsible, without any limitation of liability, for all debts of the company. In addition to being held criminally liable, the director also bears civil liability. Upon order of the Court, this director may be disqualified for a period of as long as 15 years. The definition of director is very wide. It does not only include people who claim to be directors but also people who do not adopt the title of a director but are, in fact, exercising the powers of a director. Therefore, even if the proprietor has only casually found a relative, friend or assistant to stand in his place, it does not mean that he could evade his responsibilities in law.

As regards many such ordinances, I really do not know whether they have been actually enforced or studied. Of course, in exercising such authorities or enforcing the legislation, certain efforts have to be made, for example, investigations have to be conducted, lawyers have to be appointed and prosecutions have to be initiated. However, if ordinances are in place but not enforced, then we are encouraging certain people to take advantage of the PWIF to make payments. Therefore, if the Government can step up law enforcement to impose a deterrent effect by investigating each suspicious bankruptcy case, then it would be sending out a very clear message. Then, even if some people want to be "unscrupulous employers", it would not be easy for them to do so.

Apart from reviewing the legislation, some people propose to increase the catering industry's Business Registration Fee. I think that this proposal is worth consideration. Some members of the industry oppose this proposal and think that it is requiring good employers to subsidize bad employers, thus creating a moral risk problem. In fact, the existing PWIF is actually playing such a role, whereby good employers are made to subsidize bad ones. The situation in the insurance industry is also the same. If some people often submit claims to the insurance companies, then the premium for other policy holders will also be increased; so if cases of abuses are particularly serious in certain industries, then the idea of charging such industries a higher fee may merit consideration.

Another proposal is to require certain eating establishments to pay a security deposit according to the number of their employees, or to submit a bank guarantee when they obtain or renew their licences. In fact, there may be problems in putting the proposal on bank guarantees into practice and the banks may not necessarily be able to do so. However, we are of the opinion that the problem of "default payments" is particularly serious and since security deposits are only guarantees on payments which eventually have to be made, I think this idea is still worth exploring.

Madam President, in brief, I support today's original motion and the amendments. Thank you, Madam President.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the Protection of Wages on Insolvency Funds (PWIF) was established in 1985. I could clearly recall that one of the foci of public discussions at that time was (as some employers indicated) the establishment of this fund may mean that unscrupulous employers were subsidized by good employers. I believe that the current Commissioner and Permanent Secretary would also remember that discussions at that time were very extensive and members of the community had expressed concerns.

So, have the abovementioned incidents actually happened? Have the abovementioned incidents really happened since the establishment of the PWIF in 1985? Yes, such incidents have actually happened. However, the problem was less serious than that of the past several years in the aftermath of Hong Kong's economic recession. Current incidents, that is, for example, the closure of the Ocean Palace Restaurant, have already aroused concerns in the whole community, to the extent that we have to debate this in the Legislative Council today. I think the situation has already reached a stage which we all find unacceptable. Ever since the establishment of the PWIF, people have expressed concerns. In the interim, Hong Kong has experienced problems in the economy after the reunification in 1997. Presently, more and more serious incidents have happened in succession. If our Government continues to ignore this problem, then it will become a big problem.

Madam President, the closure of the Ocean Palace Restaurant triggered off discussions over this issue in the Panel on Manpower some time ago. However, the relevant officials responded by asking us to let them conduct some studies. It is not that I do not allow the Government to do so, but as I have said

earlier, from 1985 to date, in the history of the PWIF, people have expressed concerns ever since its establishment. In other words, the Government should have long been prepared for certain incidents. I clearly remember that in around the year 2000, when dot.com was all the rage, and when the bubble eventually burst, I approached the Labour Department and the Economic Services Bureau with staff from five information technology companies because we noticed that those companies had intended to cheat the PWIF out of its money. Those companies were all transnational companies, and some of them had got parent companies in Singapore and branches in Hong Kong. When they saw that the dot.com business of Hong Kong was in trouble, they started making preparations to close down their branches, by gradually transferring their capital back to the parent companies in Singapore in advance, in accordance with our company law. Back then, we accompanied the employees of those five international information technology companies to inform the Government that those companies had planned their actions all along with our PWIF in mind. They had told their employees at a very early stage that they needed not worry about not getting paid, for even if the companies were closed down, the employees were still protected by the PWIF in Hong Kong. And if the employees did not have a very long service, then they would receive their pay in full.

However, the employees of the companies felt that something was wrong for since the bosses had owed them wages, they could not understand why they should make claims to the PWIF? So, they lodged a complaint with our telecommunications union and asked the union to make some fair comments, so that members of the community would know about the incident. I could still remember that the media were also very concerned and lots of discussions had been made. People were of the opinion that if there were problems with the PWIF, and if some people had taken advantage of the relevant company legislation in Hong Kong to wind down their companies, then great problems would be created and they had also put forward many solutions at that time. The Hong Kong Federation of Trade Unions (FTU) also made countless proposals on amending the relevant legislation.

However, two weeks ago, when the Panel on Manpower held discussions over this issue, the official reply was that studies would be conducted. Madam President, sometimes, I really could not help feeling depressed, for cases after cases have been accumulated and become the focus of the whole community, but the Government is still dealing with such problems in a leisurely manner. I am

saying this not because I wish to criticize Commissioner Matthew CHEUNG or any other person, for I am only commenting on the policy-making mechanism of the whole Government. In the face of such situations and seeing that we were being bullied, why has the Government still left its door wide open and allowed other people to help themselves to the PWIF? How could it allow them to do so?

Two years ago, there was a court case involving a restaurant and its employees and the Court finally ruled in favour of the employees. The owner of the restaurant was ordered to pay up all vacation pay in arrears to the employees (the employees of other restaurants have four days' vacation per month, but the employees of the restaurant in question only have one or two days). Back then, the employer concerned told the media and in an interview on the television that many eating establishments would soon close down. If I were a member of the investigation division, then I should have known what he was talking about.

However, so far, I have not seen the Government "taking any actions" to solve the problem. Therefore, I would like to recap some history. I really hope that our hard-working Commissioner will respond in the same way every time he faces any problems, that he could come up with 11 measures in a short span of 10 days. However, even with such solutions in place, I am still worried for, one day, some officials will come out and say that things are not like this or that security deposits cannot be used in such a manner. We are worried that government officials will try to cover up each other's tracks by passing the buck around, and eventually no actions will be taken after some years. I really hope that the Government will really listen to the views of the community. There are people specializing in different disciplines of law among Members, including Mr KWONG Chi-kin who have rich experience in labour legislation and he has also made a number of suggestions. I hope that the Government could really consider each and every one of the problems raised by us. Ms Audrey EU has also referred to sections 63A and 31 earlier. In fact, the Government does have legislation in place, only that some of such legislation are lax and some are more stringent, and while some will impose terms of imprisonment, others will only impose a fine, and some will not even impose a fine. That means that there are both lax and stringent regulations under different ordinances. Why could the same standards not be applied in different ordinances to deal with those unscrupulous and irresponsible employers? The ordinances can actually be amended.

Very often, when employers owe employees wages, benefits and so on, the case is brought before the Labour Tribunal and even if the Tribunal eventually rules in the employees's favour, the employers may still fail to pay up. In the course of trying to recover their wages, employees may find that the employers have already "fled", so they will have to apply to the PWIF. And, what can be done to open the door of the PWIF? It can only be opened through legal means by employing lawyers to make applications in accordance with the legislative procedures. If the employees have a little money, then they are not eligible for making claims. I have several of such cases in hand and they are still pending to date. We have also referred such cases to the Government, for in addition to the fact that our Company Ordinance, Employment Ordinance and ordinances in relation to the PWIF are being abused, such cases will also pose problems.

Madam President, even the Buddha does get angry — and I am really angry. Why am I angry? If we have only raised this issue or these problems today, then we would not have expressed such strong opinions and it will be fine for the Government to take its time in finding solutions. However, we have already talked about such cases for many years. Why is the Government still sitting on certain issues at this stage? Even if Commissioner Matthew CHEUNG has played a very positive role in putting forward 11 measures to solve the problem, another official has indicated that this could not be done. My greatest worry is that nothing can be done in the end if the government departments continue to dilly dally in such a manner.

Madam President, I hope that the SAR Government could immediately take actions. The FTU and the Labour Rights Committee have made a series of amendment proposals to five pieces of legislation, including the Company Ordinance, legislation relating to the PWIF, sections 31, 63A, 25(2) and 31O of the Employment Ordinance and other legislation, but I am not going into the details. Since the Secretary has already got a copy of such proposals, I hope he could cease dilly dallying by coming up with a timetable to solve the problems within this year. As regards the operators themselves, we think that security deposits should be required and Mr WONG Kwok-hing will move an amendment in this relation.

The FTU supports the original motion and all amendments. Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, several restaurants, eating establishments and tourist agencies have recently closed down in succession, and some employers have evaded their responsibility by acting immorally in abusing the Protection of Wages on Insolvency Fund (PWIF), "fleeing" and owing wages. This really made us very sad for under certain circumstances, there are also many employers with genuine difficulties, only that their dire circumstances are mingled up with lots of really immoral cases. I think other Members in this Chamber may not feel as strongly as I do over this issue, but this is not because I have suffered from someone fleeing from his due responsibility. My strong feelings are a result from the pains I have suffered through personal experience, brought about by our imperfect legislation which allows people who harbour evil intentions to take advantage of the loopholes, abuse the safety net, and walk away without being duly punished for their irresponsible actions.

I believe Members may still recall that LAM Sum-shing, member of The Frontier had, against my will, involved me in a legal proceeding during the 2003 District Council Election. However, LAM Shum-shing was unwilling to take up responsibilities for his actions in this frivolous legal proceeding and honour his legal obligation by paying the costs when he lost the law suit. Though I was innocent, I still got burdened with a debt of around \$200,000 in legal fees. To date, I have sent him several letters through my lawyer to reclaim the debt, but to no avail. As a member of The Frontier, a notable figure in the region, a quite knowledgeable person who is being advised by people like Legislative Council Member Ms Emily LAU, LAM Shum-shing should be aware of the legal consequences of such lawsuits. However, we have seen a person, who claims to fight for the people, for the protection of fair play, justice, fairness, and the rule of law in the community, eventually shirking his responsibility and legal liabilities by filing for bankruptcy. I hereby quote a news report on what LAM Sum-shing, Member of The Frontier said. He said "If I had the money, I would rather save it up for retirement, so I am quite prepared to go into bankruptcy", which means he will not accept his responsibility and is prepared to get out of the scrap by declaring bankrupt. Of course, I am aware that this incident is only a minor example and we can see that the community is actually full of such examples from which we can quote and the experiences of the small landlords in the "Albert House" incident is a very real example.

Madam President, from what Members said in their earlier speeches, we can see that there is really a need to review the protection of wages on insolvency

system, because there are actually a lot of loopholes in the existing legislation. One of such loopholes is, under the existing legislation, once a company winds up, the director of the company is not liable for the debts of the company, including money, criminal liabilities, or even the slightest form of punishment. The employers have made use of such loopholes in the legislation to wash their hands off all liabilities and leave behind a big mess by winding up their companies when their business fails or incurs huge debts; some unscrupulous employers will even stealthily replace one restaurant with another, by withdrawing their capital on the one hand, and opening a new restaurant at another location. The "Albert House" incident is certainly a very good example, and we will not forget that, back then, six defendants were originally held responsible for the accident and were liable for paying compensations and costs. However, four of the defendants have evaded their responsibilities by declaring bankrupt or by winding up their companies, thereby eventually passing all responsibilities onto innocent small landlords while they continue to live in bliss. Another example is the Ocean Palace Restaurant which was closed down recently. Those owners also closed down their restaurant on the one hand and opened a new one on the other. This case actually provides us with a very good example. We can also note from various incidents that other problems are still involved.

The fact that the PWIF is mercilessly abused has virtually made law-abiding businessmen subsidize employers who are not law-abiding, and allowed such employers to take advantage of the kind intention in establishing the PWIF to protect employees and turn it into their own safety net in seeking huge profits for themselves and evading their responsibilities. We can see from the relevant figures that during the period 2003 to 2004, 8 856 people from the catering industry applied to the PWIF with the amount of claims totalling more than \$190 million. Whereas there were 4 180 applications from the construction industry, with the amount of claims totalling \$188,200,000. These are very enormous figures. Of course, we cannot say that all these figures have something to do with abuse of the PWIF, but from other data, we can see that the Employees Claims Investigation Division of the Labour Department has successfully issued and convicted 504 summons for wage offences, representing an increase of 13.3% as compared to that of 2003. From this we can see some of the existing problems as reflected by the figures.

Of course, in order to plug these loopholes, we must find the right remedies. We think that the Government should carefully investigate each

bankruptcy application, so as to prevent or completely stop certain unscrupulous operators from evading their responsibilities by filing for bankruptcy or winding up their companies. This is particularly true for the catering and construction industries, which have frequently gone into trouble in recent years. Of course, we also know that these industries may not be the ones with the greatest incidence of abuse, but they have aroused more concern only because they have got the largest number of applications or amount of claims.

The establishment of an early warning system is another important issue and this is a very good proposal. We hope that the Labour Department can enhance publicity to nip the problem in the bud, by encouraging employees to report cases of defaulted wages as soon as possible, so that the Government can conduct early investigations and prevent the cumulative problems from getting worse.

Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): Madam President, the original intention of establishing the Protection of Wages on Insolvency Fund (PWIF) is to offer employees protection, so that they would not be affected by the business or investment failures of their employers. However, the PWIF has now gradually become an ATM for unruly or unscrupulous businessmen who have dismissed their employees. The development and trend of this state of affairs is becoming more and more serious, with the situation so much worsened that not only the original intention of establishing the PWIF has been distorted but it is also unfair to law-abiding businessmen. The fact that unscrupulous employers have taken advantage of this loophole or the situation to evade their responsibilities is also unfair to employees.

According to the relevant figures, the percentage of cases in which employees can successfully recover 100% of their wages in arrears, pay in lieu of notice and severance pay from the PWIF is continuously decreasing. As regards defaulted wage payments, by comparing the figures for the year 2002-03 with that of 2003-04, we can see that cases in which 100% of the defaulted wages were recovered have decreased on the whole. In the year 2002-03, the percentage of cases with full recovery was 55.7%, but this dropped to 52.9% in the year 2003-04. As regards pay in lieu of notice, in the year 2002-03, 71% of the cases achieved a 100% recovery rate, whereby a full recovery rate of about

70% can be regarded as quite high, but this dropped to 67% in the year 2003-04. As regards severance pay, the percentage of cases with a 100% recovery is even lower. For the year 2002-03, it is 12.2%, and it dropped to 10.59% in 2003-04.

We can see that the amount of defaulted wages, pay in lieu of notice and severance pay recovered by employees is far lower than their actual entitlement. This problem is even more serious in respect of the recovery of severance pay, for employees can only recover 10% of their actual entitlement; and even in respect of defaulted wages, employees can only recover about half of their actual entitlement. As a result, the losses of employees are quite significant.

There are genuine cases in which employers met failures in investment or business, for example, cases in which big landlords continue to raise rentals, thus plunging investors and operators into desperate straits. The situation is the same with the catering industry, for landlords will ask for rental increase as soon as its business begins to pick up. Recently, the owners of many small shops and eating establishments operating on small capital complained to me that they had to sign three-year contracts upon renewal of their leases this year. The rate of rental increases is really shocking, with a 20% increase for the first year, 30% for the second year and about 50% to 70% for the third year. But, even so, such business operators cannot cease operations, can they? Since, they have already invested more than a million dollars on the shops and have operated for several years, it will be very difficult for them to wind up their business suddenly. Moreover, many of them are already in their 40s and 50s and it may neither be possible for them to switch to another profession nor easy for them to relocate. Therefore, it can be said that the unscrupulous major developers who are responsible for unreasonable hefty increases in property prices and rentals are the chief culprits of and causes for the worsening situation of abuse of the PWIF or bankruptcy cases.

In this connection, I would also like to take this opportunity to condemn such unscrupulous property developers. However, if they want to raise rentals, we cannot apply any control for Hong Kong is a free market. The Government has talked about "big market, small government" — and I would like to see a "big government", but it is impossible for the Government to get any "bigger" — and is it not true that even the Housing Department has to sell the only government-owned shopping malls under the "small government, big market" mechanism? Since the whole market is controlled by such unscrupulous

developers, business operations in Hong Kong as a whole have been plunged into great difficulties. In the end, not only will the economy of Hong Kong suffer, but our employees will also suffer.

How could we deal with such problems? This ideal system intended for the protection of employees has already become an ATM for unscrupulous business operators who want to lay off their employees. The Government should really find ways to deal with this problem. If employers really meet genuine failures in investment, then it is only understandable that the Government should establish a mechanism to protect employees. However, we find many businessmen, owners of eating establishments and construction companies alike, closing their front doors today and leaving through their back doors to set up another new business right next to the old establishment the next day. It is not true that such employers do not have money, but they are only employing financial techniques. To a certain extent, such actions may have actually bordered on commercial crimes and involved elements of frauds. There are often many directors in the catering industry, some of them may be working as waiters, some in the kitchens and others may be suppliers. So, in settling payments, they will certainly settle all the bills which involved their own companies first, even though no money will be left to pay wages in the end. Such actions are really questionable for according to the law or the Bankruptcy Ordinance, employees' wages do have priority over payments for goods or other commercial debts, but since the employers are closely involved in or are partners in such operations, they will selectively prioritize debts which they have a personal interest and disregard the defaulted wages. I think the Government should really take actions to deal with such issues and conduct studies to see whether prosecutions can be pressed against frauds. The Government must punish some as a warning to others, and such persons should not be allowed to bring Hong Kong into disrepute and jeopardize the interests of employees by doing whatever they please.

According to the relevant figures, applications from the catering industry constituted about 40% of the total number of applications to the PWIF for two consecutive years, with 41% in 2003 and 39% in 2004, while the construction industry also constituted 20% of the total number of applications. It is quite common for applications to come from these two industries to the PWIF, and also quite common for employers in these industries to be able to set up new businesses. I would say that it is unfair to both employees and honest

employers if the Government does not take strong actions to crack down on the malicious acts in these two industries. Thank you, Madam President.

MR TAM YIU-CHUNG (in Cantonese): Madam President, some Members have talked about the history of the Protection of Wages on Insolvency Fund (PWIF) earlier.

The PWIF, established in 1985, should have a history of 20 years now. When the PWIF was first established, I had the opportunity to be involved in the affairs of the PWIF as a labour representative. I remember that eight years ago, whenever a company went bankrupt, the boss "fled" and workers were owed wages, the representatives of trade unions would take workers to visit various government departments and lodged all forms of complaints and made all sorts of petitions. Despite taking every possible action, workers were still unable to recover their entitled wages in the end. Later, a Member suggested a very simple solution, and that is, to add a levy to the Business Registration Fee, and then saved up the levies to help workers by paying the defaulted wages when their companies closed down and their bosses "fled". This is undoubtedly a very good solution because the Government does not have to use public funds. All it has to do is to charge a levy on the Business Registration Fee, and the amount of the levy is not very high, only \$600 in addition to the Business Registration Fee. This is a good solution which is both simple and can offer the employees protection.

In those early days when I was a member of the PWIF, it had a large surplus because our economy at that time was still quite good. Every year, hundreds of thousands of business registrations were made and a large levy income was collected while payments were only minimal. As a result, the PWIF gradually extended its coverage to cover pay in lieu of notice and severance pay, in addition to defaulted wages. However, we have always noted that among applications to the PWIF, those from three industries were most conspicuous, with the catering industry topping the list, followed closely by the construction and clothing industries. With the gradual contraction of the clothing industry in the last 10 years, the number of workers in the industry has also gradually decreased, thus resulting in the clothing industry being no longer conspicuous, and so only the catering and construction industries are left. During the low season of the construction industry, there are also cases of

defaulted wages when jobs become scarce, but on the whole, the number is not as high as that of the catering industry.

As it is quite easy to establish and close down an eating establishment, replacement of shareholders, bosses or trading names have become a characteristic of this industry. And, the workers in the industry as well as the PWIF have also become victims of this characteristic. Workers are really unfortunate if they are being owed wages, but among those unfortunate workers, some will receive different treatment. If the insolvent companies were big companies, in which media attention was caught, then the relevant division of the Labour Department would most certainly offer active assistance. Therefore, the authorities would say that compensations for defaulted wage payments or even severance pay could be recovered within five weeks. However, if the unfortunate workers work for a small company with a small number of employees and messy accounts, then they would really be in a tight position if their boss "fled". The employees may have to wait several months, a year, over a year, or longer, but even then, it may still be impossible for them to recover the defaulted wages. Though the Commissioner for Labour may exercise his discretion, that is, if there are less than 20 employees, or that it is uneconomical to file a winding-up petition in respect of the case, then the Commissioner may exercise his discretion to make payments from the PWIF under the circumstances which no winding-up or bankruptcy petitions are filed. However, in reality, before the Commissioner for Labour can exercise his discretion, the Legal Aid Department must first prove that it is uneconomical to file petitions. This is extremely difficult, for unless what is left of the company in question is only really an empty shell, it will be impossible to do so. In the event where there are more than 20 employees in some companies, and a lot of eating establishments may have several tens of employees, then these employees will be getting nowhere and it will be even more difficult for them to obtain any protection.

Employees have to go through a means test if they want to apply for legal aid. At present, persons whose personal financial resources do not exceed \$155,800 may apply for legal aid, but many employees may not be eligible. If employees fail to obtain legal aid and have to file a petition on their own, then they would have to pay a petition fee first. Of course, for a group of employees, some may be eligible, but if no one is eligible, then they would have a great problem. Moreover, they may also be unable to fully recover the relevant fee upon completion of the company's bankruptcy or winding-up

procedures. Moreover, since lawyers would at least charge a fee of \$400,000-odd for filing petitions, sometimes the compensations eventually awarded may not be sufficient to cover the relevant fees.

As remuneration for labour is the main source of people's livelihood and an employee's right to receiving remuneration for labour is a basic right in the community, it is different from other civil rights in general. Therefore, these two rights should be distinguished in the provision of legal aid. For cases in which applications are made because of defaulted wages, the Government should relax its requirements on the granting of legal aid, including raising the upper limit on financial resources. Furthermore, the Government must also establish a new mechanism to allow the PWIF to make early *ex gratia* payments to provide immediate financial assistance to employees.

Madam President, before the implementation of long-term remedial measures, the Government should, by adopting the two abovementioned proposals, enhance measures on preventing unscrupulous employers from evading their responsibilities and help employees to obtain early compensations through the PWIF system. With these remarks, I support the motion.

MR JAMES TIEN (in Cantonese): Madam President, I joined the then Legislative Council in 1988, and over the years, in particular during the early stages, I participated actively in the work of the Panel on Manpower. As the Protection of Wages on Insolvency Fund (PWIF) was established in 1985, I already stated my views on this issue upon first joining the Council in 1988 when we debated on this subject.

I always thought that paying wages is the due responsibility of employers, but what could be done if the company went into financial difficulties? The Government came up with a way in 1985 (but this is not the solution to the problem), and that is, all healthy companies are required to pay an extra several hundred dollars when they applied for business registration. Back then, I had great doubts about this approach for a Business Registration Certificate is a licence which allows the applicant to run a business. Since administrative costs are incurred by the Government in allowing operators to businesses, they are required to make registrations and licences will be issued. However, irregardless of the type of business they operate, or even if they do not hire a

single employee, they still have to pay this sum of several hundred dollars. In persuading us to support this plan, the Government said it would only be tried for one or two years, so that a relatively large sum of money could be accumulated, and after the target had been met, the levy would be gradually reduced each year, or even eventually abolished. However, I think that the Government was only making empty promises for though the levy had been reduced at a certain point of time, it was eventually raised to its original level.

Many Members have mentioned that if certain employers knew about the PWIF, they would try to make their employees apply to the PWIF when their business went into difficulties. Now, everyone knows about the existence of this fund, there will certainly be problems and the problems have dragged on till now. At first, the Government told us that after the problem had been solved and when a sufficient amount of money had been accumulated in the fund, the \$600 levy would no longer be charged. However, the Government has all along been collecting a levy and it seems that it is no longer possible to abolish it. Moreover, the Government will always find excuses to charge more when something happens.

I think that since the PWIF has already operated for 20 years, it is really necessary to review whether there is still a need for its operation to continue. From the perspective of the business sector, we have to point out that every company has paid profits tax to the Government. Yesterday, the Commissioner of Inland Revenue said the profits tax revenue for this year had increased by 20%, and that is, \$800 million, as compared to that of last year. As such, why has the Government collected taxes from companies with a profit but not taken up its responsibilities to deal with all the problems?

The labour sector has already been dissatisfied with the fact that the PWIF is unable to cover the whole amount of defaulted wages, and payments are only made on the basis of years of service and according to a ratio, so workers could only recover a very small sum. This is particularly true in the case of the closure of the Ocean Palace Restaurant. The Liberal Party is very unhappy and disappointed with the style of the Ocean Palace Restaurant's employers. However, should we let the labour organizations, the FTU and the Hong Kong Confederation of Trade Unions use this excuse — very much like the knee-jerk reaction, in which the foot will jerk whenever the knee is hit, which Mr Ronny TONG mentioned earlier — to demand the Government to comprehensively

review the whole system and apply stricter control, just because there is a small number of unscrupulous employers or one or two such cases each year, or several tens of such examples over a period of 10 to 20 years?

Of course, Permanent Secretary Matthew CHEUNG is also in a very difficult position, and since he did not know what to do and was under time constraint, he came up with the idea of a security deposit system and intended to put out the fire with it. However, I think that this idea is not a long-term solution. The Government really has to review the whole system and look into all the problems in the light of today's debate. I agree that the Government should do this. However, good employers should not be made to subsidize the employees of bad employers; and if one or two industries are subsidized by all employers, then the problems of these industries would easily continue. Of course, such cases have become less and less common in the clothing industry. My own factory was closed down in 1994 and as far as I understand it, most garment making factories have already been closed down. Several Members, such as Mr TAM Yiu-chung, have mentioned earlier that a garment factory usually does not have many shareholders, only just only a few, and it is different from the construction or catering industries, in which companies can easily be set up to undertake several projects or to operate a catering business for several years, or even open another restaurant right next to the old one when it has closed down. Therefore, I think that the Government should deal with each industry on an individual basis.

On the other hand, the Government should also deal with the employers; otherwise, such incidents will still occur from time to time if the situation is allowed to continue. Our PWIF is quite fortunate this year for only \$300-odd million has been paid out. During the SARS period, that is, 2002-03, it paid out \$400 million to \$500 million, and it seems that it also paid out \$300-odd million in 2000 and 2001. Since this fund has to pay out \$300-odd million each year, it is virtually asking good employers to watch the Government spending their money because the Government is always paying out money with levies from good employers. Therefore, I think that the Government should take this problem seriously and review the operation of the PWIF in the past several years. If it were found that the same major industries, or the same sub-sectors of a few major industries, have repeatedly run into trouble, then should the Government not deal with such industries in a comprehensive manner? Now, the Government has come up with a transient proposal on security deposits due to

a single incident and although it was said that this proposal will only be applied to the catering industry, has it ever considered whether the banks will also find this feasible? If a security deposit system is really introduced, then major restaurants as well as those with a long history will also be affected. So, are there any other better ways to deal with this problem? I hope that the Government can conduct a comprehensive review in this relation.

Earlier on, when Miss CHAN Yuen-han of the FTU spoke on this subject, she said the FTU has made five proposals to the Government, all of which are on reviewing the existing legislation. Upon first hearing this, I do not think that it may be the most appropriate approach. Instead of reviewing all 30-odd pieces of labour legislation or even introduce some new legislation just because of one incident, should we not be thinking that we should only consider repealing certain clauses when the 30-odd pieces of legislation have become outdated, obsolete, or when such legislation is no longer applicable to the labour sector today? Or should we not introduce some new legislation only when a serious problem has occurred? I think the Labour Advisory Board (LAB) and the Legislative Council Panel on Manpower should conduct an in-depth discussion on these issues again. I also hope that in the course of their communication, they can obtain the support of more good employers. Certainly, everyone will have great sympathy for the affected employees when something bad happens. However, if the Government is only aware that there is a problem and the LAB only acts in response to such Government views, then what they do may not be very comprehensive, and another incident may occur again after a couple of years, making it necessary to conduct another review. Therefore, I think that the Government should review all the issues anew. Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, Mr James TIEN said earlier that the Protection of Wages on Insolvency Fund (PWIF) should be reviewed. I agree with his view. In fact, it is really necessary to conduct a review because, like he said, there are really some inadequacies in our legislation.

The first inadequacy is that not all wages in arrears, severance pay and payment in lieu of notice could be paid in full because payments cannot be made from the PWIF if the amount exceeds a certain limit. Therefore, to the

employees, the PWIF is just better than nothing. To certain employees with longer years of service, the PWIF virtually fails to meet their expectation, so I think that it should be reviewed. Apart from this, there is a more important point, and that is, the review should be conducted with a precautionary line of thinking, because we do not wish to compensate employees with payments from the PWIF. What is most important is to prevent employers from defaulting of wage payment and evading severance pay and payment in lieu of notice. Otherwise, not only honest employers are made to support unscrupulous employers, like Mr James TIEN said, but members of the general public are also made to support those unscrupulous employers.

Madam President, why am I saying this? In fact, as Mr TAM Yiu-chung has said, before the financial turmoil, the PWIF has a "surplus". However, things have been different after the financial turmoil. Ever since the financial turmoil, the PWIF has not got any surplus until last year but then, it was only a very small amount of \$90 million. The surplus was not a result of fewer applications, it was rather due to several reasons. One of them is that the Business Registration Fee has increased from \$250 to \$600, and thus increased the revenue of the PWIF. Furthermore, a more important point is that, since 2002-03, the Government has made a loan of \$695 million in four instalments to the PWIF, to save it from bankruptcy, otherwise, the PWIF would have already become bankrupt. However, the problem is, this loan has to be repaid; and by 2007-08, the PWIF has to repay \$150 million, including interest. If the PWIF is still badly operated and suffers losses, then members of the public will have to subsidize the PWIF, which means that the public is indirectly subsidizing unscrupulous employers. Therefore, we should not only stress that unscrupulous employers are subsidized by honest employers, for members of the general public also have to shoulder this responsibility indeed. Therefore, I think such an approach is improper and inappropriate.

I think that investors should have an obligation and make it a principle to prepare for certain expenses and make provision for those expenses clearly in their accounts when they invest in a business. They should not only cross the bridge when they come to it, thinking that they would deal with the problem only when they are unable to pay wages and focus all their attention only on doing business. I think that this is a wrong approach. However, is there no legislation to regulate such situations? Madam President, this is actually not the case. In fact, sections 23 and 25 of the existing Employment Ordinance clearly specify that if an employer fails to make wage payments on time, then the

Government can make prosecutions. However, it is a pity that the Government has not strictly enforced the law in this relation. Over the years, we find the work of law enforcement very unsatisfactory and cases in which unscrupulous employers are brought to justice are very few and far between. In fact, this reflected a phenomenon, and that is, how much efforts the Government has made to monitor those employers who have not complied with the regulations of the Employment Ordinance, in respect of making wages and other entitled payments, including pay in lieu of notice and severance pays. Therefore, I think we should review why the Government has been so lax in enforcing the law over the years? Why has the figure on the number of prosecutions always been so low over the years? Why is it that there has never been any deterrent effect on the unscrupulous acts of unscrupulous employers over the years? I think the Government should also review all these.

However, apart from reviewing such issues, I think a more important point that merits consideration is that we can see employers taking advantage of the loopholes in the law in many aspects. For example, although the Government has specified in the legislation that directors should report the cases to the Official Receiver's Office if their employees have applied to the PWIF twice in any five years, but has the Government really obliged them to do so? Our greatest worry is that, since the Government has behaved like a lame duck and failed to do its job, the legislation has virtually no deterrent effect, resulting in a continually worsening situation. Therefore, nowadays when we conduct a review, we should not only review problems relating to the legislation itself, but also the Government's resolve in cracking down on the unreasonable acts of unscrupulous employers against workers.

The Government has proposed some measures and I agree that some of them are good, for example, employers have to make security deposits with the banks or even enter such expenses into their accounts. However, I think that it may still be inadequate to only target on certain industries, for although it is true that certain industries may make more applications to the PWIF, it does not mean that there are no applications from other industries. Therefore, I think that if we have to implement such measures, then they should be comprehensively applied; otherwise it would be unjust and unfair.

Finally, as regards certain new proposals made by the Government, such as to solve the problem in relation to certain responsibilities of directors by introducing the Companies (Corporate Rescue) Bill, I think that this is worth

further examination for it may be effective. No matter what, I think it is only fair that workers should earn wages for their labour, and we should not make any concessions on this. I hope the Government can step up law enforcement with stringency.

Madam President, I so submit.

MR SIN CHUNG-KAI (in Cantonese): Madam President, Members of the Liberal Party, including Mr Andrew LEUNG and Mr James TIEN, talked about the Protection of Wages on Insolvency Fund (PWIF) when they spoke earlier, and pointed out in particular that there would be difficulties in introducing security deposits. This is because operators of tripe noodle stalls will have practical difficulties in getting banks to make arrangements for security deposits and taking out insurance. And, even if a security deposit system has to be introduced, there are many ways to do so. What Mr Matthew CHEUNG suggested, about it being handled by banks, is not necessarily the only way. Moreover, banks will have difficulties in operating the system.

Another possible method is, and this could be taken as my response to Mr James TIEN (from our experience in the past several years, we concluded that each eating establishment usually owes its staff one and a half to two months' wages when it closes down), to require each eating establishment to make a monthly contribution to its own account when it first opens for business. When its account has a balance equal to the sum of one and a half month's wages of all its staff, the money could be kept in the account, and this could solve the problem of requesting the banks to make arrangements for security deposits. But the banks may ask, "How is it possible to handle the security deposits of fish ball noodle stalls?" In fact, this is really very difficult. However, if each eating establishment maintains a balance, which is equivalent to the sum of one and a half months' wages of all its employees, in their account, and if, for example, each eating establishment opens an account with the PWIF for this purpose, then it may help to dispel Mr James TIEN's worry that good companies are required to subsidize the bad ones. Of course, the catering industry will be unhappy about any suggestion that would increase their costs, so it will be up to the public to make a decision. However, in view of the present trend, it is inevitable that the Government will have to introduce amendments to the method of making contributions, and I believe that the Government will also have to amend the legislation relating to the plan of contribution.

When the protection of wages on insolvency system was first introduced in the 1980s, it might not have been carefully thought out. The Secretary for Financial Services submitted a piece of legislation — that is, the Deposit Protection Scheme Ordinance, which is also of an insurance nature, to the Legislative Council two years ago. The Deposit Protection Scheme Ordinance is related to the contribution scheme for banks, because compensations would have to be made if a bank closes down. The scheme has a supervisory rating which is implemented through the CAMEL system — Members can find out about this system by referring to the Ordinance and it is not difficult to find — whereby banks are divided into four levels and the contribution rate for each level is different. It is stated in the Schedule that the contribution rate for level 1 is 0.05%, with the rate for the highest level at 0.14%, that is, a lower contribution rate is set for banks with lower risks, and a higher rate is set for those with higher risks.

In solving the existing problem, the Government may also consider applying the same rationale. On the basis of the information on this fund, which has been in operation for 20 years, a statistical survey can be conducted to compute a risk rating, and then it can work out the contribution rate for each industry, or the size of each industry may even be taken into consideration. I believe the approach of setting a different contribution rate is unavoidable. Some Members said earlier that over the past two or three years, half of the compensations paid out by the PWIF went to the catering industry. Basically, the PWIF may have to single out the whole catering industry and ask the industry to make contributions on a self-financing basis. At least, this should be the first step. Of course, if the security deposit system were to be implemented, then the solution may be different. However, I think that in considering this issue, the Government, Mr Matthew CHEUNG or even the Bureau, may have to consider adopting both approaches at the same time, but if they have decided on establishing a security deposit system, then it may no longer be necessary to set different contribution rates.

However, from an administrative point of view, the procedure for "pay out" will be simpler if contributions to the big pool of the PWIF are made at different contribution rates. If the approach of asking banks to make arrangements for security deposits is adopted, I personally think that there will be great difficulties. I also agree with the views of several Liberal Party Members. This is because the responsibility will be placed on operators if banks were to act as guarantors. Asking the operators to pay may be easier than

asking them to apply for bank guarantees, but perhaps we can talk to the banks about this. We should also apply some imagination. Some operators may only know how to cook tripe and not everyone can be capable of opening big restaurants that can accommodate 500 to 2 000 people. Take the catering industry as an example, the number of people involved in such operations may range from two to 2 000. Therefore, we really have to consider how security deposits can be arranged.

However, personally, I also think that it may not necessarily be impossible to make such arrangements. The security deposit system can be operated in the same manner as the Mandatory Provident Fund by dividing restaurants and eating establishments into individual units, and that is, to set up individual accounts for each restaurant. The eating establishments can start making contributions to the account when they first start operations until the account has a balance which is equal to the sum of one and a half to two months of the employees' wages — depending on how many months of wages the restaurant and eating establishment have to pay out in compensation on average upon closure. If this method is adopted, then there will not be any problem even if there were 20 000 eating establishments for each of them will have their own account and this can offset the adverse effect of having to make unfair subsidies. If an eating establishment withdraws money from its account to pay wages when it closes down because there is a reserve fund in the account, this cannot be regarded as unfair for this is also a possible way.

I believe that if any of such two methods are adopted, the Government will undoubtedly have to amend the legislation. I hope that the Government can take this opportunity to deal with this issue in a serious manner. I think certain proposals, like Mr James TIEN's proposal on abolishing the PWIF, are infeasible. At present, taxpayers have already been required to underwrite all the outstanding payments of the PWIF, and greater problems will be created if taxpayers are required to underwrite. Mr James TIEN, you have already declared that you would not run in the Chief Executive election, but if you run in the election, you would not adopt this approach, for by then you would have to look at both sides of the issue. By then, you would not only be representing the business sector, but also the community as a whole, when you look into and try to find a solution for this problem, so you would most certainly not adopt this approach. Moreover, today you are the Legislative Council Member representing the New Territories East and not the business sector. You have to appreciate the problem faced by the whole community and it would seem unfair

if you just look at that of the business sector. You have to consider the views of different sectors when you deal with a problem.

To be fair, I think we should also speak out on behalf of the business sector. Members of the Liberal Party mentioned that the PWIF has to pay \$300 million to \$400 million each year, and that is to say, good companies have unconsciously become the ATM for Mr Tommy CHEUNG's "con"- "stituents" and allow them to withdraw money over the years.

Madam President, I hope that the Government can seriously consider the several suggestions made. Today, the Democratic Party supports all motions because there is still room for improvement efforts.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Jasper TSANG, you may now speak on the three amendments.

MR JASPER TSANG (in Cantonese): Madam President, the DAB supports all the amendments proposed respectively by Mr Andrew CHENG, Mr LEE Cheuk-yan and Mr WONG Kwok-hing.

Mr Andrew CHENG proposed to streamline the application procedures for Protection of Wages on Insolvency Fund (PWIF) and there is absolutely no reason for us to oppose this amendment. As regards the proposal on stepping up prosecution against those employers who deliberately default on payment of wages to their employers, from what I have heard, even Members from the business sector do not oppose this amendment.

Mr Andrew CHENG has put forward other views, including those on certain long-term measures proposed by the Government, when he spoke on the Democratic Party's views on a review of the protection of wages on insolvency system. According to Mr Andrew CHENG, those measures are all feasible, but he was also quite brief in his comments. Does the Democratic Party support all

the so-called "five short- and six long-" term measures proposed by the Government? I believe some thoughts and discussions can be made in this respect and the DAB does have some reservations about this. However, he has not mentioned other issues in his amendment, but only requested to streamline the procedures and step up prosecution against those employers who deliberately default on payment of wages to their employees, so we definitely support his amendment.

As regards Mr LEE Cheuk-yan's amendment, the part on the security deposit system may be more controversial, but he is quite cautious in the wordings of his amendment. He only mentioned "studying the establishment of a security deposit system". We are of the opinion that since the Government has put forward the security deposit system as a possible option for discussion, we have no reasons to oppose further studies on this system. I hope Members from the business sector will take note of the fact that Mr LEE Cheuk-yan was quite restrained when he spoke earlier. For example, on the proposals on security deposits or bank guarantees, he stressed it should only be applied to the catering industry as a start. He also talked about certain exemption measures, for example, if the small and medium enterprises run into trouble, he also appreciates that exemptions could be applied under certain circumstances.

Therefore, since a lot of restrictions and rules have been laid down in relation to this issue with studies to be conducted and exemption can be made, I hope that, as Mr Andrew LEUNG said earlier, there will not be great disagreement between Members from the business and labour sectors over this issue. As regards this problem, I also hope that everyone will agree to explore and look into the matter and would not close their doors at this point.

For similar reasons, Mr WONG Kwok-hing also raised the issue of security deposits. Of course, Mr WONG Kwok-hing has clearly pointed out in his amendment that the system is targeted on employers who have repeatedly evaded their responsibilities or on industries with more cases of abuse, so this is even more worth supporting. He also indicated that further studies should be conducted and did not say that a mandatory plan had already been formulated.

As regards proposals like stepping up enforcement and prosecution, from what I have heard in Members' earlier speeches, I think almost all Members agree to this, no matter whether they think that the existing system is already sound or that improvement should be made. They do not have any objection.

Therefore, the DAB supports all the three amendments and I also thank Members for making these suggestions after careful deliberations.

Thank you, Madam President.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in the absence of Secretary for Economic Development and Labour) (in Cantonese): Madam President, Honourable Members, as Secretary Stephen IP is not in Hong Kong today, he has asked me to double for him and attend the motion debate today. He asked me to inform Members that he would read their speeches delivered earlier very carefully and he would consider and follow up the views expressed together with the Permanent Secretary CHEUNG Kin-chung.

Coming back to the motion debate today, the Government has all along attached great importance to the possible abuse of the Protection of Wages on Insolvency Fund (PWIF). In view of this, the Labour Department (LD) has devised a stringent mechanism to prevent abuse of the PWIF and a review is conducted from time to time of the preventive measures. Last week, the Government proposed at the meeting of the Legislative Council Panel on Manpower a package of possible measures to further prevent abuse of the PWIF and Members' views were sought on these measures.

The PWIF was set up in 1985 and as many Members have said, it has been in existence for 20 years. The aim of the PWIF is to provide timely relief in the form of *ex gratia* payment to employees of insolvent employers. During the initial stages of the PWIF, each eligible employee would only receive a maximum payment of \$8,000 from the PWIF to cover outstanding wages in default. Later on, with the development of the economy and improvements made to the rights and benefits of employees and due to favourable financial conditions, the scope of the PWIF was widened and the amount of protection given to employees raised on a number of occasions. At present, employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply for *ex gratia* payment from the PWIF. The maximum payment for each employee is \$36,000 of wages, \$22,500 of wages in lieu of notice and severance payment up to \$50,000 plus 50% of the remainder of the entitlement. The maximum amount of payment that each person would receive is \$278,500.

The PWIF has since its establishment played an important role in protecting the rights and benefits of employees. To ensure the financial stability of the PWIF and that its resources will not be abused, the Government has worked closely with the PWIF Board to devise a mechanism whereby every applicant is required to provide truthful information and their eligibility is assessed by stringent vetting procedures. Two years ago, the LD set up a special investigation team to conduct in-depth investigations into dubious applications. The LD has also stepped up prosecution of wage offences. In end 2002, the LD set up the Employment Claims Division to step up prosecution of employers who fail to discharge their obligations under the Employment Ordinance. Rigorous enforcement and prosecution actions have served as a warning to employers and hence reduced default on wage payment and prevented cases of non-payment of wages from developing into claims to the PWIF. In 2003, there were 445 summonses for convicted wage offences, representing a 2.2-fold increase over 2002. In 2004, the number of summonses for convicted wage offences further rose by 13% to 504. In the first quarter of 2005, the number of summonses for convicted wage offences was 150, representing an increase by 32% over the same period in 2004. We will continue with our rigorous efforts to combat default in payment of wages and employers who have contravened the law will not be tolerated. Where there is sufficient evidence, the LD will not hesitate to prosecute. Recently, two employers have been imposed a suspended sentence of imprisonment for default in the payment of wages. We hope that in future there will not be any person who will try to tempt the law by committing wage offences.

An inter-departmental Task Force was set up in November 2002 to step up collaboration among various government departments in proactively pursuing and investigating possible abuse of the PWIF. The Task Force comprises representatives of the LD, the Commercial Crime Bureau (CCB) of the police, the Official Receiver's Office (ORO) and the Legal Aid Department. The LD has referred 65 cases of suspected abuses to the Task Force since its formation some two years ago. The CCB arrested some 50 persons in connection with seven of the cases. Among them, a director and an employee were convicted and both were jailed for a year. Of the remaining 58 cases, 45 are still under investigation by the CCB and the ORO.

Work done by the PWIF, the LD and the inter-departmental Task Force is beginning to pay off. In 2004, there were 13 631 applications made to the

PWIF, representing a 39% reduction compared to 22 350 applications in 2003. In the first quarter of 2005, the number of applications made to the PWIF has fallen by 22% compared to the same period in 2004. At present, the PWIF has about \$100 million of accrued surpluses and its financial status can be described as sound.

We can see that an overwhelming majority of the applications made to the PWIF is due to insolvency caused by genuine hardship on the part of the employers. However, there are also some cases of abuse. We will continue with our efforts to conduct reviews of the existing vetting mechanism to prevent and combat abuse.

Over the past few weeks, views have been expressed by people from various sectors across society on the operation of the PWIF and the possible abuse of it. We attach great importance to these views and swift response has been made. The inter-departmental Task Force has convened a special meeting to discuss possible measures to further prevent abuse of the PWIF. Last week, the Government proposed 11 immediate and longer-term measures at the meeting of the Panel on Manpower in a bid to step up actions to combat abuse of the PWIF. The immediate measures include strengthening the LD's early warning system on non-payment of wages in the catering industry; mobilizing the catering industry in adopting good management practices; helping individual restaurants to improve their management; recruiting retired police officers with criminal investigation experience to reinforce the LD's capacity in investigation and intelligence gathering as well as stepping up enforcement action, and so on.

In addition, the Government has also proposed some longer-term measures including the following: (1) Mandatory requirement for all restaurant proprietors or restaurant proprietors who have been involved in cases requiring payment from the PWIF to provide bank guarantees for the statutory entitlements of employees; (2) scaling the levy rates of Business Registration Certificates by industries such that employers in industries that account for significant portions of claims to the PWIF will be required to pay a higher Business Registration Certificate levy; (3) setting up separate funds for individual industries and employers in these industries would support their own funds on a self-sufficient basis; (4) requiring employers to comply with standard accounting practice to recognize the contingent liability for severance payment in the balance sheet; (5) exploring the feasibility of introducing a new Companies (Corporate Rescue) Bill to the Legislative Council to stipulate that directors and senior management will

be personally liable for the debts of their company which has continued to trade while insolvent. In view of the complexity of these long-term measures and as many legislative amendments may be involved, Members expressed many different views on various measures in the meeting.

Some Members suggested that the Employment Ordinance should be amended to enhance the protection of employees and impose stiffer penalties on offending employers. I would like to point out that the current legislation has offered sufficient protection to employees and the penalties do carry enough deterrent effect, as employers are liable to a fine of \$200,000 and one year's imprisonment for default in the payment of wages. Hence there is no need to amend the relevant legislation at this stage. However, we will conduct a review from time to time to see if there is any need to reinforce or improve the relevant legislation.

Some Members suggested that we should consider amending the laws to provide that directors of companies shall be personally liable for the non-payment of wages, wages in lieu of notice and other compensation. This suggestion must be carefully considered as, in accordance with the fundamental principles of commercial operation in Hong Kong, directors and shareholders of limited companies do not have to bear any personal liabilities for their companies under normal circumstances. The existing system is well established and unless there are strong justifications, it is not advisable to make any major modifications to the system. In fact, with respect to offences committed by directors such as illegal transfer of assets and fraud, they are already subject to regulation by the relevant laws. As I have said before, the Government will keep the company legislation under constant review to keep in tune with the market changes. After listening to the speeches made by many Members, I have an impression that the focus of the problem may lie with enforcement. With respect to this, we have indicated that enforcement actions will be stepped up.

Some Members suggested relaxing the eligibility criteria for employees applying for legal aid so as to enable them to lodge a petition for bankruptcy or liquidation against their employers. I wish to point out that under the existing legal aid system, all applications are vetted by using a uniform set of criteria and if exemption is given under certain circumstances, the fairness and integrity of the system may be compromised. That is why careful consideration must be made. We will refer the suggestion to the Legal Aid Department (LAD) for further study.

I wish to make a clarification here and that is, with respect to employees' application for legal aid to initiate liquidation or bankruptcy proceedings against their insolvent employers, normally these employees would elect among themselves a person whom they think would meet the financial requirements of applying for legal aid as their representative. If the financial means of that person exceed the upper limit to be eligible for legal aid application, the employees would elect another person to apply for legal aid on their behalf. The LAD would help the employees elect a representative who will meet the requirements. In a petition for bankruptcy of an employer, we should bear in mind that should any employee initiate an application for the liquidation or bankruptcy of the employer on the ground of non-payment of wages or refusal to pay other moneys, all other employees involved in the action, regardless of whether they will get legal aid, may apply for *ex gratia* payment from the PWIF Board by virtue of the Protection of Wages on Insolvency Ordinance (Cap. 380). They may also submit proof of debt to the ORO after the Court has issued a bankruptcy or liquidation order.

Some Members pointed out that the procedures for applications to the PWIF and vetting such applications should be streamlined so that employees affected by closure of business of their companies can be given *ex gratia* payment expeditiously. The LD will from time to time review the vetting procedures of the PWIF and on the premise that efforts should be made to prevent the PWIF from being abused, we will strive to improve and streamline the application and vetting procedures.

In addition, some Member queried that certain proposed measures seemed to target the catering industry and it was not fair. I would like to point out that the catering industry has, over the past decade, consistently accounted for the major share of applications to the PWIF. Of the 13 631 applications in 2004, 5 333 or 39% came from the industry. For the first quarter of 2005, though the number of applications to the PWIF dropped by 22% as compared to the same period last year, applications from the catering industry rose by 24%, representing 55% of the total. Such a situation warrants our concern. This is why the Government must address the applications from the catering industry to the PWIF and the pressure exerted on it.

We are grateful to Members for the views and suggestions offered with respect to reviewing the protection of wages on insolvency system. Madam President, we are glad that Members from both the business and labour sectors

have discussed the related issues in a rational and pragmatic manner and that constructive views have been put forward. We will examine views put forward by people from all sectors across the community and make an in-depth assessment of the possible impact of these measures on society. We understand that certain industry may hold reservations about some of the proposed measures. In devising new measures on the prevention of abuse of the PWIF, we will be very careful and take various factors into account in the hope that a right balance can be struck between the need to combat and prevent abuse and avoiding the posing of obstacles to the business environment.

Madam President, we will further consult the industries, the trade unions, the PWIF Board as well as the Labour Advisory Board on the various suggestions made. We hope that a plan acceptable to all can be found and this can be submitted to the Panel on Manpower for consideration. I am convinced that as we pool our wisdom on these issues, a consensus can be forged, with which we can formulate a sound and practicable plan to prevent and combat abuse of the PWIF.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr Andrew CHENG to move his amendment to the motion.

MR ANDREW CHENG (in Cantonese): Madam President, I move that Mr Jasper TSANG's motion be amended, as print on the Agenda.

Mr Andrew CHENG moved the following motion: (Translation)

"To add "streamline the application procedures for the Protection of Wages on Insolvency Fund, and step up prosecution against those employers who deliberately default on payment of wages to their employees," after "related legislation"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr Andrew CHENG to Mr Jasper TSANG's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, as Mr Andrew CHENG's amendment has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members on 3 May. Therefore, you have up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. Mr LEE Cheuk-yan, you may now move your revised amendment.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I move that Mr Jasper TSANG's motion as amended by Mr Andrew CHENG, be further amended by my revised amendment.

Madam President, I have actually incorporated Mr Andrew CHENG's amendment into my amendment, including the part on streamlining the application procedures for the Protection of Wages on Insolvency Fund (PWIF) and stepping up prosecution against those employers who deliberately default on payment of wages to their employees.

Here, I would like to mention another point. Secretary Frederick MA just mentioned that the Legal Aid Department (LAD) has to treat all applicants

equally and cannot apply different criteria for PWIF applicants. However, I have always proposed that the Government should not deal with such cases through the LAD and the Labour Department should provide "one-stop" service by hiring lawyers to help all workers who are owed wages to make petitions for the company's liquidation. This would be most in line with Mr Andrew CHENG's proposal on streamlining application procedures for it would greatly simplify the procedures by at least shortening the required time by two months. Thank you, Madam President.

Mr LEE Cheuk-yan moved the following further amendment to the motion as amended by Mr Andrew CHENG: (Translation)

"To delete "and" after "Protection of Wages on Insolvency Fund,"; and to add "study the establishment of a security deposit system, and require employers to reserve funds for severance payments and long service payments payable to their employees in future," after "payment of wages to their employees,".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr LEE Cheuk-yan's amendment to Mr Jasper TSANG's motion as amended by Mr Andrew CHENG, 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.

(Member raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan 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:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Andrew LEUNG, Mr Patrick LAU and Miss TAM Heung-man voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr MA Lik, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mr Ronny TONG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, nine were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 25 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, as Mr Andrew CHENG's amendment has been passed, and I have given leave for you to revise the terms of your amendment, you have up to three minutes to explain the revised terms in your amendment, then you may move your revised amendment.

MR WONG KWOK-HING (in Cantonese): Madam President, I move that Mr Jasper TSANG's motion as amended by Mr Andrew CHENG, be further amended by my revised amendment.

Madam President, I have actually been very cautious with the wording of my amendment and have considered that we should focus on the problem to be solved, and that is, employers who repeatedly evade their responsibilities for the legal interests of their employees or industries with more cases of abuse. This is really the crux of the problem and it is the difference between my amendment and that moved by other Members.

Furthermore, I have clearly urged the Government to study — rather than immediately enforce — the relevant policies. I think this could solve the problem of making good employers subsidize unscrupulous employers. Therefore, I would like to appeal to those Members who may not support my amendment and ask them not to feel too nervous about it, because my amendment is very mild and I have also considered the issue of being too generalized in my proposal. My amendment is actually targeted at the crux of the problem and to tie in with the 11 measures proposed by the Government at the Panel on Manpower. Though the 11 measures show that there is resolve on the part of the Government, I am also very worried that it may be able to find a pretext for delaying the implementation of strong and effective measures if we hold controversial views. As such, I call upon Members to find the greatest

consensus with concerted efforts, so that the business sector of Hong Kong can have a good business environment, workers can have real job security and the "rodent litter" that contaminated the whole catering industry can be eliminated. I hope Members will support my amendment. Thank you, Madam President.

Mr WONG Kwok-hing moved the following further amendment to the motion as amended by Mr Andrew CHENG: (Translation)

"To delete "and" after "Protection of Wages on Insolvency Fund,"; and to add "and step up enforcement, as well as to study the imposition of a security deposit system targeted at employers who repeatedly evade their responsibilities for the legal interests of their employees or on industries with more cases of abuse" after "payment of wages to their employees".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr WONG Kwok-hing's amendment to Mr Jasper TSANG's motion as amended by Mr Andrew CHENG, 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.

(Member raised their hands)

Mr Tommy CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG has claimed a division. The division bell will ring for three minutes after which the division will start.

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:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr MA Lik, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 10 were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies

through direct elections, 30 were present, 27 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr Jasper TSANG, you may now reply and you have one minute 29 seconds.

MR JASPER TSANG (in Cantonese): Madam President, I thank the 24 Members who have spoken on this motion, including three Members who have made specific proposals on policies to achieve the objective of the original motion by moving amendments to the motion.

Some of their views are controversial and as a result, the amendments moved by two Members could not be passed, which is not at all surprising, so to speak. The debate on this motion has also been made more meaningful because this difference in opinions on such policies has thus facilitated our debate.

The Secretary for Economic Development and Labour explained to me beforehand that he knew we were going to have this debate today, but could not be able to attend because he had already planned to leave Hong Kong on duty. However, I believe Secretary Frederick MA and the Permanent Secretary for Economic Development and Labour cum the Commissioner for Labour have listened carefully to the speeches of Honourable colleagues today. I also hope that, as the Secretary for Financial Services and the Treasury said, a reasonable and effective plan would soon be proposed and implemented and that all Members would agree to the objective of the original motion and that is: protecting employees' interests and preventing employers from abusing the system.

As such, I call upon Members to support this motion as amended.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Jasper TSANG, as amended by Mr Andrew CHENG, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Second motion: Opposing Japan's textbooks distorting history.

MR ALBERT HO (in Cantonese): Madam President, in my amendment there is this line, ".....urges the Government of the SAR to request the Central Government to exercise its right of veto". I wonder if the Government should appoint a public officer to attend this motion debate.

PRESIDENT (in Cantonese): If no public officer is appointed by the Government to attend this motion debate, and if your amendment is passed, we will notify the Government in writing of the contents of your amendment.

OPPOSING JAPAN'S TEXTBOOKS DISTORTING HISTORY

MR LAU KONG-WAH (in Cantonese): Madam President, this year is 2005. One hundred and ten years ago, China was defeated in the Sino-Japanese War. Sixty years ago, China won the war against Japanese invasion. Today is 4 May, a commemoration day of the anti-imperialism and patriotic movement.

In May four years ago, a motion with the same wording was proposed in this Council by Mr Jasper TSANG. Whether it was 110 years ago, 60 years ago or four years ago or even today, the fact remains that although what had happened was so far away from now, they are still as near to us as ever, for they are all about resisting Japanese militarism. Over the years, the acts of Japan, such as amending textbooks and paying homage to the Yasukuni Shrine, and also the Diaoyutai Islands incident, have demonstrated clearly to all people in the world that the ghost of Japan's militarism has lingered on and is still looming over us. We also see that Japan has never seriously learnt a lesson. On the contrary, it has continued to embellish its history of aggression. All these acts will put regional peace in peril, and they have done harm to the Japanese people.

Despite the Japanese Emperor's announcement to the world on Japan's unconditional surrender in 1945, which showed that militaristic hegemonism was contemptible to all people in the world, the right-wing forces in Japan, which represent militarism, have not been disintegrated. On the contrary, they have conspired with many politicians and even become rampant gradually on the political stage. The Japanese Society for History Textbook Reform, a right-wing group in Japan, was set up for an objective known to all people, that is, they hope to continuously give play to the ideology of militarism in the Second World War and turn Japan into a super political power and strong military state. They consider it necessary to thoroughly deny the historical fact that Japan started the invasion war and to completely negate the post-war responsibilities of Japan. They hold that it is impossible for a super political and military power to be burdened with the historical facts that it had invaded into other countries and bullied their civilians. They cannot let their people, particularly the successors of right-wing forces, live under this disgraceful shadow of history. Therefore, their refusal to admit mistakes and offer apologies, denial of historical facts and distortion of history have become a despicable means of the right-wingers in Japan to attain their political purpose.

The *New History and Civics Textbook* is the best proof of the resurgence of Japanese militarism. The Japanese Society for History Textbook Reform, through the history textbooks published by them, has rationalized Japan's invasion, pointing out that these acts of invasion have the merit of facilitating economic development in various Asian countries. For example, after Japan's occupation of Manchuria, a civilized legal system was introduced, and through investment and development, the economy of Manchukuo had achieved rapid

growth. They also stressed that through their colonial rule over Taiwan, Japan had created such miracles as causing the Taiwanese economy to boom. Moreover, the textbooks have shamelessly stated that through its entry into Asian colonies which was essential to the successful establishment of the Greater East Asian Co-Prosperity Sphere, the determination of the people in these countries to fight for independence was liberated and inspired. The textbooks have repeatedly challenged and denied the credibility of the information on the atrocities of Japan's invasion, querying the allegations made by the International Military Tribunal for the Far East against the atrocities of the Japanese Army and considering the information on the Nanjing Incident questionable.

The textbooks have not only distorted historical facts, but also told lies brazenly. They have deliberately left out or given a vague account of some of their ruthless brutalities. They have, among other things, obscured the concept of the Nanjing Massacre by not mentioning a word on the hundreds of thousands of people killed and injured in the massacre. Moreover, they have purposely concealed the historical fact that hundreds of thousands of Asian women being tortured and made "comfort women", and also other facts such as the "Three-All Policy", the Unit 731 (germ warfare unit) in relation to Japanese militarism, and so on.

Through the textbooks, the Japanese Society for History Textbook Reform has not only rationalized Japan's invasion, but also deliberately played up Japan's helplessness in its invasion and Japan's role as a victim. For example, the "September 18 incident" is described as the result of the anti-Japanese movement in which there were repeated instances of the railway being obstructed and Japanese schoolchildren harassed. As for the Marco Polo Bridge Incident, it is said that the Japanese Army had been shot at and as the Chinese side continued to fire shots, both sides therefore entered into a state of war. In other words, China should take all the blame for the Marco Polo Bridge Incident! The Sino-Japanese War broke out because two Japanese military officials were shot and killed in Shanghai, which had intensified the conflict between China and Japan, and as this had exceeded the tolerance of Japan, Japan, therefore, took defensive actions. These ridiculous, preposterous textbooks aim only to deny Japan's war crimes and pull the wool over the eyes of the Japanese youth and incite hatred against China among the next generation, in an attempt to pave the way for Japan's continued invasion of other countries in the future. This should be condemned by this Council!

If the Japanese Government continues to educate their younger generation with these preposterous textbooks and allow the right-wing forces to expand continuously in Japan, no doubt it is tantamount to putting peace in the entire Asia right in a minefield. Regrettably, the ideology of militarism advocated by the right-wing forces in Japan has been spreading in the political arena in Japan. The Ministry of Education, Culture, Sports, Science and Technology in Japan has even given a green light to these "unconventional textbooks", brazenly allowing the distortion of the historical facts of Japan's invasion. In the final analysis, this only shows that Japan is reluctant to give up the ideology of militarism.

Madam President, Germany and Japan are two very similar countries. Both were defeated in the War; economic miracles have taken place in both countries after the War, and they both wish to become a permanent member of the United Nations Security Council (UNSC). However, we welcome Germany's accession to the UNSC but oppose that of Japan. Why? After the War, Germany earnestly admitted their mistakes and made compensations, whereas Japan has only made verbal apologies without taking any substantive actions. The German Chancellor had knelt down in Poland to show remorse for Germany's past invasion during the war. But the Japanese Prime Minister will kneel down only to Class A war criminals every year, showing not the slightest regret for his country's acts of aggression. Germany has strictly prohibited textbooks from embellishing the Nazi atrocities, but Japan has secretly beautified such crimes year after year. Germany has eradicated all possibilities for the Nazis to gain a foothold in the country, but the right-wingers in Japan have already infiltrated the business community and political circle. The words and deeds of Germany have not rendered the country's credibility compromised and on the contrary, they have commanded praises from all over the world. But what Japan has done is always despised and reprimanded by the Asian peoples. The positions of these two countries in the hearts of people all over the world are clearly on two extremes.

Madam President, under the present circumstances, China needs peace externally and harmony internally as peace and harmony are precious. The state leaders have continuously paid visits to other countries, in an effort to strive for peace. The Chinese nation is, after all, a peace loving nation. In the recent anti-Japanese movement, people in the Mainland have indeed taken to the streets to express their strong dissatisfaction. Although we have seen on television some instances of violence, this cannot inundate the true meaning behind the aspiration expressed by the people. In this movement, we have

particularly noticed that many young people have taken to the streets, and this is particularly meaningful. While we are condemning the atrocities of Japanese militarism, the Chinese people must distance themselves from violence. To answer violence with violence is not a civilized act in any case. We must insist on rationality and peace. To truly love our country does not mean that we should oppose Japan blindly. What we oppose is Japanese militarism.

Madam President, I am 48 years old this year. In fact, I am lucky to be born after the war. I have heard of the calamities of war from the older generation, and I have witnessed the disasters brought by war to the people in other parts of the world nowadays. We would never wish to see a war breaking out anymore. Recently, we have watched the happy ending of "Official WEN" and "Doctor XU" as in the popular Korean drama, and we have also seen the reunion of Kuomintang and the Communist Party. When can the grudges and hatred that have existed between China and Japan for generations be settled?

Mr LAU Kong-wah moved the following motion: (Translation)

"That this Council strongly condemns the recent approval by Japan's Ministry of Education, Culture, Sports, Science and Technology of the history textbooks for secondary schools written by a right-wing group, which brazenly distort the historical facts of Japan's invasion of its neighbouring countries during the Second World War and embellish Japan's acts of aggression, and also strongly demands the Japanese Government to totally abandon militarism, face up to the historical facts, and offer its sincere apologies and reasonable compensation to the countries and people who were subjected to its invasion during the Second World War."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAU Kong-wah be passed.

PRESIDENT (in Cantonese): Mr Albert HO and Mr James TIEN will move amendments to this motion respectively. Their amendments have been printed on the Agenda. The motion and the two amendments will now be debated together in a joint debate.

I will call upon Mr Albert HO to speak first, to be followed by Mr James TIEN; but no amendments are to be moved at this stage.

MR ALBERT HO (in Cantonese): Madam President, the Japanese Prime Minister, Junichiro KOIZUMI, has recently delivered a speech at the Asia-Africa Summit held in Indonesia, expressing deep remorse and heartfelt apology for the tremendous damage and suffering caused to the people of Asian countries by Japan through its past militaristic invasion and colonial rule. This declaration of apology by KOIZUMI is exactly a replica of the speech made by the former Japanese Prime Minister, Tomichi MURAYAMA, 10 years ago. In spite of this, it still helps to temporarily ease the very strong anti-Japanese sentiments recently expressed in the community of the Mainland. Having said that, however, greater efforts must be made in order for Japan to be able to dislodge its historical baggage.

In recent years, many Japanese friends (including reporters) have asked me time and again when Japan could stop making apologies. By proposing an amendment to this motion under debate today, I wish to point out how Japan should honour its post-war responsibilities, and this will be the true and complete answer to their question.

In fact, Madam President, like the speech of former Prime Minister MURAYAMA, the speech of KOIZUMI did not have the support of the Diet. It even did not have the support of all government officials in his cabinet. Members may recall that on the same day when KOIZUMI offered an apology, some 80 members of the Japanese parliament and a Minister in KOIZUMI's cabinet paid homage to the Yasukuni Shrine. Later, in response to questions asked by reporters, KOIZUMI categorically refused to undertake not to pay homage to the Yasukuni Shrine anymore. As Members may remember, the tradition of paying official homage to the Yasukuni Shrine has never ceased since it was first started by the then Prime Minister Hashimoto RYUTARO in 1996.

On the other hand, with regard to primary school textbooks, the right-wing groups in Japan amended the textbooks in 1982, arousing strong opposition in Asia. While they had been deterred for some time, they staged another comeback in 2001 and obtained the approval of the then Minister for Education, Culture, Sports, Science and Technology, Nobutaka MACHIMURA, who is the incumbent Minister for Foreign Affairs, for making amendments to the textbooks. This year, permission was again granted for amending the textbooks. Earlier on Mr LAU Kong-wah cited from a new history textbook published by a right-wing group called Fusosha. The textbook contains many

serious distortions of facts, showing most clearly the prevalence of the ideology of militarism in Japan. But today, many people may say that with a usage rate of less than 1%, this textbook should not pose a big problem. Today, I must remind Members that our worry is not about this new history textbook of the Fusosha alone. This textbook is an insult to the Asian peoples, and this is a fact. But what warrants our attention is that substantial changes have been made to seven other textbooks over the past few years. Here, I must thank *Ming Pao* for publishing plenty of information in April and translating lots of first-hand information in the textbooks for our reference.

Let me first talk about the Nanjing Massacre. Of the eight textbooks, only one mentions that the death toll was 200 000. In three of these textbooks, it is stated in a footnote that views are diverse on the number of people killed. Although we all know that the international court already confirmed then that at least 150 000 people had been massacred, only three of the eight textbooks mention the death toll of the Nanjing Massacre in the main text, whereas the other five all describe the massacre as the Nanjing Incident.

On the allusion to comfort women, seven of the textbooks gave a very clear account of what happened in their versions in the '90s. In 2001, however, only three mentioned comfort women, and in 2005, it is mentioned in only one textbook. With regard to the crime of forced labour, this was mentioned in seven textbooks from the '90s to 2001, but only in two textbooks in 2005. As for "Unit 731", all the textbooks are completely silent on this in recent years as if it has never taken place.

Madam President, under such circumstances, who would believe that what Junichiro KOIZUMI said in his speech was sincerely from the bottom of his heart? In fact, Japan is still withholding lots of information on its war crimes, particularly information on the "731" germ warfare. Recently, the United States Congress has openly stated that all first-hand information was given to Japan in 1958, but Japan has still refused to disclose such information.

Madam President, in all fairness, how can the numerous war crimes committed by Japan in the Second World War be completely wiped off with just a word of two? Let us look at the efforts made by Germany. Over the last two to three decades, the several Presidents and Prime Ministers of Germany have time and again made speeches in all sincerity, and from their speeches we do feel

their sincerity, not to mention the fact that at least two German Presidents had personally knelt down before a Jewish monument to beg for forgiveness. In Germany, many museums have been built to educate the next generation. Their textbooks are written on the advice of historians from various European countries and the consensus reached among them and so, they have never aroused any controversy. In Germany, there are also laws that ban remarks or speeches denying the Nazi crimes.

Madam President, on the issue of compensation, our national Government officially gave up its compensation claim in the two treaties signed between China and Japan in 1972 and 1978. But now, it is clear that, according to international law, the state government cannot use the treaties to subrogate individuals' right to claim compensation for their sufferings caused by war crimes. In this connection, many victims in Asia (including our country) have already instituted proceedings against Japan. This has once again reminded people all over the world that Japan has neither honoured its post-war responsibilities nor made just compensation to the victims.

Madam President, Mr Makoto TANABE, a Member of the House of Councillors in Japan, has said to the effect that an apology without compensation is hypocrisy, and compensation without an apology is unethical. So, I hope the Japanese Government will understand that an apology and compensation are inseparable.

Moreover, after the war, Japan has still occupied the Diaoyutai Islands which are our national territory. This symbolizes that Japan's aggression has not ended, which has greatly antagonized the Chinese people.

The movement to seek compensation from Japan and the protest against Japan's accession to the United Nations Security Council (UNSC) as a permanent member indeed carry strong nationalistic sentiments, because the sentiments expressed by the people have come from the profound collective memory of a nation and an account of history that has been passed orally from one generation to the next in many families. In general, I must emphasize that this does not and should not represent nationalism in a narrow sense, and this does not mean that we must resort to irrational exclusivism or commit anti-Japanese acts. What we are pursuing is historical justice, the dignity and human rights of the war victims, as well as continued peace in Asia. This is precisely the reason

why our aspirations are supported by the international community and by many Japanese people and organizations that cherish peace and justice, and are considered a common cause of conscience by all.

Madam President, today, I think the State Government has no other choice and is duty-bound to exert its utmost to stop Japan from becoming a permanent member of the UNSC by, among other things, exercising its right of veto. If the State Government cannot answer the people's aspirations and uphold justice by forestalling Japan becoming a permanent member of the UNSC, I am worried that it would be condemned as being immoral for doing a disservice to the Asian peoples and for bringing disgrace to our country. Thank you, Madam President.

MR JAMES TIEN (in Cantonese): Madam President, the Japanese Government's recent approval of the new edition of secondary school history textbooks written by a right-wing group, which contain distortions of the historical facts relating to Japan's invasion of its neighbouring countries during the Second World War, has incited a spate of extensive anti-Japanese protests in a number of mainland cities for three weeks in a row, and we have also seen peaceful demonstrations in Hong Kong.

Although this year is already the 60th anniversary of China's victory in the War, the tragic history of the War against Japanese invasion has remained not forgotten to us. We very much hope that all people in the world can learn a lesson from history and will work to prevent the recurrence of this tragic history. Therefore, the Liberal Party very much agrees with the spirit of the original motion today which condemns the Japanese Government for distorting history and evading responsibilities.

Despite the rapid advancement of information technology nowadays, Japan's attempt to unilaterally conceal the truth will never succeed. However, education can exert an imperceptible influence on people's mind and will hence have far-reaching implications on the next generation. It is, therefore, necessary for us to solemnly protest against these acts of Japan. We must call on the Japanese Government to face up squarely to the historical facts and totally abandon militarism, so that their descendents will understand this tragic episode in history and become constantly vigilant against the resurgence of militarism.

Although the Japanese Prime Minister, after strong protests from China, had "offered an apology" for his country's atrocities and aggression in the Second World War when he attended the Asia-African Summit in Indonesia, as two Members said in their speeches earlier, we must not only "listen to their words", but also "watch their deeds" before we can make sure that Japan has totally abandoned militarism. In other words, the Japanese Government must face up to history, show remorse sincerely and take concrete actions, such as offering an apology and making compensation to the countries and people who have suffered in the war, ceasing all its attempts to unlawfully occupy its neighbouring countries and their resources, and so on.

In recent years, Japan has made repeated attempts to occupy the Diaoyutai Islands and the oil and natural gas fields in the East China Sea, which are within Chinese territory. This precisely shows that Japan has not seriously learned a lesson from history and is still under the pernicious influence of militarism. The so-called "apology" is actually no more than a window-dressing gesture.

For these reasons, the amendment proposed by me today, which is primarily premised on the original motion, further calls on the Japanese Government to cease the unlawful occupation of the Diaoyutai Islands and the oil and natural gas fields in the East China Sea which are within the territory of our country.

It is indisputable that the Diaoyutai Islands have been Chinese territory since the ancient times. But over the years, the Japanese right-wingers have concocted various pretexts, such as repairing the lighthouse and safeguarding maritime safety, to actually mount guard over the waters surrounding the Diaoyutai Islands. Japan has also played little tricks, such as renewing the lease of the Diaoyutai Islands with "the owner". Besides, the Japanese Government has recently escalated their actions by nationalizing the so-called community facilities on the Islands. The newly revised textbooks even state directly that the Diaoyutai Islands are within the territory of Japan.

All these show that Japan intends to create the so-called "*fait accompli*", in a bid to tell the international community that Japan has actually gained control over the Diaoyutai Islands.

As to the oil and natural gas fields in the East China Sea, Japan mainly wishes to take advantage of the grey areas in international law to fish in trouble waters. According to the United Nations Convention of the Law of Sea, each coastal state is allowed to control the waters within 200 nautical miles from its territory as its Exclusive Economic Zone. Since the widest breadth of the waters in the East China Sea is 360 nautical miles, an area of 40 nautical miles in the waters is, therefore, under territorial disputes.

Yet, China has consistently offered an olive branch to Japan over the past 20 years by inviting Japan to jointly develop the area, just that Japan has ignored the goodwill of China and unilaterally commissioned private consortiums in Japan to carry out works in the region. Japan has even sent inspection airplanes and vessels to the Chunxiao oil and gas field under development by Chinese enterprises, and said that the oil and gas field would "siphon" the resources off Japan. But in fact, even if we adopt the "median line" principle advocated by Japan on the demarcation of territories, the oil and gas field is located 5 km on the Chinese side of the middle of the East China sea. This shows that the allegation made by the Japanese Government is sheer sophistry.

It is only until recently after the meeting between President HU Jintao and Japanese Prime Minister Junichiro KOIZUMI that Japan announced that it would negotiate with China on joint development on the condition that the negotiation would include the East China Sea "in its entirety".

The Liberal Party considers that the series of actions taken by Japan is basically intended to control the Diaoyutai Islands and the East China Sea where rich natural resources can be found. According to the estimation of experts, the waters surrounding the Diaoyutai Islands may contain a substantial body of petroleum, and the amount of petroleum already known to exist in the East China Sea exceeds 25 billion tonnes, and as much as 8 400 billion cu m of natural gas can also be found there. No wonder Japan wishes to obtain these economic benefits.

We hope that through their negotiations, China and Japan can come up with a win-win proposal on the joint development of the East China Sea. But we think that in the final analysis, Japan must first seriously reflect on its past mistakes in the War and totally abandon militarism and stop all acts of invasion of Chinese territory. Only in this way will the negotiations between China and Japan be truly meaningful and fruitful.

Mr Albert HO's amendment expresses concern over the intention of Japan to become a permanent member of the United Nations Security Council (UNSC). Premier WEN Jiabao has said to the effect that only a country that respects history, has the courage to shoulder its responsibility for its past, and wins the trust of the peoples of Asia and the world at large can play a more important role in the international community.

We, therefore, consider that only when Japan has taken steps to deeply reflect on its past atrocities in the War by, for instance, making a confession, ceasing to pay official homage to the Yasukuni Shrine and totally abandoning militarism, that it will be qualified to discuss its accession to the UNSC as a permanent member. In this connection, the Liberal Party also agrees that before Japan has fulfilled its responsibilities, the SAR Government should urge the Central Government to exercise its right of veto.

Having said so much, I wish to particularly make one point, and that is, we must be rational on this issue. We must be clear that what we oppose is what the right-wing elements and the incumbent Japanese Government have done. We should not blindly oppose Japan and the Japanese people in general. Indeed, we were very glad to see that Hong Kong people had expressed their dissatisfaction towards the Japanese Government in the procession earlier with a rational and peaceful attitude. So, I hope Members will support this motion and the two amendments, in order to once again put across to the Japanese Government and right-wing elements a message of strong protest.

Madam President, I so submit.

DR RAYMOND HO (in Cantonese): Madam President, Japan is one of the countries which started the Second World War and was defeated. During the Second World War, Japan did serious damage to the Asian countries. During the eight years of war, the atrocities committed by Japan on the divine land of our country made people seethe with anger. I have been to Nanjing where I saw the appalling brutalities of the Japanese army in the massacre at that time, so appalling that I could hardly bear the sight of them. Although the Japanese Government has stated that it would reflect on this incident, we can note from Japanese history textbooks the attitude of Japan towards history and that is, its words and deeds are inconsistent.

In April this year, the Ministry of Education, Culture, Sports, Science and Technology (the MECSST) of Japan approved a secondary school history textbook written by a right-wing group called the Japanese Society for History Textbook Reform which contains distortions of history and embellishment of Japan's acts of aggression. In 1986, a history textbook written by a right-wing group called the National Conference for Defending Japan for senior secondary forms, which embellished acts of aggression, was also approved by the MECSST. In 1982, history textbooks for senior secondary two and senior secondary three submitted for approval were required by the MECSST to play down or amend the parts describing Japan's history of invasion. From these three examples, it is not difficult to see that over the years, the Japanese Government has not conducted any in-depth soul-searching on its past. I wish to express my deepest regret at this.

Japan was a defeated country in the Second World War. Like other Asian countries, Japan was impoverished after the war. But Japan was different from other Asian countries in that its economic development was unmatched by any other country. Over the past few decades, Japan has developed from a small country into an economic power. Its electronic products are well known in the world, and its many achievements in this area have made people gasp in admiration. That Japan has managed to rebuild itself from the devastation of war and become a super economic power is attributed to its courage and determination. But the point is: Since Japan has the courage and determination to face and overcome the economic problems after the War, why does it not have the courage to face history and to face its people? Could it be that Japan wishes to keep its people in the dark for the rest of their lives and make them carry the historical baggage left by their ancestors forever?

Like Japan, Germany was also a country which started the war and was defeated. But after its defeat, Germany had the courage to shoulder its historical responsibilities and finally earned the respect of others. Recently, Japan has been striving to become a permanent member of the United Nations Security Council (UNSC). No doubt Japan is now a major country in the world, and it seems natural for it to become a permanent member. But how can a country which denies history and fails to learn from its mistakes in history take up such an important role? Not only has Japan failed to inculcate in its people a correct understanding of history through history textbooks, Japan's incumbent Prime Minister has even paid homage to the Yasukuni Shrine, which symbolizes militarism, every year, giving a wrong message to its people. Could these be

considered as proper acts that Japan should do after reflecting on its past crimes? Moreover, I must point out that Japan was one of the five permanent members of the League of Nations formed in 1920 after the First World War. It is extremely ridiculous that a permanent member of an organization promoting peace nevertheless started a war. The United Nations must draw on this lesson in considering whether Japan should become a permanent of the UNSC.

It has been more than half a century since the end of the Second World War. The countries which started the war should thoroughly conduct soul-searching, educate the next generation and learn from mistakes. This is what a responsible government should do to make up for its past mistakes.

Madam President, I so submit.

MR WONG KWOK-HING (in Cantonese): Madam President, the East Asian neighbours' strong reaction triggered by the approval by the Ministry of Education, Culture, Sports, Science and Technology (MECSST) of a new history textbook published by the Fusosha Company Limited has triggered anti-Japanese waves among Chinese people around the globe. Regarding such behaviour of distorting, evading and blurring historical facts by the MECSST, the Hong Kong Federation of Trade Unions (FTU) is not only profoundly infuriated, it also considers this an act of offending its neighbours and trampling on history by the Japanese Government. The FTU once again expresses its profound resentment here.

It has always been the case that, with the passage of time, we can see the historical facts of modern history more clearly and closer to the reality. This is because, after the baptism of time, historians will no longer be subject to political pressure and conflicts of interest. As a result, they can make a faithful record. However, Japan's attitude towards the history of its invasion of China and the Pacific War runs counter to this. After 60 full years, Japanese has still maintained the attitude of playing down the historical facts. It has even attempted to wipe out its past mistakes. Let us take the new history textbook, the one which takes centre stage in this incident, as an example. The textbook has concealed massive historical facts relating to the involvement of Japanese soldiers in the "Nanjing Massacre", women being forced to become "comfort women", the Pearl Harbour attacks, and so on. What is more, it has even given a false account of the true facts by distorting the "Marco Polo Bridge Incident",

saying that it was instigated by China. Amendments that seek to distort and play down history can indeed be found throughout the textbook. It is even more appalling that such an act of distorting history has occurred in Japan thrice before. We can see from this the perfunctory attitude and the lax standard adopted by Japan in handling historical facts that hurt the feeling of other peoples.

Madam President, the "Nanjing Massacre" was affirmed in the Far East martial court after the War, and it was clearly indicated that at least 150 000 Chinese soldiers and civilians had been killed in the Massacre. We should indeed despise the Japanese textbooks for not mentioning a single word on these facts. Furthermore, the textbooks have failed to give a fair, just, and even factual account of those surviving Chinese and Korean comfort women who suffered badly in those years. Instead, the textbooks have adopted an indifferent attitude in a bid to evade the matter. What kind of historical outlook is it? How can people believe that Japanese Prime Minister Junichiro KOIZUMI verbally expressed his "deep regret" out of repentance and regret?

During an earlier newspaper interview, Japan's Consul General in Hong Kong mentioned that "Japan has made its best effort to make compensation in accordance with the San Francisco Treaty" (end of quote). However, as we are all aware, the Japanese Government has yet to make any compensation to the comfort women who were badly hurt both physically and mentally and the Asian peoples who were forced to exchange their money for massive war currency. More importantly, what the people of the neighbours invaded by Japan would like to see most is actually an apology and reflection from the heart of the Japanese Government. If the Japanese Prime Minister, and even the Japanese Emperor, can demonstrate a breadth of mind and an attitude like what West German Chancellor Willy BRANDT did in the '70s, I think the people of my country will surely forgive Japan's past mistakes.

Actually, the MECSST can model on Germany in handling the issue of history education, that is, to face past mistakes with an open and proactive attitude. If problems and doubts are identified, Japan should all the more take the initiative to liaise with scholars of other countries for exchange and consensus-seeking. It should not, as at present, indiscriminately allow the right-wing activists to make unilateral interpretation of history, thereby causing discontent from its neighbours. During the Second World War, Germany

similarly committed serious war crimes. After the War, however, the country demonstrated its ability to assume its responsibilities bravely, without evading any war responsibilities that affect its national dignity, and strengthened history education and academic research on the Nazi regime. Eventually, Germany was accepted by various European countries, including those which were invaded by Germany during the war. Why does the Japanese Government not refer to the experience of Germany and hence turn hostility into friendship?

Lastly, Madam President, I would like to quote a famous line from a renowned German historian, Leopold von Ranke, to conclude my speech. He once said, "You have reckoned that history ought to judge the past and to instruct the contemporary world as to the future" (end of quote). After years of effort, post-war Germany has already set down its previous war baggage and become a peace member of Europe. It is a pity that the Japanese Government looks as if it is still living in the shadow of the "imperial historical outlook" and refusing to face up to history squarely. Its rightist behaviour has also caused tensions in the harmony enjoyed by various Asian countries. In this connection, I strongly appeal to the Japanese Government to actively face up to historical issues and strive to maintain peace in the Asian-Pacific Region.

With these remarks, Madam President, I support the original motion and the two amendments.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, Chinese Ambassador to Japan, WANG Yi, said earlier this year that the three major challenges to Sino-Japanese relations are historical issues, Taiwanese issues and the strategic inclination of the two nations. His words have precisely grasped the crux of the Sino-Japanese turmoil and the anti-Japanese waves that broke out in China.

Japan's distortion of the history of its invasion of China does not begin today. In the '80s, Japanese textbooks changed the wordings of "invading China" to "entering China". In the '90s, allusions to the Nanjing Massacre and comfort women were deleted. Recently, Japan even blamed China for triggering the Sino-Japanese War and claimed the Diaoyutai Islands its territory. Such brazen acts of alteration can actually be traced back to more than two decades ago.

For the past two decades or so, however the Chinese people protested, Japan continued to distort history. Moreover, its action has now got even more out of control. It is evident that the right-wing Government will not change its long-term policy of distorting history. Such an act seeks to gloss over Japan's historical crimes, thus removing obstacles for Japan to become a military power.

From this angle, we can better understand why successive Japanese Prime Ministers, from Yasuhiro NAKASONE, Ryutaro HASHIMOTO to the incumbent Junichiro KOIZUMI have exhausted every possible means to homage to the Yasukuni Shrine, turned the ceremony of offering sacrifices to Hideki TOJO into a normal practice, developed its Self-Defence Force (SDF) into an army by amending its constitution, and dispatched troops overseas under the pretext of keeping peace. Japan has only one objective and that is, to redevelop the country into a military power.

Chinese people have not forgotten history. Japan has always developed military power for the sole purpose of achieving political, economic and territorial expansion. During the Sino-Japanese War, Japan expanded its navy and seized Taiwan. During the War against Japanese invasion, Japan turned all its people into soldiers and annexed China. Today, Japan has resumed its efforts in expanding its military power for the sake of occupying the Diaoyutai Islands. Furthermore, it has attempted to explore the oil fields in the East China sea and include Taiwan in the protection net provided by the United States and Japan under the US-Japan Joint Declaration on Security signed with the United States. What Japan is up to is only too evident.

The provocation facing China currently is the resumed Japanese efforts of military expansion. Japan has intended to, through such means as occupation, seizure or segregation, directly achieve its purpose of taking forced possession of or forming alliance with the Diaoyutai Islands, East China Sea and Taiwan in order to rekindle its dream of reviving the Great East Asia and rebuild its military supremacy. Japan's long-term strategy is to curb and impede the peaceful rise of China to enable Japan to continue claiming supremacy and boosting its military alliance with the United States.

To achieve this goal, Japan can strike when it is strong. It can fight to become a permanent member of the United Nations Security Council so that it can build up and expand its military power to become a military powerhouse in Asia. It can also retreat when it is weak. It can say one thing and mean

another as well as making apology in a perfunctory manner. Yet, it will go on glossing over history and expanding its military power. Moreover, it will never admit failure and apologize for its mistakes.

Faced with Japan's ambition and this historical mighty neighbour, China can oppose Japan amending history and revising its constitution. It can oppose Japan becoming a permanent member of the United Nations Security Council. It can oppose Japanese Prime Minister paying homage to the Yasukuni Shrine. It can oppose Japan expanding its military power. It can oppose the forging of a military alliance between the United States and Japan. It can also oppose Japan invading the Diaoyutai Islands, seizing the oil fields in the East China Sea and encouraging Taiwan's independence. However, all the historical lessons can only vividly demonstrate that all disapproval and protests can in no way curb Japan's ambitions and stop the nation from growing strong.

Furthermore, the anti-Japanese campaigns in China are not long lasting. Under the baton and the authoritative stick of the Central Authorities, the people's power appears to be sometimes rising and sometimes falling, sometimes hot and sometimes cold, sometimes intense and sometimes dormant. Japan has seen through such a nationalistic temperament and such an authoritative government for a century and regarded this simply as a common phenomenon. Is there anything for Japan, with presence of mind in the face of changes, to fear?

For these reasons, what we really have to do today is to insist, insist and insist. We must not give up after five minutes. And we must not rise in an uproar and then disperse. We must oppose Japan distorting history, and yet teach our people history properly. We must oppose Japan becoming a permanent member and exercise our veto power in the United Nations by voting against Japan. We must oppose Japanese Prime Ministers paying homage to the Yasukuni Shrine and establish a memorial hall for the Nanjing Massacre. We must oppose Japanese opposition and allow democracy in our country to thrive. We must oppose Japan provoking Taiwan's segregation and strive for peaceful reunification with Taiwan.

The real way out for China's anti-Japanese movements hinges on the country's democracy, power and wealth. Democracy can bring comfort and happiness to the people and facilitate reunification with Taiwan. Power and wealth can curb Japan's ambitions, thereby bringing peace to China and Japan

and preventing the two countries from ever fighting each other again. Since the Sino-Japanese War, Chinese people have, for more than a century, been staging anti-Japanese protests through strikes and boycotts of Japanese goods. However, little has been achieved and our efforts have proved to be futile. Meanwhile, despite the fact that Japan's ambitions towards China and Japanese invasion of China date back to more than a century ago, there is still no sign of halting on the part of Japan. The most important reason is: The fact that China is still split and it is not yet strong and powerful has given Japan the opportunity to subject China to insults for a century and the people to elegy of the State. Presently, we have shed too many tears, lost countless lives, and summed up a great many profoundly sorrowful historical lessons. Presently, we still have to refer to the teachings left behind by the founder of our nation, Dr SUN Yat-sen, many, many years ago. Presently, we still have to advocate peaceful struggles to rescue China so as to enable our nation to really take the path towards democracy, power and wealth. Only in doing so can China gain the power and strength to curb Japan's dream of becoming a military state and pursue long-lasting and eternal peace.

Madam President, I so submit.

MR PATRICK LAU (in Cantonese): Madam President, today is the fourth of May. In 1919, or 85 years ago, the Beijing University launched the "May Fourth Movement" in protest against the proposal made by Japan and various powers in the Paris Conference of giving China unequal treatment. Madam President, I believe all the Chinese people in Hong Kong will support opposing Japan's textbooks distorting history.

Madam President, when I discussed this topic with different people recently, I noted from their response that the school textbooks in Hong Kong or other books and information mentioned too little about the history of the Japanese invasion of China and the Japanese occupation of Hong Kong for three years and eight months. As a result, many Hong Kong people, particularly the young ones, do not understand these traumatic experiences, thus failing to share the deep sorrow. Furthermore, Hong Kong people merely have a superficial knowledge of some major events in Chinese history, such as the sequence of events of the Marco Polo Bridge Incident, the May Fourth Movement, and so on. There is an impression that the Hong Kong Government has not even educated its

people properly and it has not taken its own history too seriously. Such being the case, how can it influence other countries?

Madam President, why would I say something like this? The Government House, formerly used by Hong Kong Governors and now by the Chief Executive of the HKSAR, was once converted as the headquarters of the Japanese invasion forces. For political reasons, and for the purpose of demonstrating their posture as a ruler, the Japanese carried out substantial conversions during its redevelopment and expansion by adding a lot of Japanese-style elements to this originally colonial Victorian building. In particular, a high tower was added in the centre. Without being surrounded by any high-rises at that time, the tower became a major symbol of Hong Kong being ruled by militarism. If analysed from the angle of architecture, we will find that the tower was built for the purpose of satisfying the hegemonistic mentality of the ruler. I believe many Hong Kong people, even Members who are sitting here in this Chamber, have no idea of or noticed this historical background. The Government House has since preserved its architectural style. Despite the repairs and construction works carried out by a number of Governors, the building has retained the major architectural characteristics of the period in which Hong Kong was ruled by Japan, including the Japanese-style tower.

The fact that even the residence of the head of the SAR (though the building has not been used as his residence) can put up with this Japanese style of architecture, bearing the traumatic experiences without any intention to change, and neither has the building been reconstructed in a style with Chinese flavour or Hong Kong characteristics because of the 1997 reunification does prove that Hong Kong people, being members of the Chinese race, are pretty generous. The Japanese Government should indeed learn from Hong Kong and act more generously. It should accept the historical facts of those years and stop glossing over its own faults with beautiful lies.

Madam President, if you or someone asks me whether it is necessary to alter the architectural outlook of the Government House, my answer will be "no". We should let this building, witnessing numerous unforgettable historical facts, educate our next generation that they must strive to make self-improvement. Despite the fact that it carries such a strong Japanese militarist flavour and records traumatic experiences, we have not restored or altered it a bit. In comparison, the Japanese Government has allowed its people

to distort history textbooks and twist historical facts. People around the world will evidently find such an act ungentlemanly.

Faced with this act of the Japanese Government induced by an ulterior motive, pure condemnation is not enough, and neither will it be very useful. The Hong Kong Government should take this as a warning. It should be more proactive and take a step forward by boosting national education, help the public better understand their history and upgrade their patriotic sentiments. More importantly, a museum must be built to give an account of the historical facts of the Japanese occupation of Hong Kong to truly present the ugly faces of the Japanese Government in oppressing the Chinese people before the eyes of Hong Kong people, with a view to enabling our next generation to understand the true historical facts. Thank you, Madam President.

MR MA LIK (in Cantonese): Madam President, on the issue of history textbooks, the Japanese Government has been using the excuse that textbooks never reflect the position of the Japanese Government to exonerate itself. In addition to its claim that the Government cannot interfere with the historical outlook of textbooks published by the people, it has even euphemistically described its action as an attempt to protect freedom of speech and publication.

However, we can see from the development of certain events in Japan in recent years how the Japanese politicians protected freedom of speech and publication in relation to historical issues. Last year, a Japanese cartoonist published serial historical cartoon strips depicting the atrocities committed by the Japanese army during its invasion of China, pointing out that it had engaged in "stupid acts that all mankind should not forget". Even though he merely used the expression "stupid acts", not "sinful acts", he was consequently censured, attacked by right-wing politicians, and ultimately forced to withdraw his statement. What is more, he was required to apologize. Early this year, the production staff of NHK admitted that a television programme broadcast in 2001 on comfort women and the responsibility of the Japanese Emperor for staging the war had been edited and revised under force due to pressure from senior officials of the Liberal Democratic Party. In fact, Japanese politicians, including government officials, Diet members and political party members, have from time to time delivered speeches on public occasions, remarks denying the crimes committed during the Second World War. This is nothing strange to the

international community. Through their political influence, these people advocate the so-called "imperial historical outlook", depreciating the faithful record of war crimes and repentance as the "masochistic outlook of history". Their intention to lead the ideology of Japanese society in order to reverse history is no secret at all.

The saying that the Japanese Government will not intervene with the textbook issue is indeed a myth. The litigation case involving a textbook compiled by a historian, Prof Saburo IENAGA of the Tokyo Education University, is a case in point. In his book entitled *New History of Japan*, all historical facts relating to the September 18 Incident, Nanjing Massacre, resistance put up by Korean people against Japan, Unit 731 of the Japanese Army, and so on, were ruled by the Ministry of Education, Culture, Sports, Science and Technology (MECSST) as substandard and ordered to be revised. At that time, some Japanese educationists supporting Saburo IENAGA strongly criticized the way in which the Japanese Government handled the matter, maintaining that the account of the textbook compiled by Saburo IENAGA was well grounded. On the contrary, the Japanese Government ruled that these views represent an indiscriminate interpretation of history and theories, as well as a stark academic and educational interference.

Under the accreditation system for Japanese textbooks, the council with non-governmental representatives is just an advisory body. The ultimate power of accreditation is vested in the Minister of the MECSST. This system contains a clause on "neighbouring countries" requiring that essential consideration from the angle of international understanding and co-ordination has to be given in handling historical incidents involving Japan and its Asian neighbours in modern history. Furthermore, in 2000 and 2001, under the "guidance" twice given by the MECSST, the National Education Committee revised the textbooks selection system. Under the revised system, textbooks shall be picked by various Education Committees. As a result, front-line teachers no longer decide which textbooks to use.

It can thus be seen that, on the issue of accrediting and even adopting history textbooks, the Japanese Government has all along played a key role. As regards matters involving its neighbours, the Japanese Government similarly holds the deciding authority over how to adopt and discard historical facts and how to manifest its historical outlook. It is evident from the Japanese Government's past interference in textbooks that the saying that the textbooks do

not represent or reflect its position and it cannot intervene is entirely a pretext for pulling wool over the public eye.

An American scholar once said that the compilation of history represents an ongoing process of judgement. The accreditation of history textbooks by a government all the more represents a value-judgement process, and its official position will be reflected. Should the Japanese Government endorse some deliberately selected or adulterated historical representation, or accept that some aggressive atrocities are controversial or inconclusive, or even allow some historical interpretation with totally distorted value judgement, its offer of apologies and reflection on its mistakes with respect to similar historical issues will definitely cast doubts as to whether its acts are hypocritical.

The fact that the Japanese Government has, on the one hand, made apologies and reflections but, on the other, held on to its false historical outlook has attracted words and acts of resentment from the people of its neighbouring countries. This two-sided approach has not only been manifested in the textbook issue, but also in the issue of paying homage to the Yasukuni Shrine.

It has been pointed out that a decade ago, Prime Minister Tomiichi MURAYAMA made a statement on "reflections" and "apology" to the Asian peoples with respect to the Second World War. On the same day, 10 Cabinet members and more than 100 members of the Liberal Democratic Party paid homage to the Yasukuni Shrine. Today, a decade after, the recital by the incumbent Prime Minister of the words of Tomiichi MURAYAMA in Bandung seems to imply that he is "doing soul searching" or "expressing apology" too. However, coincidentally, on the same day, more than 100 Diet members and politicians paid homage to the Yasukuni Shrine. Actually, the Prime Minister is still reluctant to state explicitly that he will never pay homage to the Yasukuni Shrine again. No wonder the Dutch Government has declined to accept the apology extended by him during his visit to the country.

Given such a two-sided approach, how can Japan convince people that it has the courage of facing history and will act according to its words? We cannot stop people with an uncommonly low taste. Some governments simply love to explore glory and self-confidence in their historical sins. Such behaviour cannot be stopped too. We cannot regard people with an uncommonly low taste as normal; neither can we treat those countries or governments which love to dig out glory in their historical sins as normal. The

United Nations would be unfortunate should such a government be allowed to join as a permanent member.

Madam President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the recent distortion by a Japanese right-wing group of the historical facts of the invasion of China has triggered strong reactions, demonstrations and waves of procession and protests in the entire Chinese community and countries which have been invaded by Japan, such as Korea. Actually, such protests have occurred countless times during the past three decades or so because of the Japanese Government's occupation of the Diaoyutai Islands, followed by its distortion of history. Its refusal to offer apology one moment and make compensation the next has infuriated those nationalities which were subjected to the atrocities of the Japanese troops during the Second World War. However, it must be emphasized that, in staging protests, we must convince people with reason, and avoid any violent actions pinpointing Japan's ordinary people. To answer violence with violence will not only prevent us from resolving disputes, but also trigger conflicts among ordinary people. This is what Japan's right-wing politicians and political bodies would be most delighted to see.

Regarding the recent disputes over Japan's distortion of the historical facts of its invasion of China, some people hold that Japan's current history textbooks have more than one version, actually seven, and only one version is controversial. The fact that this version of history textbook is only accepted by 1% or so of the secondary schools in Japan does show that the problem is not very serious. However, Madam President, whether it is one seventh or 1%, it is indisputable that there remain some groups in Japan which are attempting to whitewash their inglorious history of aggression, and their actions are financed and organized. Should we fail to demonstrate an attitude of opposition promptly, they will only get even more out of control, thereby providing soil for such misdeeds to develop.

We have to make Japan's next generation understand that, during the Second World War, not only some Japanese soldiers were killed, not only some Japanese civilians in Hiroshima and Nagasaki were bombed by the atomic bombs dropped by the United States, millions of ordinary people in East Asia were

killed by Japanese troops too. We have to make the Japanese people face up to history in that not only should they reflect on their past acts of aggression, but also realize the crux of the issue so that they will oppose any acts of war that may possibly occur in future.

Some people maintain that history is not written by right-wing politicians. The acts of the minority politicians should not be exaggerated in such a manner, and we should not oppose and worry the resurgence of militarism. Yet, we must bear in mind one thing. All politicians in Japan's political arena today, including Prime Minister Junichiro KOIZUMI and Shintaro ISHIHARA, the Governor of Tokyo, were elected by Japanese citizens by "one person, one vote". To a certain extent, these politicians represent the entire Japanese society, particularly the way of thinking of adults. Should we fail to argue on the basis of reason and present the historical facts in discussions with the Japanese people, it is feared that, under their political propaganda, the number of supporters will continue to grow and false reasoning will become facts, thereby giving further support to the right-wing politicians in their expansion attempts.

Actually, the phenomenon of "moving to the right" has emerged in Japanese society in recent years. According to the latest opinion poll, more than 60% of the general public agree to amending the constitution to allow Japan to have its own troops. It is already an iron-clad fact that the Japanese right-wing Government has always looked for opportunities to amend the constitution to enable it to dispatch troops overseas.

Under the leadership of the United States after the War, Japan enacted a new constitution to affirm three principles on "allowing the people to assume sovereignty, respecting human rights and peace doctrines". In Article 9 of Chapter II of its constitution, Japan announced renouncing the use of force as a means of settling international disputes and, in order to accomplish this aim, land, sea, and air forces would never be maintained, and the right of belligerency of the state would not be recognized. For these reasons, there are no national defence forces, but only Self-Defense Forces (SDF), in Japan. The new constitution is called peace constitution. Nevertheless, after development for half a century, the so-called SDF is now, in essence, no different from "armed forces". It has now become an elite military force with a combined force of 240 000, equipped with sophisticated land, sea, and air defence armoury. It is absolutely qualified to be hailed as a first-rate military force in Asia.

During the '50s and '60s, the Japanese right-wing Government, reluctant to be subject to the restriction imposed by the peace constitution mentioned earlier on military expansion, repeatedly passed relevant laws on dispatching troops overseas, on the pretext of supporting the maintenance of peace-keeping forces, with the assistance of its ally, the United States. These laws include the United Nations peace keeping operation law enacted in 1992, the act of peripheral affairs enacted in 1995, the act of anti-terrorist special measures enacted in 2001, and the three bills proposed in 2003 under the contingency legislation with respect to emergency attack-response, amending the Self-Defense Forces law and the establishment of the Security Council of Japan. These bills empower the Prime Minister to mobilize the SDF in response to "foreign military attack" and "perceived threat of attack". This is evidently in breach of the attitude of giving up war and denying the power of war in the peace constitution. In particular, the definition of "response to perceived threat of attack" is extremely ambiguous. As a result, it is impossible to check the power of the Japanese right-wing Government in mobilizing the SDF. In this respect, we are even more worried that these bills will allow the Japanese Government to expand its military power.

We can see from these laws that the Japanese right-wing Government and its supporters have never given up any opportunities of expanding its armed forces and its intention of invading other countries. Perhaps some people may think that unless the existing Japanese constitutional system is replaced by dictatorship, with soldiers ruling the country, it will be very difficult to say that there is a possibility of Japanese imperialism and militarism being restored. However, it must be pointed out that a militarist government supported by its people is even more frightening. One such example is the United States Government. As supporters of world peace, we should all the more keep a close watch on the developments. In order not to let the events get out of control, we should now issue a serious warning to the Japanese right-wing Government.

Of course, we understand that there are plenty of ordinary Japanese who oppose military expansion and face up to history squarely. In a survey conducted by the *Asahi Shimbun* on "should the Government make post-war compensation" on 14 November 1993, it was found that 50% of the Japanese respondents agreed and 37% disagreed. In particular, 72% of the young people aged between 20 and 24 agreed, and only 21% disagreed. It is thus evident that

Japan's next generation is even more willing to face up to history (*The buzzer sounded*)

Madam President, I so submit.

MR WONG YUNG-KAN (in Cantonese): Madam President, the topic we are debating in this old edifice today — "opposing Japan's textbooks distorting history" — is particularly profound in meaning, as this building was a venue directly related to the historical past in question. Some 60 years ago, during the Japanese occupation, this building was converted into the headquarters of the Kempeitai in Hong Kong, where numerous people were terrorized by the Japanese in a Gestapo fashion. The head of the Kempeitai was Kennosuke NOMA, often nicknamed "the Killer" for his cold-bloodedness and ruthlessness. With the aid of some Chinese traitors, scoundrels and the like, he bullied and oppressed the people, arresting and executing them at will. He even turned the basement of this building into an inquisition venue, where people were subjected to various kinds of torture, such as drinking by force, suspension, crush injuries using ankle-compressors, electro-shocks, burns, whipping, and so on. Many innocent people who could not withstand such torture died as a result, much aggrieved. I hereby extend my deep condolences to all those compatriots who died in this building years ago.

These are just some of the atrocities committed by the Japanese Army during the three years and eight months of occupation. Other brutalities, much more infuriating, were committed elsewhere all over Hong Kong and Kowloon. There are huge volumes of literature recording how the Japanese ransacked people's homes on various excuses, how people were beaten up or even tortured to death for showing just the slightest sign of disrespect when walking past Japanese military guard posts, how women (even elderly ones) were raped, how mothers and sons were forced to commit incest in the presence of others, how people were taken away for forced labour, how people were forced to undergo blood transfusion with Japanese soldiers, how people were rendered homeless, how granaries were emptied by the Japanese, leading to many deaths, and how people lived under fear and panic all the time, as if in hell.

The Japanese Army committed their atrocities not only in the urban areas but also in the villages and fishing villages of the New Territories. Since guerrillas of the Dongjiang Column were scattered in many New Territories

villages and Japanese soldiers were frequently ambushed and attacked by these guerrillas, the latter often retaliated by attacking the villages concerned, adopting what is called the policy of "Three All's", burning down all, killing all and looting all.

According to historical records, in August 1945, in revenge for the killing of their peers by guerrillas, a squad of Japanese soldiers at Mui Wo on Lantau Island stormed into the village concerned, shooting around, setting fire on everything, beheading the villagers, suspending them for beating and committing many other atrocities beyond imagination, in total disregard for the fact that Japan had already surrendered.

Fishermen, in particular, were the earliest victims of the Japanese invasion of Hong Kong. After 7 July 1937 when China staged a total war of resistance against Japan, but before Hong Kong even became a target of Japanese attacks, there were already sporadic incursions of Japanese airplanes and gunboats near the Hong Kong border, and sometimes, they even crossed into the territorial air and waters of Hong Kong to attack operating fishing vessels. In just a few years, they bombed and destroyed several hundred fishing boats, killing several thousand innocent fishermen. After the fall of Hong Kong, fishermen sailing out of Hong Kong for catches were frequently intercepted by the Japanese forces on the excuse that they were trying to smuggle supplies out of Hong Kong. On one occasion, all the family members of a fisherman were bound together by a metal wire that passed through their palms. All of them were then tied to the cabin before they were burnt to death together with the boat.

Madam President, the atrocities done by the Japanese forces in Hong Kong as described above are all quoted from reliable literature based on the written or oral accounts of actual victims. Such accounts are far more reliable than the history textbooks compiled by the Japanese Ministry of Education, Culture, Sports, Science and Technology through right-wing organizations that blatantly seek to doctor history.

Madam President, as the saying goes, "it is fortunate that history is written by the people". Historical facts cannot be blurred forever by any handful of people seeking to achieve any partisan political expediency. The history of the Japanese invasion of China, for example, was recorded not only by the people; the earliest and most truthful records were actually made by the Japanese

aggressors themselves. Many of the photographs and much of the footage on the Japanese invasion of China that we see today, especially those on the cruellest atrocities of killing races, raping and mass burials of people who were still alive, were taken by the cold-blooded soldiers on the spot. Thanks to their records, people after them are able to learn of their numerous immoral deeds at the time of their "entering" China years back.

How much Japan owes to China and the Southeast Asian peoples for causing all the bloodshed in the last century can never be fully accounted. However, it has all along refused to pay any compensation and extend any apology to the peoples of the countries that suffered its aggression. Worse still, in defiance of world opinions, its Prime Minister has been paying tribute to the Class A War Criminals enshrined at Yasukuni Shrine year after year. Japan has been trying to cover up the crimes it committed, and it does not have the courage to admit its mistakes. As a result, people of other countries have been making compensation claims against it year after year, so its international image is very poor. For many years, Japan has hoped to become a permanent member of the United Nations Security Council. But how can we allow this country to assume such an important role in this peace-keeping organization of the world, bearing in the mind its attempts to doctor the historical records on how it massively trampled on the human rights of the peoples in other countries?

Lessons learnt from the past can guide one in the future. I believe that if we Chinese people wish to prevent any further outbreaks of war, we must develop our country and make it strong and powerful. I also hope that peace will continue to prevail in our society, so that we can contribute to build up a strong China.

Madam President, I so submit.

DR JOSEPH LEE (in Cantonese): Madam President, the purpose of studying history is to draw lessons from the experience of our antecedents for the building up of a better tomorrow. This year is the 60th anniversary of China's victory in the war of resistance. However, even after the passage of 60 years, the Japanese Government still refuses to face up to history squarely. Instead, it has time and again tried to doctor history by revising its history textbooks. Since half a century ago, Japan has tried three times to do so.

In the 1950s, the Democratic Party of Japan launched the biggest ever revision of history textbooks in the country. As a result of this revision, the occurrence of the Nanjing Massacre was denied, and Japanese "aggression" was rephrased as "entry" in a bid to play down the harm inflicted by Japan on the whole world. Although the revision was overruled in 1970 when Japanese historian Saburo IENAGA won his lawsuit against the Ministry of Education, Culture, Sports, Science and Technology (the MECSSST), another attempt of revision was made in the 1980s, in which the MECSSST once again rephrased "aggression" as "entry", referring to the Nanjing Massacre as "occurring in the midst of confusion".

The third revision came in 2000, when a group of Japanese scholars formed the Japanese Society for History Textbook Reform. On 3 April 2001, the Society published a set of textbooks entitled *New History and Civics Textbooks*. Advocating the "imperial historical outlook", these textbooks blatantly obliterate all the historical facts and bitter memories associated with the Japanese aggression of other countries in the Second World War. As a result, the Kyoto Education Committee was able to decide that with effect from April 2005, certain schools can be permitted to use this new set of textbooks.

Madam President, the attempts by Japan to distort the historical facts, to conceal the truth, to confound right and wrong, to gloss over the crimes of militarism and to glorify its aggression have not only defied human justice and conscience, thus seriously hurting the feelings of war victims, but also misled its young generations, preventing them from learning the truth. They have never, at any time after the war, admitted their aggression of other countries, nor have they ever extended any apology and pay any compensation to the countries victimized by their aggression. This cowardly attempt by the Japanese Government to conceal the truth is not only irresponsible but also extremely shameless.

Madam President, many acts of Japan in recent years, such as those listed below, have aroused great anxieties among its neighbouring countries:

- (1) Japan frequently claims that the Diaoyutai Islands and the East China Sea are part of its territory, disregarding the sovereignty claims of other countries, in particular China.

- (2) For reasons of persistent economic sluggishness, the Japanese Prime Minister, Junichiro KOIZUMI, has repeatedly led his cabinet to pay homage to the Yasukuni Shrine since his assumption of office in 2001, in a bid to affirm militarism. This has caused anxieties in neighbouring countries.
- (3) In recent years, Japan has made particular and incessant efforts to increase its defence expenditure. The expenditure even increased to as much as US\$50 billion in the past year, second only to the United States. The continuous growth of Japan's military power will cause a certain extent of psychological impact on its neighbours. Regarding its military strength, although Japan is permitted to maintain only a Self Defense Force after the Second World War, its land, sea and air forces have by now greatly increased in strength. As pointed out by other Members, the three Laws passed by the House of Councillors of Japan in June 2003, namely, "The Law to Amend the Self-Defense Forces Law", "The Law on the Establishment of the Security Council of Japan" and "The Law regarding Response to Armed Attacks", are all meant to expand the scope of activities for the Self Defense Force in the Asia-Pacific Region.
- (4) For 11 years, the Japanese Government has been actively seeking permanent membership in the United Nations Security Council (UNSC). It also hopes to bear 15.4% of the expenditure of the United Nations. But on the other hand, it has been expanding its military strength all the time, refusing to reflect on its war crimes and extend a sincere apology, and thus causing anxieties among its neighbouring countries. For all these reasons, how can it be qualified to become a permanent member of the UNSC?

Madam President, for reasons of all these acts by the Japanese Government, Legislative Council Members must support the severe condemnation of the Japanese Government and oppose Japan becoming a permanent member of the UNSC.

Madam President, I have spoken in support of the original motion and the amendments. I so submit.

MISS CHOY SO-YUK (in Cantonese): Madam President, Japan committed numerous war crimes against our country, inflicting harm on countless Chinese people. In the valiant war of resistance, many Chinese people shed their blood and tears. In this sorrowful yet epic period in history, hundreds and thousands of heroes defended their country with their lives. One of these heroes was General YANG Jingyu, who formed the Northeastern Anti-Japanese Allied Army after the Shenyang Incident in 1931. He subsequently eradicated 180 000 enemy troops, preventing 600 000 Japanese soldiers from crossing into China proper. However, he was killed in battle in 1940 at the young age of just 35.

Madam President, with your indulgence, I would like to read aloud in Putonghua two verses of a song written by General YANG Jingyu — "The United Front of the Chinese and Korean Peoples Against Japan". In so doing, I hope to illustrate the high morale and noble patriotism of the Chinese people during the war of resistance against Japan. Today, when we witness the revival of Japanese militarism, how can we forget the countless many national heroes like General YANG Jingyu?

(in Putonghua)

Indignant, and roaring, the two peoples are awakened.

Heroes with broken limbs all scrambled for the Lamp of Ten Thousand Years.

The Standard sees the enemy crumbling, extinguishing the flame of invasion.

A reinforced army and a strong defence lay the foundation of victory.

The fiery star of resistance lights up the whole world, never fading.

The vicious Japanese bandits are digging their own graves, past any redemption.

We must charge forward fearlessly, for the outcome is never destined.

Men dispose, and their strong determination will see the arrival of twilight.

(Delivery in Cantonese resumed)

Madam President, we can forgive, but we can never forget. We can never forget the bloodshed, tears and wounds of our country under Japanese aggression. We can never forget the shamelessness of the Japanese Government, its refusal to show any remorse for its past atrocities and to extend any apology and pay any compensation. We can never forget how the revival of the spectre of Japanese militarism has led the right-wing Japanese Government

to doctor history through continuous textbook revisions, and to glorify war criminals by paying tribute to them at the Yasukuni Shrine. Most importantly, we can never forget that it was with their own flesh and blood that the Chinese people defended their country against the sabres and guns of the Japanese.

The Japanese intention of joining the United Nations Security Council, the American-Japanese defence alliance and the Diaoyutai problem all remind me of the need for brave warriors, of another national hero in the war of resistance — General LI Zhaolin, the Commander-in-Chief of the Third Route Army of the Northeastern Ant-Japanese Allied Army. In the days of the war of resistance against Japan, during the hardship of his western expedition, he wrote this song — The Song of the Army Tent. In this song, he described how the strong determination of his army to fight the Japanese till the end and "recover the fallen lands" was never softened by the inclement weather "in the tempest", the hardship of "sore feet, sweats and gasps", the "enemy fortress that scares the chargers to a halt" and "the freezing air that makes sleep impossible" in the snow-covered tent site. Madam President, with your indulgence, I would like to read aloud in Putonghua the first two verses of this song:

(in Putonghua)

Insurmountable and precipitous ridges enveloped in dense woods and forests.
Chargers neighing in the tempest beside a stream in the wasteland.
Soldiers clustering round the fire of solidarity that lights up the whole sky.
Comrades! Be determined and fear not the evening tides of Sungari.
All rise! Charge forward fearlessly.
Expel the Japanese bandits. Recover Manchuria.
When morning breaks, the glamour of victory will show.

Dense canopies and wild flowers.
Sore feet, sweats and gasps of warriors under the shadow of low, moist clouds.
Shellfire bursting in the sky. Fatigues stained by blood from mosquito bites.
Warriors! Your burning patriotism shall overcome the Xingan Mountains.
Persevere! Shoulder your heavy responsibility.
Break the blockade. Crack the siege.
When twilight comes, darkness will vanish.

(Delivery in Cantonese resumed)

Madam President, we will never forget history. The Chinese people will never forget the war crimes committed by the Japanese. Let us all join hands to prevent the revival of militarism and work for the strengthening of Chinese race. Madam President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, this motion debate has come just at the right time because today is the 86th anniversary of the May Fourth Movement. As we all know, the May Fourth Movement was a patriotic student movement sparked off by Japan's seizure of Shandong. Sixteen years ago today, in Chater Garden outside the Legislative Council Building, several thousand university students assembled to commemorate the 70th anniversary of the May Fourth Movement and to show their support for the pro-democracy movement of students in the Mainland. Even today, I can still remember scenes of the assembly.

It carries a special meaning for us to oppose Japan's revision of history textbooks on this anniversary day of the May Fourth Movement. As we all know, one of the slogans chanted most loudly during the May Fourth Movement was "Struggle for sovereignty externally. Get rid of national traitors at home". The May Fourth Movement also brought home to the Chinese people two significant concepts: Mr Democracy and Mr Science. Mr Democracy denoted the pursuit of democracy and Mr Science stood for an emphasis on the sciences.

Here, I must take the opportunity to pay my tribute to those compatriots who have organized all the protests against Japan's revision of history textbooks. It is criticized that their behaviour has sometimes been over board, but then, let us not forget that their main intention is just to tell the whole world that all the 1.3 billion people in China and many overseas Chinese, or even non-ethnic Chinese, oppose the revival of Japanese militarism. But it is such a great pity that when I am speaking here now, many of them are held in detention. There could have been a very large-scale anti-Japanese protest in the Mainland today, but "before victory comes, the soldiers are already killed". I mean, they are not literally killed. But they are now detained. I must therefore pay tribute to

them in this Chamber, and I also urge the mainland authorities to release them and allow them to speak freely on their opposition to the revival of Japanese militarism.

Madam President, there have been three movements in Hong Kong against Japan's revision of history textbooks. The first occurred on 18 September in 1982. That day, some 10 000 people assembled at Victoria Park to oppose Japan's revision of history textbooks. Twenty-three years have passed, but what people opposed years back has only escalated.

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

I also want to say a few words in defence of a friend of mine — Mr SZETO Wah, who has been an eloquent orator in this Chamber for more than a decade. In a recent anti-Japanese assembly, he did nothing more than just quoting something he had seen. He only said that after the suppression on 4 June, he saw this in a bookshop: "The Nanjing Massacre was about Japanese slaughtering Chinese, but the 4 June Massacre was about Chinese slaughtering Chinese". However, he was immediately greeted by catcalls. This saddens me very much. I must ask, "In what ways can national dignity, or racial dignity, be manifested?" Apart from the protection of sovereignty against alien control and abuse, the most important manifestation should be the exercise of sovereignty by the people. A man was greeted by catcalls simply because of his reference to a certain historical incident. Some even threatened to beat him up, and he was bad-mouthed by many newspapers subsequently. I must therefore make it very clear that patriotism must be accompanied by respect for the basic human rights of our compatriots. I have to say this to all those who jeered at Mr SZETO: Have you ever voiced any protest on behalf of your compatriots who are now detained and harassed by the government for the same patriotic cause you advocate? All can be equally patriotic regardless of their political positions or when they decide to be so. Have you ever considered all these compatriots?

I can see where all the problems lie. I must say that while we should struggle for sovereignty externally, we must at the same time fight for human rights at home. On my part, I will not dwell on whether Japan can become a permanent member of the United Nations Security Council, for I have already made my position very clear. The United States is a permanent member of the Security Council, but President George W. BUSH could still ignore the opposition of other countries and invade Iraq. Therefore, whether Japan can become a permanent member of the Security Council is no longer an issue of any importance. I must once again make the appeal that we must start living as a decent Asian, as a decent Chinese, before we can talk about patriotism and resisting Japan.

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, time is up.

MISS TAM HEUNG-MAN (in Cantonese): Madam Deputy, on this day 86 years ago, the Chinese people launched an anti-Japanese movement because it was decided in the Paris Peace Conference convened after the First World War that the interests held by Germany in Shandong Province would be transferred to Japan, thus triggering the May Fourth Movement which had far-reaching impact on China's development. Today, 86 years later, we have to declare in this Chamber to the Japanese Government again that we will by no means allow the Japanese to deny its history and in no way will we tolerate the resurgence of Japanese militarism. From the First Sino-Japanese War to now, over a hundred years have passed. When will Japan really face up to its history and abandon its hostile attitude towards China?

Recently, by approving history textbooks that distort history, the Japanese Government has demonstrated its unwillingness to accept the historical fact that it invaded nations in Asia back in those years. Given the intransigent attitude of the Japanese, it will be hoping against hope to urge them to offer reasonable apologies and compensations to those killed and victimized in the War. In the Asia-Africa Summit, the Japanese Prime Minister, Junichiro KOIZUMI, gave a speech and expressed regret over the conduct of the Japanese during the Pacific War. However, we all have a good idea as to whether this kind of so-called "apology" is a diplomatic gesture or a sincere admission of wrongdoing. Should the Japanese Prime Minister publicly ask the people in various nations in

Asia for pardon one of these days, I will then be convinced that the Japanese are truly repentant over the war crimes committed by their predecessors.

Although the Japanese Prime Minister is paying lip service by that apology, in reality, he is deviating further from the direction of being truly repentant. Japan is a nation that attaches great importance to education on history. Allowing textbooks that do not conform to the facts to be published is to completely deny the new generation in Japan of the opportunity to look at the historical facts clearly. When these students grow up and become the pillars of their country, will they face up to historical facts anymore? They will only agree with even greater conviction that the war waged by Japan against various nations in Asia in those years was justified and worthwhile. They will think that there is no need to express any regret to the international community. In that event, how can we possibly hope that the Japanese Government will feel deeply remorseful?

Of course, in the face of the distortion of history in the textbooks in Japan, the adamant refusal of Japan to ask for forgiveness from people in various Asian nations and its unwillingness to offer reasonable compensation, there is nothing much that society, the general public and Members of the Legislative Council can do. The most that we can do is to take to the streets and express our opinions. We have no control over how their textbooks are written. The unwillingness of Japan to offer any apology is also its own subjective wish over which we have no control. However, is it really the case that there is nothing we can do?

The answer to this question is of course in the negative. Although we cannot prevent history from being distorted in textbooks, we can still urge the Central Government and various Asian nations to exert pressure on Japan at the diplomatic level. Nowadays, Japan is yearning to become a permanent member of the United Nations Security Council. We can make use of this opportunity to persuade various countries through diplomatic channels to prevent Japan from becoming a permanent member and elevate this issue to a level above that of the bilateral relationship between China and Japan. We should make Japan know that it is not due to the territorial disputes between China and Japan that China wants to hinder Japan from taking part in international affairs, but that the international community will not allow a country that denies history to exert political influence in the international community. Regarding Germany, which was also defeated in the Second World War, its Chancellor once knelt down to

express repentance to the Jews. What about Japan? Nowadays, Germany has been accepted by the international community and also wants to become a permanent member of the Security Council. The reaction elicited by this move is far more muted compared to that to Japan. We have to stress that we do not want to shut Japan completely out of the international community. This is not a goal or thought that the Chinese should contemplate. We believe that it is necessary to send a message to Japan, that is, Japan must admit the historical facts and apologize sincerely before it can establish full international relationships and assimilate into the international community.

Another example illustrative of the denial of historical facts and the absence of remorse on the part of the Japanese Government can be seen in the disputes in the sovereignty over the East China Sea and the Diaoyutai Islands. The Japanese side has condoned right-wing elements in fomenting incidents and approved an application to test-drill for energy resources in the East China Sea. This action deliberately overlooks the disputes over sovereignty and pays no heed whatsoever to China. In view of this, the Central Government must show greater resolve and must by no means back down in any issue. In the face of Japan's arrogance and overweening attitude, even though China wants to maintain friendly relations with Japan, it should also respond to the sentiments and demands of its people in earnest, remonstrate with Japan at the diplomatic level and avoid giving others an impression of weakness. Finally, the behaviour of the Japanese in denying the historical facts again is an issue of distinct right and wrong. We should urge the Central Government to attach importance to this matter and elevate this issue to the international level, so that the dispute can be resolved in a satisfactory and peaceful manner. I so submit.

MR LI KWOK-YING (in Cantonese): Madam Deputy, the focus of today's debate falls not just on opposing Japan's revision of history textbooks which brazenly doctor history. Instead, judging from the provocative moves taken by the Japanese Government against our country recently, such as their unlawful occupation of the Diaoyutai Islands and the oil and natural gas fields in the East China Sea, we should realize that the act of doctoring history in their history textbooks is just the means to an end, and the end is to invade our national territory. Members of the public have taken to the streets and participated in demonstrations to condemn the Japanese Government and to state it clearly that the Chinese people are not to be bullied. It is most encouraging to witness that patriotism is prevalent throughout the country.

However, having gone through these passionate moments, apart from keep launching strong written and verbal criticisms against the Japanese Government, we should make it a priority task to identify a proper way of handling Sino-Japanese relations in future. We should not be opposing the Japanese just for the sake of opposition. We have to handle Sino-Japanese relations with rationality and vision. Staging demonstrations against the Japanese is a way of expressing patriotism by the Chinese people. However, if we can convert this patriotism into a positive eagerness among the people to do something for the country, thereby making China stronger and richer and stabilizing our society, then we will not give invaders any opportunity to assault our country and stop them from spreading fallacies in the guise of universal truths.

China and Japan have long been entangled in territorial disputes. The rich oil resources in the East China Sea have led to a conflict of interest between the two sides. Japan is an island nation, where natural resources are scarce. Therefore, in order to ensure their economic dominance, or even to revive their past glory as a military superpower, Japan will be vying for the area of the East China Sea. As a result, the Japanese Government is taking an increasingly strong stance over the territorial disputes, showing no signs of reconciliation at all.

However, must this battle for energy resources result in a full-scale confrontation, with both sides ending up as devastated losers? It must not. China is a peace-loving country. We oppose the revival of militarism by the Japanese Government. But on the issue of promoting Sino-Japanese relations, we hope to handle it rationally. Let us take the Sino-Japanese dispute over the East China Sea as an example. The Chinese Government has proposed to "put aside the disputes and develop the area with joint efforts". The fact that the Japanese Government has rejected the proposition does not mean it is undesirable *per se*. The recent dispute over the South China Sea between China and the Philippines has ended up in a way that gives us some very good inspiration. China and the Philippines have entered into a contract with a value of over HK\$10 billion to enable the two countries to jointly explore the oil reserve in the waters off the Palawan Island at Western Philippines.

The Philippine Government has changed its stance not just out of the consideration of its own economic conditions. More importantly, it is attributable to the mutual trust built up between both countries in the course of

economic and trade transactions, and such mutual trust has enabled them to work together for joint development under the principle of seeking common grounds while accommodating differences.

It is therefore apparent that the issue of territorial disputes is not unique to China and Japan. Resorting to extreme measures is not the only way out in settling disputes. As China and Japan have developed close economic and trade relations, we can say that getting along with each other with sincerity and peace is the only sensible option for both countries.

In order to get along with each other peacefully, both countries must make efforts to build up mutual trust. Given the fact that China and Japan are enjoying harmonious relationship in the economic aspect, but are quite detached on the political front, we should work on the cultural aspect in an attempt to eliminate the divergent views between the two countries. However, we must respect history and we must let the next generation know the truth. Therefore we must not let them doctor history. Only by enhancing our mutual understanding, through accommodation and tolerance, can we narrow our differences. In this connection, I recall that a television station has rescheduled its television programmes recently. Given the prevalence of anti-Japanese sentiments, the television station decided to continue broadcasting Korean drama series instead of Japanese drama series in order not to arouse strong feelings among viewers. This is of course a commercial decision, but I found it a very good decision. If we indiscriminately reject traditional Japanese culture, if we refuse to have cultural exchanges to provide us with more opportunities of better understanding each other, we will only end up with even greater misunderstanding, and the situation will become out of control. This explains why nowadays young Chinese patriots are very hostile towards Japan, while the Japanese young people absolutely cannot understand why this is the case.

To sum up, apart from sternly condemning the Japanese Government for distorting historical facts, we should also demand them to admit their mistakes and offer us their apologies. Meanwhile, in order to resolve the present deadlock between China and Japan, I sincerely hope that both sides can strive to eliminate their differences through proper and sincere cultural exchanges.

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

MR FREDERICK FUNG (in Cantonese): Madam Deputy, in regard to the motion topic today, "opposing Japan's textbooks distorting history", we must first ask, "What is history? Why is it necessary to learn and understand history clearly?" Some think that history is the recollection of mankind's collective living, the "true" record of human activities in the past. Through such a record, they argue, we can understand the origins and developments of various events that shape the world as we know it today. In other words, through the study of history, we can draw lessons from our antecedents' experience, learn how to analyse causes and consequences and thus avoid the repetition of mistakes. The idea is summed up even more aptly in *Strategies of Zhao*, a chapter in *Stratagems of the Warring States*: "Past experience, if not forgotten, is a guide for the future". This means that we must learn lessons from history and apply them to events of the present time. We must not forget "past events", but must reflect on them, face up to the consequences, and draw lessons from them, so as to turn them into a guide for "future events".

However, we have instead witnessed how the Japanese Government has totally ignored and distorted the historical facts, turning history into a tool of the "rulers" to fool the people and control their thinking. We have witnessed how the Japanese Government has tolerated the incessant development of right-wing forces, permitting them to glorify the acts of aggression in World War II, to invent queer excuses to justify their evil deeds and war atrocities during the invasion of other Asian countries — the liberation of colonized nations in Asia, a lack of natural resources that necessitated the looting of other countries for the sake of survival, and so on. The purpose of all of these acts is just to continue to cover up their evil deeds of aggression and rebuild the national mentality of "Japanese Superiority", so as to pave the way for a strong government and military expansion.

At a deeper cultural level, there is a lack of any spirit of remorse and repentance in the Japanese culture. As pointed out by American anthropologist Ruth BENEDICT, the Japanese culture is different from the "guilt culture" of the West, in the sense that the former is a "shame culture" with no standards on the good and the evil. Nurtured in such a culture, the Japanese consider the upholding of individual loyalty and reputation are of paramount importance. As a result, there is an absence of any moral control over all acts, and no one will be concerned about whether a war between nations is just or unjust; the only concern is victory or defeat.

There is a grain of truth in this viewpoint. But I think the crux of the problem is that the Japanese Government has been adding fuel to the flames by allowing right-wing organizations to doctor history at will. Because of this, the Japanese people have never been able to draw any lessons from the bitter war in the past. They have never shouldered any responsibility for the consequences, have never shown even the slightest remorse for their own atrocities in the war. Consequently, the Japanese culture has never undergone any restructuring and rebirth. There have been very few requests for reflection and remorse in Japan, but military expansion and the spirit of "Japanese Superiority", as advocated by the Japanese Government and right-wing organizations, find popular reception among the people. What will happen when a country that refuses to admit its mistakes and make any atonement can participate actively in global affairs? As I already pointed out at the beginning of my speech, the studying of history enables us to draw lessons from the valuable experience of our antecedents and avoid repetition of mistakes. I believe this is the cultural "construction" and "perfection" process that every nation must undergo if it is to exist proudly in the world and earn the respect of others.

In contrast, Germany, another country guilty of aggression in World War II, has shown the full courage of a great nation to face the consequences of its acts. Once an aggressor cursed by the whole world, Germany has by now regained the respect of other European nations. I can remember that on 6 June 2004, at the ceremony marking the 60th anniversary of the Normandy landings, German Premier Gerhard SCHRODER said, "The German people do feel an unavoidable historical responsibility for failing to stop the outbreak of that evil war. We in Germany know who caused the war. We know our responsibility for history and we take it seriously." In fact, successive German Premiers have apologized to the victims of aggression on many different occasions. And, not only this, Germany has over the years banned all Nazi activities and paid compensations worth over a hundred billion Deutsche Marks to war victims.

Earlier on, at the Asia-Africa Summit, Japanese Prime Minister Junichiro KOIZUMI expressed an apology for Japanese aggression. But his apology is no different from what one of his predecessors, Tomiichi MURAYAMA, said 10 years ago. It seems that Japan's attitude toward history has been positive, but in reality, all is just "window-dressing". What Japan has been doing over the past 10 years between the apologies of its two Prime Ministers, or, to be precise, what Japan has been doing since the end of World War II, such as the doctoring of its history of aggression, the paying of tribute at the Yasukuni Shrine, military expansion and its unlawful occupation of China's Diaoyutai Islands and East

China Sea waters and Korea's Dokdo, are all evidence of the discrepancy between its words and deeds.

A greater irony happened, just hours before KOIZUMI made his apology, when more than a hundred members of the Japanese Diet and their representatives paid tribute to the war criminals enshrined at the Yasukuni Shrine, the symbol of Japanese aggression in World War II. What message did this deliver? The message is that the Japanese Government has never reflected sincerely on its crime of aggression. Instead, war criminals who slaughtered civilians are extolled as war heroes and the continuous expansion of right-wing forces in Japan is tolerated.

The Hong Kong Association for Democracy and People's Livelihood and I strongly urge the Japanese Government to stop doctoring history by revising history textbooks. We also urge it to cease the occupation of the Diaoyutai Islands and the East China Sea waters. It must properly admit its history of aggression, make a formal apology, reflect on its deeds, show remorse and shoulder responsibility for its war atrocities by making compensation to the victims.

Finally, before I conclude, I hope Members can note that in our discussions on nationalism, how people should look at history, and so on, we should avoid the adoption of double standards and must apply the same logic and principles to both ourselves and others, so as to pre-empt criticisms. We must carefully find out whether we have ever distorted any facts for political or other reasons in our interpretation and understanding of historical incidents. We should adopt the same standard for both ourselves and others.

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

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, today is the fourth of May and is the 86th anniversary of the May Fourth Movement. Today we are holding a debate on opposing Japan's textbooks doctoring history. In my opinion, any Chinese should support this motion debate. My colleagues and I will support the original motion and all the amendments.

The fourth of May is also the Youth Day in China. If we visit any mainland portal websites, we will notice that the Youth Day is accorded the same

status as such festive occasions as the Children's Day and the Dragon Boat Festival, and there are always a wide array of mobile phone short messages and e-cards available to mark them.

It has been more than 80 years. Due to the waves of anti-Japanese sentiments that are so prevalent recently, we are reminded of the need to do some soul-searching. Otherwise, we may have forgotten that the Youth Day was a result of the May Fourth Movement, a movement which called for the self-strengthening of the nation, the awakening of patriotism among the people, the fight for democracy and the respect for scientific spirit.

China's reforms and opening have led to its economic prosperity. Subsequently, there are certain international critics promoting the "China threat" theory. When we look back at the objectives proclaimed in the May Fourth Movement, have they actually been achieved one after the other?

Over the past few years, the self-esteem of the Chinese people has really been strengthened. The performance of the national soccer team in the last World Cup Finals and Beijing's success in securing the right of hosting the Olympic Games of 2008 have aroused a sense of either great disappointment or ecstasy. This being the case, it is evident that the emotions of the people are greatly influenced by the achievements of the national representatives. This shows that the people of our nation aspire for occasions to hold their heads high, and that they have a desire to build up a reputation and status for the nation.

What triggered the May Fourth Movement was that, in spite of the fact that China was a victorious nation in the First World War, the Chinese Government was prepared to sign an unequal treaty at the Paris Peace Conference, the terms of which treated China as if it had been a defeated country. The signing of the treaty would make China give up many of its rights and it would be a great insult to the nation. Nowadays, the political climate in the international arena has changed, and similar events will not happen again. I had some mixed feelings when I heard of such incidents as NATO's bombing of the Chinese Embassy, the collision of United States and Chinese airplanes over South China Sea, the movements of defending the Diaoyutai Islands that have been going on for many years, and the anti-Japanese sentiments triggered by Japan's revision of their textbooks recently. On the one hand, I am pleased to see that the patriotic sentiments have remained unchanged. On the other hand, I

feel sorry that, after all these years, there are still much to be desired in terms of the quality of our nation. To date, we are still chanting the same slogans chanted by our predecessors 80 years ago — "Stop buying Japanese goods, boycott Japanese goods". It is a very passive and negative attitude indeed.

As regards the respect for scientific spirit, our national Government is actively developing science and technology with the adoption of the principle of "strengthening the country by means of technology and education". Recently, China has produced a number of world-renowned scholars in the field of science and technology. China has succeeded in launching satellites and achieved remarkable results in such areas as aeronautics, biological technology and information technology, and so on. From these, we can see that science has successfully planted its root on Chinese soil.

However, have we forgotten another major theme of the May Fourth Movement, that is, democracy? The New Culture Movement advocated in the May Fourth Movement encouraged the opening up of public space, freedom of speech and the formation of a civil society in the hope of bringing democracy to China.

Regrettably, even in Hong Kong where the principle of "one country, two systems" is implemented, Hong Kong people still do not have the right to elect their own Chief Executive. It seems that China still has not allowed democracy to have its root successfully planted on Chinese soil.

There is an argument that Japan is so arrogant presently because they are powerful and influential. Therefore, they want to fight for a political status in the international community so as to expand their influence.

In that case, what about China? China has adopted the opening policy and has been carrying out reforms for more than 20 years now. China has achieved great economic miracles. Is it time it revisited democracy? Or put it another way, if we do not have the support and assistance from democracy, will China succeed in progressing really steadily to become a rich and strong country? Will the ideal of the May Fourth Movement, that is, to lead our country to make progress to become rich and strong, be achieved?

Madam Deputy, I so submit.

MRS SELINA CHOW (in Cantonese): Madam Deputy, on 6 June 2004, national leaders from countries which had participated in the Second World War were invited to attend a commemorative ceremony held in France to mark the 60th anniversary of Allies' landings at Normandy. Among them were German Chancellor Gerhard SCHRÖDER and some veteran Nazi soldiers. That was the first time German representatives had ever been invited to commemorative activities held by the Allied Forces of the Second World War. In the ceremony, all countries agreed that all wartime rivals should work together now towards a peaceful world. However, in another activity held in Sydney commemorating the Pacific War of the Second World War, all veteran soldier organizations from the Allied Forces opposed in unison to invite veterans of Japan's Imperial Army. Even official attendance by Japanese representatives stationed in Sydney was rejected.

Both Germany and Japan are defeated countries of the Second World War, and both of them committed atrocious crimes during the war. But why are they treated so differently? There is only one reason, and that is, because after the war, the Germans were able to conduct serious introspection about history, and they were willing to right the wrongs of the past. Meanwhile, after Japan has become an economic superpower, the ghost of militarism is still lingering on the minds of certain Japanese people on a subconscious level. On many occasions, Japan has tried, either blatantly or insidiously, to absolve itself of the responsibility of the crimes they had committed in staging the war. They would even go so far as to distort historical facts in a bid to cover up the truth. How can a country with such behaviour earn the respect and trust of the people of the world?

Madam Deputy, we should all condemn in one voice the Japanese Government and some of the right-wing politicians for their blatant act in doctoring history. However, I would also like to stress that while we oppose the nasty behaviour of the Japanese Government, we should not vent our angers on the general Japanese people. The conduct of the Japanese politicians does not necessarily reflect what is on the mind of the Japanese people. For example, when a group of members of the Japanese Diet were paying homage to the Yasukuni Shrine late last month, they came into encounter with a group of demonstrators who opposed the revival of militarism. When the Government of Japan wanted to send its troops overseas, it met with waves of challenges from local bodies who accused the Government of breaching the Peace Constitution.

Just as right-wing politicians are revising textbooks, there are people like Prof Saburo IENAGA who has for decades kept accusing the Japanese Government of doctoring history to the detriment of the upcoming generations. While there are people like the governor of Tokyo Shintarō ISHIHARA, who keeps saying that the Nanjing Massacre was made up by the Chinese people, there are still veteran Japanese soldiers like Shiro AZUMA who, acting on their own conscience, testified with pictures and writings that heinous crimes were committed in Nanjing by the Imperial Army of Japan. I would like to emphasize that we should target at those die-hard militarists in Japan, but not those peace-loving Japanese people or general Japanese people who have not been given an opportunity to understand the history in the correct light.

These examples may not be closely related to the general public of Hong Kong. However, if we look at the issue with the relevance that covers Japanese working in Hong Kong or Japanese tourists visiting Hong Kong, then we may have some personal feelings about the issue. Hong Kong and Japan maintain frequent exchanges in trade and business activities. Many Japanese people like Hong Kong very much. I have even visited a place called "little Hong Kong" in Tokyo. The Japanese is one of the biggest ethnic minority groups in Hong Kong, and Japan is one of the major sources of tourists visiting Hong Kong.

(THE PRESIDENT resumed the Chair)

Ever since our reunification with the Motherland, the number of Japanese visitors coming to Hong Kong has been on the decline. During the peak in 1996, the number of Japanese visitors coming to Hong Kong hit the mark of about 2.76 million person trips. However, due to the domestic economic recession in Japan, coupled with the fact that the interest of visiting Hong Kong after the reunification had dwindled, the number of Japanese visitors had kept dropping year by year. In 1999, the number of Japanese visitors to Hong Kong decreased by 57% to only 1 174 000 person trips. In order to arrest the dropping trend, the Hong Kong Tourism Board launched many promotional initiatives specifically targeted at this area. But just as our efforts were beginning to produce visible effects, Hong Kong experienced the SARS outbreak in 2003. Consequently, the number of Japanese visitors dropped drastically to less than 870 000 person trips, and it was not until last year that the number of Japanese visitors rose to approximately 1.12 million person trips. The trend in

the first quarter of this year was not bad, when the number of Japanese visitors increased by 40% as compared to the same period of the preceding year. Unfortunately, last month when *The Asahi Shimbun* reported a peaceful anti-Japanese demonstration in Hong Kong, it had mistakenly included a footage showing that Japanese stores were being vandalized by the citizens of Shenzhen in the demonstrations held in Shenzhen earlier. Because of this, many Japanese visitors stopped visiting Hong Kong. Although the broadcasting company made clarifications and corrections on the matter afterwards, damages had already been done for sure. That is most regrettable indeed.

In my opinion, as an international metropolis where the population is predominantly Chinese, and as a city which has experienced the hardships inflicted by the War for three years and eight months, Hong Kong is duty-bound to oppose the Japanese Government's doctoring of history. However, in the course of staging such protests, we must not give the general public of Japan a false impression that we oppose everything that is Japanese, or that they are not welcome to visit Hong Kong. Should this happen, it would be contrary to the principles of "rationality" and "impartiality" which have always been stressed by the Hong Kong community.

Madam President, I so submit.

DR YEUNG SUM (in Cantonese): Madam President, the Ministry of Education, Culture, Sports, Science and Technology of Japan has recently approved the secondary school history textbook for 2002 compiled by a right-wing group. This history textbook has doctored history and distorted historical facts, which is indeed a most shameful act. Certain contents of the textbooks are extremely absurd. For example, the history about comfort women has completely been erased from the textbooks; the Nanjing Massacre is alleged to be fictitious; the history about Unit 731, which researched on biological warfare, has been removed; and "invading China" has been rephrased as "gaining access to China". Madam President, there are countless examples of distorted historical facts in this textbook.

We oppose the Japanese distortion of history today mainly because we are worried that Japan's right-wing forces may try to indoctrinate the Japanese young people with the idea of militarism through doctoring history in a bid to revive the past glory of a great Japanese empire.

In fact, Japan's right-wing forces are active on many different fronts. Apart from amending the history textbooks for secondary schools, they are also trying to amend the constitution, so that Japan could expand its military power and embrace themselves in militarism. Why has Japanese right-wing militarism become increasingly popular recently? I believe the major reason is that many Japanese people refuse to conduct introspection on history, refuse to learn lessons from history. As a prominent Japanese scholar Michio MORISHIMA pointed out in a speech he made at Nankai University (and I quote to this effect), "As a matter of fact, the atrocities committed by Japan in the War had reached the farthest extreme limits of human beings. It is true that the individuals were mad. But more importantly, it was the entire nation that had gone mad. From the '30s and the first half of '40s of the 19th century, Japan was constantly in such a mad state". (End of quote)

Another Japanese scholar Kenzaburō OE pointed out in a speech he made in Beijing in 2000 (and I quote to this effect), "Japan invaded China, having caused massive losses of human lives and natural resources to the people of China. After the war, have Japan and the Japanese people made up for these losses? My answer is negative. In my opinion, we should embrace the future and keep repenting. We should keep working towards this goal. This should be the basic attitude of the Japanese people when they face China and other Asian countries". (End of quote)

Madam President, Germany and Japan are both the initiators and the defeated countries of World War II, but they have adopted totally different attitudes towards their wars of aggression. After the War, both the German Government and the German people have displayed great courage and rationality in restoring peace for the modern age, denouncing fascism, and showing remorse to the victims. The way they have acted is simply admirable. Madam President, as early as December 1949, which was not long after the War had ended, when the first Federal President of post-war Germany Theodor HEUSS talked about the crimes committed by the Nazi Party against the Jews, he pointed out (and I quote to this effect), "this part of our history is and will remain a disgrace to the German people as a whole". (End of quote) Also, when Willy BRANDT, former Chancellor of the Federal Republic of Germany and winner of the Nobel Peace Prize, visited Poland in December 1970, he was so overwhelmed that he fell on his knees before a monument to the victims of the Warsaw Ghetto Uprising to show his remorse to the Polish people. According to a public opinion survey conducted at that time, 80% of the German

respondents supported Willy BRANDT's move. Federal President of the Federal Republic of Germany Richard von WEIZSACKER said, on the 50th anniversary of the liberation of the concentration camp (and I quote to this effect), "Do not forget history; do not reject history. Always stay alert." "The view that history will not repeat itself is a dangerous fallacy. History may repeat itself by taking on a new form". (End of quote)

In fact, starting from 1957, Germany has established a compensation fund. By 1999, a total of US\$100 billion had been made in compensation. On 7 July 2000, the Bundestag (Federal Assembly) of Germany endorsed the formation of a legal fund for "memory, obligations and the future", which aims to resolve the compensation issues in relation to millions of Nazi labourers.

Madam President, when German politicians are expressing their contrition to people of the world, the political entities of Japan are trying to justify their invasion. Both the Japanese Emperor and the Japanese Prime Minister have participated in ceremonies honouring the spectres of militarism. This is indeed most regrettable.

Madam President, history does repeat itself. The Japanese Government should learn the lessons from the cruel wartime history. They should face the history squarely, offer apologies to the world for their war crimes and compensate the victims, so as to prevent the revival of militarism.

With these remarks, I support the motion. Thank you, Madam President.

MR LEE WING-TAT (in Cantonese): Madam President, I rise to speak in support of today's motion and amendments.

Earlier on, the Japanese Government endorsed the *New History and Civics Textbook* published by the Fusosha in an attempt to embellish Japan's war crimes in its aggression of our country and other Asian countries such as Korea and Indonesia. It also attempts to cover up and distort the historical facts. The Democratic Party sternly condemns this act of the Japanese Government. We demand the Japanese Government to respect history, to thoroughly admit their past mistakes, to face their mistakes through serious introspection, to abandon militarism and to truly believe in living peacefully with its neighbouring countries.

As long as the Japanese Government has not repented thoroughly and abandoned militarism, it will continue to inflict injuries on the governments and peoples of its neighbouring countries. There are even signs that Japan may be repeating its past mistakes from such moves as indoctrinating the younger generations with incorrect historical views about the mistakes made by Japan during the War, and the unlawful occupation of our Diaoyutai Islands. As long as this continues, the Japanese Government will not be able to earn the respect and recognition of the international community, and Japan will not be eligible to become a permanent member of the United Nations Security Council (UNSC).

In the controversial *New History and Civics Textbook* published by the Fusosha, the Marco Polo Incident of 7 July 1937 is described as follows (and I quote to this effect), "on the night of 7 July 1937, at Marco Polo Bridge which was located in the suburb of Beijing, cannon fires were directed at the Japanese army who was engaged in military exercise. The next morning, the Japanese army and the Kuomintang army of China were engaged in battle (the Marco Polo Incident) In the ensuing eight years, the war between Japan and China continued". (End of quote) Such a portrayal has apparently doctored history.

Regarding the Nanjing Massacre, the *New History and Civics Textbook* has such a description: "the Japanese army was of the opinion that once they conquered Nanjing, the capital of the Kuomintang Government, CHIANG Kai-shek would surrender. So the Japanese army conquered Nanjing in December". The *New History and Civics Textbook* writes in a footnote: "There are many divergent views on the number of people killed in this incident, and the controversy remains unsettled to this day."

In fact, the *New History and Civics Textbook* is trying to depict the Marco Polo Incident and the Nanjing Massacre as triggered by "provocations directed against the Japanese army". Its simple description of the massacre as having massive casualties is apparently an attempt to distort the historical facts, so as to attenuate the major responsibility of Japan in its invasion of our country.

As regards what triggered off the Second World War, the *New History and Civics Textbook* even implies that Japan was "dragged in the war unwillingly". The textbook describes Japan as a poor victim which was "cornered" by the British, the Americans, the Chinese and the Dutch as a result of their economic blockage. Japan was forced to consider the option of "gaining access" to Southeast Asia as a result of the economic pressure imposed upon it by countries

like the United States. To us, it is just inconceivable that Southeast Asian countries, including China, that have fallen victim to the Japanese invasion as well as American and British historians would find these so-called "historical facts" acceptable at all.

Apart from the *New History and Civics Textbook* published by the Fusosha, as many as 60% of the schools in Japan are using the *New Social History* textbook published by Tokyo Shoseki. Although the viewpoints adopted by the *New Social History* textbook are generally less radical than those adopted by the *New History and Civics Textbook*, it still has tried to evade the description of many atrocities committed by the Japanese army, such as the acts of forcing Chinese and Korean women into sex slavery, so as to play down Japan's war crimes.

Moreover, while Japan's Prime Minister Junichiro KOIZUMI openly offers his apologies for Japan's invasion of other countries and for the war crimes they committed such as torturing the civilians during the Second World War, over the past few years, he has been paying official homage to the Yasukuni Shrine where Japanese military officers of the Second World War are worshipped. This shows that his apologies are not sincere, and that the Japanese Government has not thoroughly repented on the crimes it committed in the War.

The Democratic Party demands the Japanese Government to face squarely its responsibility in the War, to repent on what it did, and to take remedial measures accordingly, including offering their sincere apologies, stopping paying official homage to the Yasukuni Shrine, revising all history textbooks that are known to have distorted the historical facts, conducting retrospection on the history of Japan's invasion of China, educating the next generations of the horrors and atrocities of war and nurturing the next generations to discard war and to be peace-loving. The Japanese Government should also retreat from the Diaoyutai Islands which it has occupied unlawfully and offer apologies and compensation to victims of the War.

Before the Japanese Government has fulfilled its war responsibilities as described above, the Democratic Party thinks that Japan is not eligible for permanent membership in the UNSC. We urge the Government of the Hong Kong Special Administrative Region to request the Central Government to do

everything it can, including exercising its right of veto, to forestall Japan from becoming a permanent member of the UNSC. Thank you, Madam President.

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

(A Member gestured to the President to indicate that, according to the screen displaying the speaking status of Members, one Member had not spoken yet)

PRESIDENT (in Cantonese): Yes, although the screen shows that a Member still has not spoken, we have already sent out numerous notes to summon him back to deliver his speech. I heard that he is at the moment being interviewed in the garden nearby. We cannot wait for him any longer.

(Dr LUI Ming-wah raised his hand to indicate his wish to speak)

PRESIDENT (in Cantonese): Dr LUI Ming-wah.

DR LUI MING-WAH (in Cantonese): Madam President, the behaviour of a country is the collective manifestation of the behaviour of its people as a whole. Likewise, the policies of a government are also the manifestation of the wisdom of the people of that particular country. Modern history has seen repeated invasions of China by Japan in the past century. Ever since the Sino-Japanese War of 1894, Japan kept invading China, trying to conquer China step by step. In the Manchurian Incident of 1931, Japan launched an offensive attack at North Eastern China and occupied Manchuria. In the Shanghai 128 Incident of 1932, the Japanese army raided Shanghai. In the Marco Polo Incident of 1937, the Japanese army demanded to enter the Lugouqiao town on the pretext of searching for a missing soldier. When their demand was rejected, the Japanese army staged a full-scale offensive attack at China. A bloody war lasting for eight years ensued. In those eight warring years, countless Chinese compatriots were brutally slaughtered and many Chinese women were violated by Japanese soldiers. The atrocities of the Japanese army have caused immense agonies and painful experience to the Chinese people. When the Japanese army conquered Nanjing, the capital of the then Nationalist Government, they launched a massacre which lasted for six weeks. More than 300 000 Nanjing residents

were either killed or buried alive. Few nations in history have perpetrated such heinous war crimes. It has been 60 years since Japan was defeated and surrendered. If we can learn from history and study the behaviour of Japan in the post-war era, it will enable us to gain a better understanding of Japan, and it will help us a long way in getting along with Japan and formulating related policies accordingly.

After the end of the Second World War, there were two defeated countries in the world, namely Germany in the West and Japan in the East. After the War, Germany admitted the mistakes they had committed in the war. They came to realize that they had committed heinous crimes in the Second World War under the leadership of Adolf HITLER and the Nazi government. In the post-war era, the mainstream German society had never attempted to defend the Nazi government or Adolf HITLER. Instead, they were able to reflect on what they had wrongly committed in the War and shown deep remorse for what they had done. They insisted to take the path of impartiality and justice, for which they earned the respect of neighbouring countries. Nowadays, Germany has become an emerging power founded on moral high ground.

On the other hand, Japan has never seriously reflected on the war crimes it committed, and it has not assumed its wartime responsibilities. Instead, it has kept revising history textbooks in an attempt to cover up the historical facts and to disguise the Japanese militarists from "persecutors" to "victims". This has triggered waves of rage from many Asian countries. Japan thus became a mouse in the street which everybody dislikes and would like to go after to capture.

Germany and Japan have adopted vastly different attitudes towards history. Some scholars attribute such great differences to their different cultures and mindsets. The German people are Christians and they believe they can achieve peace of mind through confession and repentance. However, the culture of the Japanese evolves around the idea of "disgrace", and they are trying to get rid of the sense of disgrace generated from their defeat in the war. Deep down in their hearts, they refuse to admit defeat: "The Imperial Army was not defeated. It was the atomic bombs that defeated Japan."

After the Second World War, Germany has become stronger and stronger because they can thoroughly dispose of their Nazi mentality. All they have to

do is to come to terms with the fact that they once had a frantic leader, his Nazi Party, and the crimes they committed in the war. However, insofar as Japan is concerned, the one who initiated the war was Emperor HIROHITO. After the war, the United States purposely retained Japan's emperor system, so they did not hold Emperor HIROHITO accountable for the war crimes. As a result, the Japanese people have never conducted any serious introspection on their war crimes, because if they were to pursue responsibility, ultimately they would find that the one who should be responsible is none other than their emperor. Because of this, the Prime Ministers of Japan could offer their verbal apologies while they continue "whitewashing history". Paying homage to the Yasukuni Shrine has become an annual event. In the opinion of the Japanese, Class-A war criminals are so described only by the victimized countries. To the Japanese, these Class-A war criminals are heroes.

From this brief account, we can see that Japan is both an invader in the Second World War and a victim of the atomic bombs. So far, the Japanese can only see the pains they had suffered, and they have chosen to ignore the pains they had inflicted on their "victims". This double standard in fact works like a gigantic pair of spiritual shackles torturing the Japanese. Meanwhile, the Japanese people are also torturing the victims because they have failed to face history squarely. Therefore, Japan needs a leader of great wisdom who can bring them down the road of a serious introspection, show them how to face history squarely, how to admit their mistakes, how to confess and repent, and be reborn from self-redemption as a new nation. Only by doing so can Japan stand upright among the Asian countries, be forgiven by its neighbouring countries, and become an economic superpower with great moral courage.

I so submit. Thank you.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, then I now call upon Mr LAU Kong-wah to speak on the two amendments. He has up to five minutes to speak.

MR LAU KONG-WAH (in Cantonese): Madam President, the DAB supports the amendments proposed by the Liberal Party and the Democratic Party. We certainly understand that the issue concerning the United Nations Security Council is a foreign affair. That said, we have to make the voices of Hong Kong people heard, and we also hope that we can act in unison insofar as external affairs are concerned and stand united in opposing Japanese militarism.

Thank you.

PRESIDENT (in Cantonese): I now call upon Mr Albert HO to move his amendment to the motion.

MR ALBERT HO (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion be amended, as printed on the Agenda.

Mr Albert HO moved the following amendment: (Translation)

"To add "fulfil its post-war responsibilities, i.e." after "strongly demands the Japanese Government to"; to delete "abandon" after "totally" and substitute with "abandoning"; to delete "face" after "militarism," and substitute with "facing"; to delete "and offer" after "up to the historical facts," and substitute with "disclosing all the information on the war crimes it committed when invading its neighbouring countries during the Second World War, compiling history textbooks that are faithful to historical facts, ceasing to pay official homage to the Yasukuni Shrine, making"; to add "confession and" after "its sincere"; to delete "and reasonable compensation" after "apologies"; and to add ", and offering reasonable compensation to the war crimes victims; and, until the Japanese Government has fulfilled the above responsibilities, this Council resolutely opposes Japan becoming a permanent member of the United Nations Security Council (UNSC), and urges the Government of the SAR to request the Central Government to exercise its right of veto to forestall Japan becoming a permanent member of the UNSC" after "during the Second World War". "

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

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

(Members raised their hands)

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

(Mr SIN Chung-kai still kept his hand up)

PRESIDENT (in Cantonese): Mr SIN Chung-kai, are you against this motion?

MR SIN CHUNG-KAI (in Cantonese): No.

PRESIDENT (in Cantonese): That means no one is against the motion.

PRESIDENT (in Cantonese): I think the question is agreed by a majority of each of the two groups of Members who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr James TIEN, as Mr Albert HO's amendment has been passed, I have given leave for you to revise the terms of your amendment in advance. Therefore, you have up to three minutes to explain the revised terms in your amendment, and then you may move your revised amendment.

MR JAMES TIEN (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion as amended by Mr Albert HO, be further amended by my revised amendment.

Madam President, it is now 8 pm sharp. I have already said what I want to say. The focus of my amendment is on the Diaoyutai Islands and the oil and natural gas fields in the East China Sea. I have already presented all my arguments, so I am not going to waste Members' time now.

The Liberal Party supports the original motion and the amendment. I hope Members will do the same. Thank you.

Mr James TIEN moved the following further amendment to the motion as amended by Mr Albert HO: (Translation)

"To add "; furthermore, this Council also strongly demands that, to totally abandon militarism, the Japanese Government should cease the unlawful occupation of the Diaoyutai Islands and the oil and natural gas fields in the East China Sea which are within the territory of our country" after "becoming a permanent member of the UNSC". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr James TIEN's amendment to Mr LAU Kong-wah's motion as amended by Mr Albert HO, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, you may now give your reply. You have up to four minutes 34 seconds.

MR LAU KONG-WAH (in Cantonese): Madam President, before the start of this meeting, many people assembled downstairs to show their support for us and their dissatisfaction with Japanese militarism. There were also many journalists among them, and one of whom came from NHK in Japan. He interviewed me and asked me many detailed questions. He said that he was not familiar with the procedures of this Council, and he asked me many questions on the moving of motions and amendments. In the end, he asked me what would happen if the motion was passed today. I think this should be the most important question. I told him that there would be no legal effect — in fact, no Members' motions are legally-binding — but there would be some moral effect. This is precisely what we want to achieve.

He rang me up again just now, asking me to contact him immediately when the voting results were available. I am more than happy to do so, and I very much hope to send the voting results and our views to Japan immediately. I hope that our views can converge with the voices of justice in Japan to form a torrent that stops the growth of Japanese militarism.

A moment ago, some Members wondered whether there would be any use for us to move any motions, to stage any protest and to condemn and curse the Japanese Government. Madam President, if we really want to check and counter Japanese militarism, we must realize that the only key should be the strength and power of our country. It is only when our country is powerful, is able to strengthen itself, that we can counter Japanese militarism. For this reason, the Central Authorities have recently expressed one hope concerning Hong Kong, the hope that it can achieve stability, harmony and development. Conversely, I believe that Hong Kong people will also treasure the development of our country and hope that it can likewise achieve stability, harmony and development. I think that it is very important that our country can become rich and powerful. This is our most important hope. Self-reliance is very important. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Kong-wah, as amended by Mr Albert HO and Mr James TIEN, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 11 May 2005.

Adjourned accordingly at six minutes past Eight o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Economic Development and Labour to Mr Howard YOUNG's supplementary question to Question 2**

Regarding Limited Liability Partnership, the Administration understands the views of the travel trade on limited liability. Like other commercial entities, travel agents should be responsible for the services they provide, and in doing so, must manage the risks involved. They are encouraged to adopt effective risk management measures to minimize the possibility of liability arising from third party negligence. The Travel Industry Council of Hong Kong (TIC) is looking into the matter, in particular, the liability, risk and protection of travel agents in organizing tours and making arrangement for transport and sightseeing activities for tour group members. The TIC seeks to increase the travel agents' knowledge of risk management, liability indemnity and liability insurance, and will also consider relevant protection measures to reduce operational risks of travel agents.

The TIC issued in January 2005 two documents on issues to pay attention to by outbound tour operators when they work with partners outside Hong Kong, and a safety checklist for package tours to all travel agents in Hong Kong. These documents aim at helping outbound tour operators and tour escorts to enhance both the quality and the safety of outbound tours.

As stated in the main reply of the Secretary for Financial Services and the Treasury, limited liability concerns not just the individual professions but also affects the interests of clients, creditors, and even the general public. Therefore, on the issue of limited liability, we need to consider not only the requests or views of individual profession or sector, but the whole issue in a comprehensive manner.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr WONG Kwok-hing's supplementary question to Question 3**

As regards the number of complaints relating to voluntary contribution schemes and the problems involved, according to the information provided by the Mandatory Provident Fund Schemes Authority (MPFA), it has received less than 10 complaints relating to voluntary contribution schemes from the years of 2001 to 2004. The complaints received involved services and information provided by trustees, the time required for withdrawal of accrued benefits, and so on.

The above information shows that there were very few complaints relating to voluntary contribution schemes. That said, the MPFA will monitor the situation continuously so as to ensure that voluntary contribution schemes are operating effectively and efficiently.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Health, Welfare and Food to Mr Abraham SHEK's supplementary question to Question 4**

As regards the employment of people with disabilities (PWDs) by the Hong Kong Disneyland, the Social Welfare Department and the Labour Department met with the Hong Kong Disneyland in December 2004 to discuss matters of employment of PWDs and to introduce to them employment services for PWDs. Close liaison with the Hong Kong Disneyland has also been maintained afterwards.

We understand it is the policy of the Hong Kong Disneyland to hire individuals on the basis of their abilities to successfully perform the required role. Their hiring decisions are made without prejudice or discrimination in accordance with the principles of equal opportunities. We were informed that they have successfully hired a number of PWDs and will continue to be open to hire more PWDs in a wider range of roles, such as food and beverages, park operations and custodial, and that they will continue to identify projects which can be outsourced to non-governmental organizations.

Appendix IV

WRITTEN ANSWER

Written answer by the Secretary for the Environment, Transport and Works to Mrs Selina CHOW's supplementary question to Question 6

As regards the supplementary information on the pollution control technologies which the Government would introduce to Hong Kong in the next three years, the following provides more technical details about the technologies which would be introduced to the major sewage treatment works in the next few years:

- (a) *Ngong Ping Sewage Treatment Works* — This will be the first tertiary treatment works in Hong Kong incorporating a Sequencing Batch Reactor for biological treatment, followed by a Media Filtration System and a UV Disinfection System. The treated effluent would be used for toilet flushing and restricted irrigation at Ngong Ping.
- (b) *Tai Po Sewage Treatment Works* — This is the second largest biological sewage treatment works in Hong Kong. It is programmed for expansion over the next three years. The biological treatment technology to be adopted is the Modified Ludzack-Ettinger (MLE) Process. Furthermore, we would also incorporate the Side-stream Nitrification process by means of the construction of a Sequencing Batch Reactor for nitrifying the filtrate from the sludge dewatering facilities. This would assist in improving the performance of the biological treatment works.
- (c) *Stonecutters Island Sewage Treatment Works* — At the moment, the treatment works is able to remove about 50% of the sewage-borne pathogens (in terms of *E. coli*). Subject to the results of an environmental impact assessment to be conducted, to improve the effluent quality, we plan to introduce Chlorination/Dechlorination Disinfection to the system which would be able to remove 99% of the *E. coli* from the sewage. To avoid any risk associated with massive storage of chlorine gas or hypochlorite solution, we are also planning to install electro-chlorinators to generate hypochlorite solution on-site through electrolysis of seawater.

WRITTEN ANSWER — Continued

- (d) *North District Reclaimed Water Demonstration Scheme* — We are planning to carry out a demonstration trial at the Shek Wu Hui Sewage Treatment Works, using ultrafiltration and disinfection, to provide tertiary treatment for the production of reclaimed water for unrestricted irrigation and water features.

Wastewater Treatment Terminology

Sequencing Batch Reactor (SBR) — is a fill-and-draw activated sludge treatment system. Unlike the conventional activated sludge process, aeration and sedimentation/clarification are carried out in the same tank in the SBR system. This helps to reduce the space requirement for smaller scale sewage treatment works.

Modified Ludzack-Ettinger (MLE) Process — is an activated sludge process containing two zones, namely an anoxic zone and an aerobic zone to provide both organic and nitrogen removal.

Side-stream Nitrification — Filtrate generated from sludge dewatering processes normally contains a very high ammonia level. The usual practice has been to feed filtrate to the aeration tanks for nitrification. But this may overload the activated sludge system during cold weather conditions. A new design now adopted is to provide a separate nitrification process for the filtrate in order to improve the performance of the treatment works.

Chlorination/Dechlorination Disinfection — Chlorine is normally added to the treated wastewater in the form of hypochlorite solution (or bleaching agent) to kill the bacteria. Following the chlorination process, dechlorination agent (such as sodium sulphite) will be added to neutralize the chlorine in order to ensure the discharge of treated effluent will not have an adverse effect on the environment.

Ultrafiltration — Ultrafiltration systems are pressure-driven membrane operations that use porous membranes for the removal of dissolved and colloidal materials. Treated effluent from ultrafiltration is generally very clean with turbidity of less than 0.1 unit. When followed by appropriate UV disinfection, the treated water is suitable for various types of reuse, such as unrestricted irrigation and water features.