OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 June 2008

The Council met at Eleven o'clock

MEMBERS PRESENT:

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

MEMBERS ABSENT:

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

THE HONOURABLE JAMES TO KUN-SUN

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

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

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

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.
SECRETARY FOR LABOUR AND WELFARE

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

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, J.P.
SECRETARY FOR DEVELOPMENT

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

CLERKS IN ATTENDANCE:

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

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is not present now. Will the Clerk please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): A quorum is now present. The meeting now starts.

TABLING OF PAPERS

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

Papers

Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007

Report of the Bills Committee on Trade Descriptions (Amendment) Bill 2007

Report of the Bills Committee on Domestic Violence (Amendment) Bill 2007

Report of the Bills Committee on Buildings (Amendment) Bill 2007

ADDRESSES

PRESIDENT (in Cantonese): Address. Ms Margaret NG will address the Council on the seven items of subsidiary legislation relating to the civil justice reform, which were laid on the table of the Council on 11 June 2008.

Rules of the High Court (Amendment) Rules 2008, Rules of the District Court (Amendment) Rules 2008, High Court Fees (Amendment) Rules 2008, High Court Suitors' Funds (Amendment) Rules 2008, District Court Civil Procedure (Fees) (Amendment) Rules 2008, District Court Suitors' Funds (Amendment) Rules 2008 and Lands Tribunal (Amendment) Rules 2008

MS MARGARET NG: Madam President, thank you for allowing me to address this Council on the subsidiary legislation relating to the Civil Justice Reform tabled in this Council on 11 June 2008. It marks the completion of the mammoth task which began in February 2002, when the Chief Justice appointed the Working Party to embark upon this arduous journey. The aim of the Civil Justice Reform as explained by the Chief Justice was to review our adversarial procedure of litigation which has become unacceptably expensive and time consuming, and to introduce reforms to bring the whole process under better control for the more efficient use of resources.

The exercise involved extensive consultation. The final report was published in 2004 and followed by a Consultation Paper on proposed legislative amendments in April 2006.

Given the complexity and volume of subsidiary legislation involved, the House Committee set up a Subcommittee to study the subsidiary legislation in draft form before they were finally and formally tabled before the Council. The Subcommittee held 14 meetings. As a result, amendments have been made to the draft and are reflected in the final text.

The new court procedure rules introduced in this subsidiary legislation are intended to make far-reaching changes to civil litigation.

The new Order 1A and Order 1B introduce underlying objectives and give judges new case management powers in order to achieve these objectives. Matters will no longer be left entirely in the hands of the parties. Case management powers will be applied to require the identification of issues at an early stage, to restrain excessive discovery and witnesses, and cut down unmeritorious and unnecessary interlocutory applications. Judges can order immediate payment into court if a party fails to comply with a rule or a court order.

The new rules also provide more options and incentives to the parties for early settlement. Order 13A enables a party who has no real hope of defence

but for one reason or another wants to defer payment to make an admission to the claim while asking for more time to pay.

The new Order 22 (Sanctioned Offers and Sanctioned Payments) allows not just the defendant but also the plaintiff to offer to settle at a reduced sum. The incentive is that if the offer is not accepted and the party refusing the offer which ends up without significantly better results after proceeding with the case will have to pay more in costs.

Under existing rules, parties which have agreed on everything except costs often have no alternative but proceed with an expensive trial. The new "costs only" procedure will make this unnecessary.

There are changes aimed at modernizing and simplifying litigation. Under the present rules, proceedings may begin by writ, by originating summons, originating motion or petition. After the new rules come into effect, these will be reduced to two: by writ where there are likely to be substantial factual disputes; and by originating summons where there is little factual dispute and the dispute concerns mainly questions of law.

To cut down interlocutory appeals which sidetrack from the main issue and waste court time and expenses, the new Order makes leave necessary except for certain specified categories.

The above are only examples. The size of the document tabled bears witness to the extensiveness of the change.

Madam President, as Chairman of the Subcommittee, I would like to highlight the deliberations of the Subcommittee.

First and foremost, the Subcommittee relied on the views of the professional bodies and other stakeholders including law costs draftsmen, the Consumer Council and representatives of chambers of commerce. On the whole, the Bar and the Law Society are satisfied that the new rules in their totality are workable from a practitioner's point of view. They have been deeply involved in the consultation process, and informed the Subcommittee that most of their concerns at the early stages of consultation had been addressed. The Subcommittee thank these bodies for the assistance they have given us.

Access to justice is the right of everyone, and litigants in person is a fact which cannot be ignored. The Subcommittee therefore tried to scrutinize the reform under the new rules from the user's point of view, though always acknowledging that rules of civil litigation are inevitably complex and technical.

From this angle, the Subcommittee had made suggestions for greater clarification, for more restraint, for better balance, for greater practicability, and to ensure that practitioners, the wider public and particularly the numerous NGOs advising them who have not had the benefit of in-depth discussion of earlier drafts, will have sufficient time to educate themselves on this mammoth change.

I will just name a few examples. Under the New Order 53 as originally drafted, applicants for leave to apply for judicial review are required, at the leave stage, to name and describe all "interested parties", which have a wide meaning under the rule. The intention is to streamline proceedings and ensure that parties who are likely to be affected will be notified and brought into the action from the start. However, given the realities of judicial review in this jurisdiction, this requirement may be too high to meet for the ordinary applicant who comes to the court to seek remedy against public authorities. Since non-compliance carries serious consequence, the new rule may result in stifling this kind of judicial review and obstructing access to justice.

The Subcommittee is gratified that the draft rule is now modified to remove this requirement, leaving judges to exercise their general case management powers to ensure interested parties will be alerted as soon as they are identified.

With regard to the new Order 13A, the Subcommittee has reservations about requiring a party making an admission and proposing delayed payment to provide a detailed schedule of means and serve it on the other party from the start. We believe that this might make the new procedure less attractive, since the proposed delay may be acceptable to the other party on commercial considerations without detailed means being disclosed. While it is only right for the court in considering whether delay should be granted to have the detailed information, this can be provided only if the initial proposal is opposed. The Subcommittee trusts that the Judiciary will monitor the implementation of this new procedure.

The Subcommittee understands the need to allow an application for leave to make an interlocutory appeal to be dealt with expeditiously on paper. We are uneasy about denying the applicant an oral hearing altogether in cases which are "totally without merit". The experienced practitioners among members of the Subcommittee assured us that cases which judges considered "totally without merit" have, on occasions, turned out differently upon oral submissions.

The Subcommittee has discussed the impact of the changes on unrepresented litigants. Although the new rules will not make civil litigation more complex or more disadvantageous to unrepresented litigants in the conduct of proceedings, members are of the view that the services of the Resource Centre for Unrepresented Litigants should be reviewed and enhanced. We recommend that the matter be followed up in the next session in the appropriate Panel of this Council.

The Judiciary intends to bring the relevant legislation into force on 2 April 2009 in one go. The Subcommittee has expressed concern whether there would be sufficient time for the legal profession to undertake the necessary preparation and training, and requested the Judiciary to consider implementing the legislative amendments by phases.

The Judiciary is of the view that this may create uncertainty and confusion, and affect the training plans already in place.

However, in response to the request of the Subcommittee, the Judiciary Administration has agreed to report the progress on preparation and training of the two professional bodies to the Panel on Administration of Justice and Legal Services by early January 2009, before gazetting the commencement notice for the subsidiary legislation.

The Subcommittee feels that as the Judiciary is the proper sponsor of legislation and subsidiary legislation of the Civil Justice Reform, there should be appropriate representatives from the Judiciary attending meetings of the Subcommittee to assist members on the policy and implementation aspects of the draft subsidiary legislation. However, we are informed that it is the Chief Justice's firm view that as a matter of constitutional principle, judges should not appear before Legislative Council committees and that the Judiciary Administration should continue, on behalf of the Judiciary and as authorized by

the Chief Justice, to facilitate the Subcommittee in its work. Members respect the Chief Justice's view although they do not necessarily share it.

I would like to take this opportunity to record special thanks to the team from the Judiciary Administrator's office and the Administration for their conscientious assistance. To enable the Subcommittee to complete the task under severe time pressure without compromising the vigilance expected by the community, a great deal of extra paper work had to be done. Thanks are also due the excellent support of the Secretariat of this Council and I wish to place them on record.

Thank you, Madam President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Concessionary Bus-bus Interchange Schemes Implemented by Franchised Bus Companies

1. **MR ANDREW CHENG** (in Cantonese): *President, it has been reported that certain route groupings under concessionary bus-bus interchange (BBI) schemes implemented by franchised bus companies have very small or even zero daily patronage. In this connection, will the Government inform this Council:*

(a) of the details of various route groupings under the current concessionary BBI schemes, broken down by franchised bus companies and the districts served by the routes concerned, including the route numbers and fares, interchange arrangements, interchange fare discounts and the average daily number of passengers receiving the concession; and whether it knows if the various franchised bus companies have plans to introduce new concessionary route groupings in the coming 12 months; if they have such plans, of the details;

(b) whether the Transport Department will assess the number of passengers who will benefit from the route groupings concerned when it examines the concessionary interchange route groupings proposed by franchised bus companies; if so, whether Transport Department will approve those route groupings assessed to have relatively low patronage; if it will not make such an assessment, of the reasons for that; and

(c) whether it had, in the past five years, assessed the effectiveness of the concessionary BBI schemes in alleviating the burden of travelling expenses on the public; if so, of the assessment outcome; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, there are generally four objectives of providing concessionary BBI schemes:

(i) BBI schemes providing passengers with more choices, such as providing interchange fare concessions at large-scale infrastructures to facilitate passengers to travel to more destinations. These schemes are commonly implemented at toll plazas outside the entrances of tunnels and bridges, and so on, where en-route stops of numerous bus routes are provided;

(ii) BBI schemes introduced for new areas or new towns. These schemes are implemented to reduce the need for introducing long-haul point-to-point bus routes;

(iii) BBI schemes provided to reduce traffic congestions in busy areas and improve the roadside air quality; and

(iv) BBI schemes introduced to provide alternatives to the bus services with low patronage when implementing bus route rationalization or enhancement.

(a) As at end May 2008, 228 concessionary BBI schemes have been implemented by various bus companies. Details broken down by their interchange locations are as follows:

- 34 schemes in the New Territories West (NTW) involving 95 routes. As at the end of 2007, the average daily patronage benefited was about 70 000;

- 40 schemes in the New Territories East (NTE) involving 80 routes. As at the end of 2007, the average daily patronage benefited was about 12 600;

- 96 schemes on Hong Kong Island involving 117 routes. As at the end of 2007, the average daily patronage benefited was about 7 400;

- 7 schemes on Lantau Island involving 15 routes. As at the end of 2007, the average daily patronage benefited was about 3 700; and

- 51 schemes in Kowloon involving 173 routes. As at the end of 2007, the average daily patronage benefited was about 30 800.

The above BBI schemes involve a total of about 400 bus routes. Details such as the interchange locations, bus companies involved, route numbers and fare concessions are available at the website of the Transport Department. Members who need to obtain further information of any particular schemes are welcome to contact Transport Department. However, if we print out the information, there are dozens of pages, for environmental protection reasons, we have not provided to Members in the form of enclosure this time around.

The bus companies plan to introduce 15 new BBI schemes in the coming 12 months. These schemes involve routes serving various districts in Hong Kong Island, Kowloon, NTW, NTE and Lantau Island. Nine of the 15 schemes are put forward to tie in with the proposed bus route rationalization packages. Transport Department is now consulting relevant District Councils (DCs) on

these proposed packages. The remaining six BBI schemes will be implemented in the next few months. These schemes, which involve 16 bus routes operating in five regions, are aimed at providing more choices for passengers.

(b) The Government welcomes the provision of fare concessions for passengers by the bus companies. As regards the concessionary BBI schemes, they could help reduce the need for introducing long-haul point-to-point bus routes and thus alleviate traffic congestion and air pollution on the one hand, and help reduce the travelling expenses of interchanging passengers on the other hand. Therefore, the Government has been encouraging the franchised bus companies to introduce more concessionary BBI schemes, having regard to their operating conditions and the economic situation. In assessing a BBI scheme put forward to tie in with a proposed bus route rationalization package, Transport Department will take into account a number of factors, including suggestions from the public and whether the proposed BBI scheme can improve the coverage and operating efficiency of the bus network.

(c) Currently, a total of 228 concessionary BBI schemes are provided by the bus companies, involving about 400 bus routes and a daily patronage of about 120 000. In 2007, the total fare savings for passengers under these concessionary schemes exceeded $200 million. This indicates that such schemes are effective in helping bus passengers to reduce fare expenses.

MR ANDREW CHENG (in Cantonese): *President, the Secretary mentioned in the last sentence of part (c) that such schemes were effective in helping bus passengers reduce fare expenses, but in view of a daily patronage of only 3%, it is obvious that these schemes are only effective in helping a handful of bus passengers to cut down their fare expenses. As we consider these concessionary schemes unsuccessful, will the Secretary consider reforming the existing bus fare structure drastically, such as adopting the cost-per-kilometre fare system, that is, to adopt a distance-based sectional fare system to replace the concessionary schemes under which passengers do not really benefit?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I have pointed out in the beginning of the main reply, that there were several objectives of providing concessionary BBI schemes. In addition to providing passengers with more choice, we also need to optimize the existing bus routes, so that these new BBI schemes can provide alternatives to bus services with low patronage. If the patronage is high, we should actually provide point-to-point bus service. For that reason, it is understandable that some bus routes will have low patronage. As the total fare savings for passengers under these BBI schemes are around $200 million, we therefore consider the schemes effective.

With regard to the question raised by Mr Andrew CHENG on whether we will implement a sectional fare system, in fact that is also a system we have been implementing. The provision of other concessions have not been discontinued because of the implementation of the BBI schemes. Take the sectional fare system as an example, of the existing 400 bus routes, about 70% are operated under the sectional fare system. If there are divergent views in this respect, we will continue to listen and study ways to rationalize different BBI schemes or other concessionary schemes.

MR ANDREW CHENG (in Cantonese): *President, the Secretary has misunderstood my concept of sectional fares. According to my sectional fare concept, the present complex and outdated bus fare system for rural routes, urban routes and cross-harbour routes should be replaced by a direct cost-per-kilometre fare system; and instead of implementing sectional fares only for long-haul bus routes under the current concessionary BBI schemes, this system will be applied to all routes. So the sectional fare system that I have referred to is not that type at all.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, at the present stage, we have not considered implementing a across-the-board distance-based sectional fare system, because according to our present idea concerning fare determination, the fares of long-haul routes will be cheaper than short-distance routes on an average kilometre basis. We always hope that long-haul passengers can enjoy a cheaper fare. Therefore, as far as structure is concerned, we have such a concept now, then we put it into practice. Nevertheless, we have heard the views of Mr Andrew CHENG. Of course, as

to the question of how, on a whole, the routes should be optimized and different BBI schemes should be implemented, constant improvement will be made in those respects.

MS MIRIAM LAU (in Cantonese): *Interchange concessions do not necessarily suit the need of all passengers, that is something everyone understands. However, one can see from part (a) of the main reply that the utilization rates of some of the routes are really very low. Take Hong Kong Island as an example, the average daily patronage benefited is only 60 on each route. Of course, the number is higher in the New Territories as 700 people per day will stand to benefit. May I ask the Secretary, with respect to some of the interchange concessions that very few people use, will the Government take the initiative to contact the company concerned in order to find out whether the location of the interchange points is not suitable, so as to ensure that more passengers can enjoy these interchange concessions?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, the Transport Department will continue to monitor the utilization of BBI schemes. As to schemes with low patronage, the Transport Department will review the specific arrangement of these schemes in conjunction with the bus companies, such the convenience of location of interchange points, and bus companies may be required to step up publicity to maximize the utilization of BBI schemes. Nevertheless, I would like to stress that low patronage does not mean that such schemes should be abolished, because there will always be some passengers who utilize the schemes, instead, we will consider whether to introduce some other interchange concessions or not, I think we can make constant improvement on that. Some of the schemes are proposed by bus companies, others are proposed by the Government, and many of them are proposed by DCs and other people. We will listen to views from all sides, if the schemes are feasible, the more schemes the better. We will encourage bus companies to do more work in this area.

DR FERNANDO CHEUNG (in Cantonese): *After the reunification, we have experienced years of deflation, but bus companies are not prepared to cut the fares, instead, they introduced BBI schemes and pointed out that they were tantamount to alleviating the burden on the public. In fact, the current figures*

show that only about 3% of the passengers can benefit from the interchange concessions. In response to supplementary questions, the Secretary said that there were other objectives of providing interchange concessions, but regardless of whatever objective, travelling expenses is indeed a very heavy burden to the public. May I ask whether the Secretary will consider requiring bus companies to provide monthly pass concessions, so as to alleviate the burden of travelling expenses on those commuters who have to go to work and attend school regularly?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we would like to discuss this subject with the bus companies, this is in fact a good proposal, DCs have also raised a similar view. I think that as long as the proposal is practicable, we are willing to look into the matter. However, Members have been focusing on the patronage of about 120 000. I would like to point out that in the daily patronage of more than 3 million, the majority of the bus passengers have been utilizing the point-to-point travelling mode; members of the public in fact welcome this approach. If practicable, in fact the use of point-to-point mode should be adopted. Therefore, there are different reasons for the adoption of interchange schemes, as I said earlier, on a number of long-haul routes, perhaps it would not be necessary to adopt the approach which involves a duplication of resources. However, the BBI schemes are introduced due to the fact that some routes have low patronage. I have explained this in the main reply. Nevertheless, we will listen to and follow up Dr CHEUNG's view.

MR WONG KWOK-HING (in Cantonese): *President, I am in strong support of the Government's promotion of interchange concessions. However, a lot of New Territories residents told me that they thought that the interchange concession arrangements between different bus companies seemed to be unresolved, in addition, the interchange issue between two different overland transport systems, that is, from bus to MTR and from MTR to bus, has yet to be resolved. So I wish to ask the Secretary via the President that with respect to various interchange concessions offered by different bus companies as well as different transport systems, that is, the interchange concession between "rubber tyres" and "iron wheels", whether the Government has any timetable for promoting these concessionary schemes?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we have in fact implemented some inter-modal interchange schemes. Of the present 228 schemes involving a total of about 400 bus routes, 62 schemes involving almost 170 routes are operating under an inter-company mode. Therefore, it is not that the problem is unresolved but in fact, the problem is being resolved. If there are feasible routes to be introduced, bus companies are willing to co-operate to help materialize such schemes.

As for the different modes of transport, there are inter-modal interchange schemes. If it is feasible, we think that the companies should be encouraged to do so. As far as I understand it, MTR has also promoted this mode recently by offering concessions to interchange passengers from outlying islands routes. We encourage this type of concessionary schemes.

MR WONG KWOK-HING (in Cantonese): *President, will the Secretary provide the information on the existing routes and their progress after the meeting?*

PRESIDENT (in Cantonese): Is this part of the supplementary question you have raised just now?

MR WONG KWOK-HING (in Cantonese): *Yes, President, I have asked the question about the timetable which is concerned about the progress, and the Government said that it was underway, we want to know the details of the progress.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, as I said before, in fact the information has been uploaded to the website of the Transport Department; we welcome Members to visit the relevant website. If there is any need for us to provide the information, we can also provide it. But as I said earlier, because of environmental reasons, we have not provided these dozens of pages of information by way of an annex.

MR ANDREW CHENG (in Cantonese): *President, the Secretary explained in part (b) of the main reply that the Government had been encouraging the franchised bus companies to introduce more concessionary BBI schemes, having*

regard to their operating conditions and the economic situation. The daily patronage of 3% in the Secretary's main reply as well as the Secretary's reply to our supplementary question is indeed very low. Therefore, is the Secretary worried about this type of interchange concessions launched by bus companies because they are in fact some window-dressing? What kind of so-called encouragement and incentives will the Government adopt to induce bus companies to introduce more BBI schemes under the current economic climate? As the Secretary undertook to listen to the views of our Honourable colleagues just now, will the Secretary speed up the introduction of concessions such as monthly pass and sectional fares?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I think this is one of the objectives of these schemes, that is, the four major objectives as I mentioned in the main reply. One of them is to introduce new BBI schemes to provide alternatives to the bus services with low patronage when implementing bus route rationalization or enhancement. This is actually an incentive, because this will achieve a more effective use of bus resources. So, we will follow this way of thinking by having more communication with bus companies to see what approach they can adopt. This will not only bring benefits to the operation of bus companies, but also passengers who can pay a lower fare, this will also benefit the whole society as the congestion at busy road sections can be alleviated.

As for the low patronage issue, as I have explained earlier, if the percentage is very high, these BBI schemes may replace a large number of point-to-point routes and this may not benefit the bus services as a whole. In fact, a lot of routes are in fact very popular, such as the 17 routes at Tai Lam Tunnel, the daily patronage is over 15 000. Two interchange routes at Kwun Tong Road are providing interchange services for Tseung Kwan O routes, and the daily patronage is over 10 000. In many busy road sections, such as those in Central, Causeway Bay, Nathan Road and so on, the vehicle trips travelling in and out of these places are significantly reduced because of the introduction of a number of BBI schemes. These schemes have been proved to be effective.

Of course, we can look at the total figures, but we can see the BBI schemes have already achieved certain results in some of the busy areas or locations,

therefore we will continue to encourage bus companies to go on with the schemes. Moreover, one of the objectives of these schemes is to use resources more effectively, and we consider that has already served the purpose of encouraging bus companies to use resources more effectively.

PRESIDENT (in Cantonese): Second question.

Requirements on Qualifications of Primary and Secondary School Teachers

2. **MR JEFFREY LAM** (in Cantonese): *Madam President, starting from the 2004-2005 school year, new Chinese and English Language teachers of primary and secondary schools must hold a Bachelor of Education degree majoring in the relevant language subject, or both a first or higher degree majoring in the relevant language subject and a Postgraduate Diploma in Education or Postgraduate Certificate in Education majoring in the same language subject. Language teachers without the above qualifications have to acquire them within three to five years of their entry into the profession. In this connection, will the Government inform this Council:*

(a) among the new language teachers recruited in each of the school years after the introduction of the above qualification requirements, of the respective numbers and percentages of them having such qualifications when they joined the profession, together with a breakdown by primary versus secondary schools and the language subjects they teach; of the number of new teachers who have failed to acquire the relevant qualifications within the stated period and the number of them who are thus disallowed to continue teaching the relevant subjects;

(b) among the serving language teachers who joined the profession before the 2004-2005 school year, of the number and percentage of them who have not yet acquired the relevant qualifications, together with a breakdown by the types of their schools and the language subjects they teach; whether the Administration has planned to set a deadline for these teachers to acquire the relevant qualifications; if not, of the reasons for that; and

(c) since the 2004-2005 school year, of the number of serving language teachers who have fulfilled the relevant qualification requirements by taking recognized courses, and the situation of their applying for grants of tuition under the Professional Development Incentive Grant Scheme for Language Teachers, set up pursuant to the proposal of the Standing Committee on Language Education and Research, including the respective numbers of applications received and approved each year?

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education) (in Cantonese): Madam President, on the first part of the question, the Education and Manpower Bureau (EDB) issued a circular in March 2004, specifying the qualification requirements for language teachers. From 2004-2005 school year onwards, new language teachers in secondary and primary schools should possess a Bachelor of Education (BEd) degree majoring in the relevant language subject, or both a first/higher degree and a Postgraduate Diploma/Certificate in Education majoring in the relevant language subject. The EDB has also specified that language teachers without the above qualifications have to acquire them within three to five years after their entry into the profession.

Statistics in respect of teachers joining since 2004-2005 school year, including the number and percentage of teachers who have acquired the relevant qualifications when they joined the profession and the number of those who have not acquired the relevant qualifications within the specified period, are set out in the table at Annex I. Schools have been clearly advised that when offering an appointment to new language teachers without the required qualifications, they should set conditions in the employment contract that the teachers concerned must acquire the qualifications within three or five years. Schools have been required to plan the professional development of these teachers and report progress to their school management. There has been no requirement for schools to deploy language teachers to teach other subjects if they do not attain the required qualifications within the specified timeframe.

Turning to the second part of the question, statistics on the qualifications of the teachers who joined the profession before 2004-2005 school year are set out in the table at Annex 2. The Standing Committee on Language Education and Research (SCOLAR) observed that when it conducted the public consultation on the "Action Plan to Raise Language Standards in Hong Kong" in 2003, the majority of respondents objected strongly to the setting of a deadline for serving

teachers to acquire the relevant qualifications. As a result, the "Action Plan" did not recommend that a deadline should be set for these serving teachers to acquire the relevant qualifications. The Administration decided that no deadline should be set for these serving language teachers.

As regards the third part of the question, 4 632 serving teachers who joined the profession before 2004-2005 school year have fulfilled the required qualification requirements by taking recognized programmes of study.

The Professional Development Incentive Grant Scheme (PDIGS) aims to encourage serving Chinese and English Language teachers who joined the profession before 2004-2005 to enhance their subject knowledge and pedagogy in the language they teach. It provides financial incentives for serving language teachers to pursue relevant programmes of study. Teachers who already possess the relevant qualifications may also apply for the grants. Upon the successful completion of the approved programme of study, each applicant may receive 50% of the tuition fee, up to a maximum of HK$30,000. The application details of PDIGS are set out in the table at Annex 3.

Annex 1

Statistics on Qualifications of Language Teacher
Joining in or after 2004-2005 School Year [Note 1]

(i) Chinese Language Teachers

	2004-2005		*2005-2006*		*2006-2007*		*2007-2008*	
	Secondary	*Primary*	*Secondary*	*Primary*	*Secondary*	*Primary*	*Secondary*	*Primary*
No. of Chinese Language teachers who had fulfilled the qualification requirements when joining the profession	142	76	165	141	189	121	158	103
Percentage of Chinese Language teachers who had fulfilled the qualifications requirement when joining the profession against all Chinese teachers recruited in the same year	63.4%	25.9%	62.5%	40.6%	58.5%	32.6%	64.8%	48.4%

(ii) English Language Teachers

	2004-2005		*2005-2006*		*2006-2007*		*2007-2008*	
	Secondary	*Primary*	*Secondary*	*Primary*	*Secondary*	*Primary*	*Secondary*	*Primary*
No. of English Language teachers who had fulfilled the qualification requirements when joining the profession	163	110	227	91	207	134	199	79
Percentage of English teachers who had fulfilled the qualifications requirement when joining the profession against all English Language teachers recruited in the same year	58.2%	35.1%	67.6%	39.6%	58.8%	45.1%	54.2%	42.9%

(iii) The fulfillment of Qualification Requirements of Teachers within three years of joining the profession in 2004-2005 [Note 2]

	Chinese Language		*English Language*	
	Secondary	*Primary*	*Secondary*	*Primary*
No. of teachers who joined in 2004-2005	224	294	280	313
No. of serving teachers who should attain the required qualifications within three years of entry	37	66	54	69
No. of serving teachers who have attained the required qualifications within three years of entry	21	28	39	39
No. of serving teachers who have not attained the required qualifications within three years of entry	16	38	15	30

Note 1: The information is extracted from the e-Services Portal where schools/teachers update their qualifications. It is for statistical reference purpose.

Note 2: The five-year timeline for teachers recruited in 2004-2005 school year and the three-year and five-year timeline for teachers recruited in or 2005-2006 school year have not ended.

Annex 2

Qualifications of Serving Language Teachers who joined the profession before 2004-2005 School Year

	Chinese		*English*	
	Secondary	*Primary*	*Secondary*	*Primary*
No. of teachers without the relevant qualifications	828	3 734	1 040	2 748
Percentage of teachers without the relevant qualifications	20.4%	55.4%	27.2%	51.0%

Annex 3

Application Details of PDIGS

	2003-2004	*2004-2005*	*2005-2006*	*2006-2007*	*2007-2008*
No. of applications Note 1	3 164	2 421	1 843	1 038	377
No. of approved applications Note 1	2 841	2 132	1 625	914	304
Amount of fund earmarked ($) Note2	75.87 million	53.75 million	40.88 million	23.6 million	7.78 million

Note 1: A teacher may lodge more than one application, subject to a maximum grant of $30,000.

Note 2: As reimbursement of grant is made only after the teacher has successfully completed the approved programme of study, earmarking of grant is necessary.

MR JEFFREY LAM (in Cantonese): *Madam President, according to the information submitted by the Government, we can see that among the Chinese Language teachers who joined the profession after the 2004-2005 school year, 37 should attain the required qualifications within three years of entry. But there are 16 teachers who have not attained the required qualifications within three years. The public are very concerned about how the authorities will deal with these teachers. Will they be deployed to teach other subjects? Or are they still teaching the relevant language subject? May I ask the Government how these teachers will be dealt with? If they are still teaching the relevant subject, does it imply that they have been given a grace period by the Government?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I am grateful to Mr LAM for raising this supplementary question.

As I mentioned in the main reply just now, the EMB issued a circular in 2004 requesting schools to plan the professional development of the new teachers who had not attained the relevant qualifications, provide assistance to them in attaining the required qualifications and report progress to their school management. For the time being, there has been no requirement for schools to deploy these teachers to teach other subjects. In our opinion, teachers and schools have adopted a very positive attitude in enhancing the teachers' qualifications. So, we will try to understand the situation with the schools and teachers concerned and consider what can be done to further assist the teachers concerned in attaining the required qualifications expeditiously.

MR JEFFREY LAM (in Cantonese): *Madam President, the supplementary question I have asked just now is: As some teachers have not attained the required standard within three years of entry are still allowed to teach the relevant subjects, as indicated by the Administration, instead of being deployed to teach other subjects, does this mean that the grace period of the policy has been extended?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I think the issue can be considered from two perspectives. The EMB issued a circular to schools in 2004 in the hope that certain teachers could attain the required qualifications within three years. I think Mr LAM will also understand that the three-year period for teachers who joined the profession in the 2004-2005 school year has just expired. In other words, the three-year period has just come to an end in the 2007-2008 school year. So, we think we should look into the situation. As far as we know, teachers who have not attained the qualifications are still pursuing their studies. As I pointed out in my reply just now, we are now trying to gain a clearer picture of the situation from the schools and the teachers so that we can decide what else can be done to help the teachers attain the required qualifications.

MR JEFFREY LAM (in Cantonese): *Madam President, may I request the authorities to provide details of the current programme in writing?*

PRESIDENT (in Cantonese): Secretary, can you provide a written reply to set out the detailed information?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Yes, I can. (Annex I)

PRESIDENT (in Cantonese): Thank you.

MR ANDREW LEUNG (in Cantonese): *President, parents attach great importance to the quality of language teachers and the business sector has been criticizing the declining language standard of Hong Kong students.*

It is evident that, according to Annexes 1 and 2 of the Secretary's main reply, a rather high percentage of language teachers have not yet reached the required benchmark. Before all the language teachers have reached such a benchmark, does the Government have any measures to safeguard the students so that they will receive quality language instruction, instead of dragging its feet on the matter and granting unlimited concessions, thus resulting in further deterioration of the students' language standard?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Mr LEUNG for his supplementary question.

First of all, I would like to provide some information. We have noticed that among the serving teachers who joined the profession before the 2004-2005 school year, the percentage of those who have attained the relevant qualifications has increased from 35% in the 2003-2004 school year to 58% in the 2007-2008 school year since the implementation of this policy in 2004 and through the introduction of the PDIGS I mentioned in the main reply. These figures show that 13% of the serving teachers who previously did not possess such qualifications have attained the relevant qualifications during the past four years.

I hope such information can make Members understand that the teachers, the authorities and the schools concerned have attached great importance to the matter. It is evident that some improvement and progress have been made within a short period of time. I would also like to stress that English Language

teachers and Putonghua teachers in both secondary and primary schools are required to pass the Language Proficiency Assessments for Teachers (LPAT) which can ensure the quality of language teachers. We hope that the language teaching skills of Chinese Language and English Language teachers, as well as their subject knowledge, can be further enhanced through the requirement of a higher qualification.

So it can be described that we adopt a two-pronged approach. On one hand, we try to maintain the basic quality of language teachers through the mechanism of LPAT, while on the other hand, by setting the requirement of qualifications. It is hoped that the language proficiency, subject knowledge and pedagogy of language teachers can be gradually enhanced over time.

MR ANDREW LEUNG (in Cantonese): *President, the Secretary has not answered my question. My question is: How can students be ensured to receive quality language instruction as 42% of the teachers have not yet reached the LPAT benchmark and no new measures have been put in place?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the figure of 42% mentioned by Mr LEUNG may be a rather rough figure because this figure of 42%, some teachers are allowed to attain the required qualifications within five years. So, for these teachers, they still have two years' time to attain the required qualifications expected of them. This is the first point and a more detailed analysis I make.

In fact, the LPAT is the major mechanism by which we achieve our goal, that is, we ensure that the students are taught by teachers with proper qualifications when learning languages. As I said just now, all language teachers are now required to pass the LPAT and those who cannot are only allowed to teach subjects other than languages. This is the first "prong" I just mentioned.

Apart from that, we think further effort can be made in another aspect and that is, the enhancement of the teachers' qualifications. We have already made some very positive progress in this aspect.

MR CHEUNG MAN-KWONG (in Cantonese): *President, does the Government notice that while new language teachers are required to hold degree qualifications upon joining the profession, they are not guaranteed that they will be offered graduate teacher posts and relevant pay when employed, thus resulting in a situation in some schools where a large number of young language teachers with degree qualifications can only be employed at the pay of certificated teachers?*

Does the Government have any plan to ensure that in future all teachers who are employed on the basis of their degree qualifications will be offered graduate teacher posts and relevant pay, and there is no more exploitation in the form of high qualifications and low pay, thus encouraging other teachers to pursue degree qualifications?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Mr CHEUNG for this supplementary question. I am sure that Mr CHEUNG is more knowledgeable than I do in this aspect. And I also believe Mr CHEUNG is aware that the Education Bureau had explored the issue with the education sector and some decisions on that had been made a few months ago.

As far as I can remember, starting from the coming school year, that is 2008-2009, the Government will increase the number of graduate teachers in the ratio between non-graduate teachers and graduate teachers in primary and secondary schools. I understand that Mr CHEUNG is very concerned about the issue and has followed up the issue for years. From the 2008-2009 school year onwards, the Education Bureau will initiate some changes in a proactive manner.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. Last supplementary question.

MR HOWARD YOUNG (in Cantonese): *President, although the Government has granted subsidy to language teachers to pursue further studies, according to some reports, some teachers are too busy to take relevant courses despite the*

provision of government grants. So, will the Government consider adopting other approaches which will ensure that language teachers can find time for further studies so that the percentage of teachers who can reach the level of LPAT can be increased?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Mr YOUNG for his supplementary question.

I have also hoped that this problem can be addressed in the main reply, however, my reply may be too short for this purpose. The Education Bureau is now trying to understand the situation with the schools and the teachers concerned — I mean those who are unable to attain the relevant qualifications within three years — in the hope that it can gain a clearer picture of the difficulties they encounter. We will also encourage the schools concerned to pay close attention to the teachers' professional development and provide more positive assistance as far as possible. The Education Bureau will consider whether other measures can be provided after looking into the situation.

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

MR HOWARD YOUNG (in Cantonese): *Just now I asked whether or not they did not find time to further their studies.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I believe I cannot confirm or deny that this is one of the factors before the Education Bureau has found out the reasons from the schools and teachers.

PRESIDENT (in Cantonese): Third question.

Appointment of Under Secretaries and Political Assistants to Directors of Bureaux

3. **MISS TAM HEUNG-MAN** (in Cantonese): *The Government announced earlier a list of newly appointed Under Secretaries and Political Assistants to Directors of Bureaux, some of whom have already reported for duty. So far, there is still public opinion which criticizes the political appointment system (including recruitment, selection, remuneration and work arrangement, and so on). In this connection, will the Government inform this Council:*

(a) of the details regarding the criteria adopted by the Appointment Committee for the recruitment and selection of the above posts, and whether the Government will consider reviewing the relevant procedures and criteria to enhance transparency (including re-considering the conduct of open recruitment); if it will, of the relevant details; if not, the reasons for that; and

(b) as I have learnt that there are civil servants expressing dissatisfaction with the above political appointment system (including level of salaries and work arrangement, and so on), whether the Government has adopted any measures to prevent the system from affecting the morale of civil servants; if it has, of the details of such measures; if not, the reasons for that?

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

(a) The Legislative Council approved the creation of the Under Secretary and Political Assistant positions in December 2007, and the Government indicated immediately afterward that all interested parties could put forward their nominations or make self-nominations. The Government then formed interviewing panels to interview the candidates. The interviewing panels met on many occasions, with the participation of the relevant Secretaries of Department and Directors of Bureau. The interviewing panels made assessments of individual candidates and presented their assessment to the Appointment Committee (AC) chaired by the

Chief Executive for consideration. All appointment decisions were made by the AC on a collective basis and according to the principle of meritocracy.

The "Report on Further Development of the Political Appointment System" (the Report), which the Government released last October, has set out the aspects which the Government would take into account when considering candidates for appointment to these new positions. These include, for example, the network they have with their respective fields, the contribution which they can make to the relevant portfolios, their knowledge and experience in public service, and their ability, and so on. The AC would certainly also consider individual candidates in terms of their commitment to serving the community and pursuing a political career. It was under this framework that the AC made comprehensive assessment on individual candidates. All key decisions on the appointment procedures were made by the AC on a collective basis.

As regards the possibility of open recruitment which is mentioned in the question, this aspect was addressed in the Report. In our view, whilst open recruitment has been the system used for civil service appointments, it is not suitable for political appointments, and this is not the arrangement adopted for appointing the Principal Officials under the Political Appointment System currently. Political appointees are required to subscribe to the Chief Executive's manifesto and be committed to assuming political responsibilities collectively for the governance of Hong Kong. In any event, as stated above, all interested parties could put forward their nominations or make self-nominations.

(b) The Government attaches much importance to civil service morale. Expanding the Political Appointment System can strengthen the support to the Secretaries of Department and Directors of Bureau and enhance their capacity in handling political work. This will be conducive to maintaining a permanent, professional, and politically neutral civil service.

Regarding the remuneration level of politically appointed officials and their working relationship with civil servants, we would like to set out the following.

- On the issue of remuneration level, we consider that the remuneration packages for the positions of Under Secretaries and Political Assistants have to be competitive and should reflect the level of responsibility for these positions. The current remuneration packages for Under Secretaries and Political Assistants were approved by the Finance Committee of the Legislative Council in December 2007. Under Secretaries and Political Assistants are not civil servants and their remuneration packages are not linked to those of the civil service. It is not appropriate to compare the level of their remuneration directly with that of civil servants. In fact, Under Secretaries and Political Assistants are remunerated on the basis of a total cash package, and there are no housing allowance, passage allowance or gratuity benefits for them. Based on the remuneration ranges approved by the Finance Committee, the remunerations for Under Secretaries and Political Assistants are pitched at a range equivalent to 65% to 75% and 35% to 55% respectively of the remuneration for a Director of Bureau. For ease of reference, the above remuneration ranges are broadly equivalent to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed and that of a senior professional to D2 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed respectively.

- On the issue of working arrangements, the Government has underlined the role of Under Secretaries in assuming the full range of political responsibilities, and the role of Political Assistants in providing political support and input and in conducting political liaison, when drawing up their respective job descriptions. This is to better delineate the responsibilities between them and the civil service colleagues.

As the Chief Executive indicated on 20 May when announcing the Under Secretary appointments, since the establishment of the new positions of Under Secretaries and Political Assistants represents a new arrangement under the expansion of political appointment

system, there is bound to be a period of transition. However, the Government is confident that the newly appointed officials will work closely with the Secretaries of Department and Directors of Bureau, and our highly professional civil servants in serving Hong Kong, as a team.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, regarding the Secretary's main reply, my concern is with the accountability system. Many people are worried whether there is any black box operation. Of course, this black box represents the concern of many people. Just now the Secretary said that decisions were made on a collective basis. I wonder whether there is any effect of a situation where candidates have been ordained. Besides, regarding this accountability system which is introduced by the Government, may I ask whether it is accountable to the public or to the senior officials? Now, a lot of details have been withheld. When will these be published? Has the Government particularly intended that they would be accountable to the senior officials?*

PRESIDENT (in Cantonese): Miss TAM Heung-man, you have asked three questions in a row. I will not instruct the Secretary as to which question he should answer, for the decision rests with him. But I know Miss TAM Heung-man would very much hope that the Secretary will answer all of them.

MISS TAM HEUNG-MAN (in Cantonese): *It is true, Madam President. Thank you.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, first of all, concerning the recruitment of the politically appointed officials, after the publication of an open consultation document in 2006, we have listened to the views of the public and the Legislative Council Members. We therefore have made a few steps forward.

Now, concerning the appointment of the Secretaries of Department and Directors of Bureau, the Chief Executive is to form his political team after being elected by the Election Committee. These 15 politically appointed officials at

the top echelons of the Government are nominated by the Chief Executive before appointment is made by the Central Authorities. This is similar to the formation of a cabinet in foreign countries after the general election and the inclusion of the Secretaries of Department and Directors of Bureau into the Executive Council in 2002 has enabled our cabinet-like institution to take shape.

In foreign countries, the appointment of vice ministers is mainly decided by the head of the government. But in Hong Kong, public opinion will be taken into account in the process which has become more systematized and both nominations and self-nominations are welcome. The Chief Executive, together with the three Secretaries of Department and other Directors of Bureau, will form the AC which will refer the interviews of candidates either to the Under Secretary interviewing panels chaired by the Chief Secretary for Administration or the Political Assistant interviewing panels chaired by the Director of the Chief Executive's Office or me. Recommendations made on a collective basis, if any, will be referred back to the AC for further handling. We have, therefore, to a certain degree, openly explained how the system works and how internal decisions are made on a collective basis. In other words, we adhere to the principle of selecting the best people for the job.

Regarding Miss TAM Heung-man's particular mention of accountability, we are very much concerned about it. Politically appointed officials, be they Secretaries of Department, Directors of Bureau, Under Secretaries or Political Assistants, are required to be accountable to the public for their work. They will also be required to explain the position of the SAR Government to the Council and the media when necessary.

Besides, we have also extended the Code for Principal Officials to cover all politically appointed officials so that all Secretaries of Department, Directors of Bureau, Under Secretaries and Political Assistants should abide by the same Code and be accountable to the public.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, the Secretary has not answered whether some candidates had been ordained and whether there was black box operation.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, we have received a wide range of nominations from different individuals and organizations, such as political parties, think tanks, the Central Policy Unit and various Secretaries of Department and Directors of Bureau, apart from self-nominations. As we have considered a wide range of nominations from various sectors, I think the system is in fact very open.

MRS ANSON CHAN (in Cantonese): *I hope the Secretary and the SAR Government can look at the matter squarely as the whole set of arrangement has caused serious public dissatisfaction. As Legislative Council Members, each and every one of us should be obliged to monitor more closely.*

According to my understanding, there will be an interim review of the salary levels of the Under Secretaries and Political Assistants. May I ask the Secretary whether the criteria for the review and the proposed salary adjustments will be submitted to the Legislative Council for approval? If not, why not?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, prior to the submission of papers concerning our policy and proposals, the matter had been discussed and scrutinized two months beforehand in the Finance Committee of the Legislative Council last year. The current remuneration packages of Under Secretaries and Political Assistants including a monthly salary which is pitched at a range equivalent to 65% to 75% and 35% to 55% respectively of the monthly salary for a Director of Bureau have been considered and approved by the Legislative Council.

Regarding the interim review, we will observe the performance of the Under Secretaries and Political Assistants in the Legislative Council, before the public and the media, and they are assessed by the relevant Directors of Bureau according to the relevant job descriptions we have drawn up. This is a well-established system and in line with the pay scale approved by the Legislative Council last December.

PRESIDENT (in Cantonese): Mrs Anson CHAN, has your supplementary question not been answered?

MRS ANSON CHAN (in Cantonese): *No, President. I am not trying to recall past events with the Secretary. What I am saying is that as the people have voiced their utmost discontent, will the Secretary submit the criteria for the interim review and the proposed salary adjustments to the Legislative Council for approval? I hope the Secretary can answer this point.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, as the job descriptions and remuneration packages of the Under Secretaries and Political Assistants have been approved by the Legislative Council, we will act within the parameters approved by the Legislative Council.

MR RONNY TONG (in Cantonese): *In fact we were asking the Secretary about the appointment criteria. But in his reply the Secretary has told us some high-sounding and universally applicable criteria.*

Regarding this batch of political appointees, members of the public have the feeling that there is some mismatch. We cannot see that they have any obvious experience or academic background which are relevant to the portfolios they are to take up. My main question is: Why has the Secretary not considered their past working experience when they are appointed? For instance, why has the Government not appointed people from the non-government groups and the academia respectively for vacancies in the Environment Bureau and the Education Bureau? Why is there such a big difference between the background of these appointees and the portfolios they are to take up?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, in my main reply, I have already explained the requirements of the Under Secretaries and Political Assistants regarding their duties and qualifications. In Chapter 7 of the Report released last October, relevant details have been set out. When making such appointments, we have to look at the candidates' qualifications, experience and abilities as a whole. Nevertheless, they are subject to the same criteria. For instance, we expect that colleagues assuming the office of Under Secretaries should fulfill our assessment in respect of their abilities to explain the policy position on behalf of the SAR Government and deal with relevant legislative matters. They should be able to

explain the policy position on behalf of the SAR Government in front of the media and deal with related matters. Regarding the Political Assistants, they should be able to conduct political liaison, make political analysis and give advice.

Concerning these dozen of candidates recruited this time around, Members can see that they have possessed very good qualifications as far as academic qualifications are concerned. While some of them are graduates from the University of Oxford, University of Cambridge and Havard University, some of them have devoted to research after graduated from some prestigious tertiary education institutions in Hong Kong. Besides, they have also acquired certain experience in different professions, academic or public service fields. However, politics is politics. If people who have all along been working in the media or scholars who have all along engaged in commentaries on current affairs, they will have wider exposure. When they are assigned to some policy bureaux after being recruited, it may seem, at first glance, that their previous working experience may not necessarily be directly related to the policy bureaux assigned. However, as they have got a grip of public affairs, the constitutional system and overall situation of Hong Kong, we think they are suitable candidates for the office of Under Secretaries and Political Assistants.

MR RONNY TONG (in Cantonese): *I do not quite see what the Secretary means. Does the Secretary mean that anyone who is as eloquent as he is will be a suitable candidate and his previous working experience is not important? Does the Secretary mean that?*

PRESIDENT (in Cantonese): This is not part of your previous supplementary question.

MR RONNY TONG (in Cantonese): *President, I want to seek elucidation from him……*

PRESIDENT (in Cantonese): Please sit down first. You are not allowed to seek elucidation in question time. But I will ask the Secretary whether he has anything to add.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, the only thing I wish to add is that as all Members here are articulate and eloquent, we are subject to certain pressure when facing Members' questions.

MR LEE WING-TAT (in Cantonese): *President, according to the Secretary, the Under Secretaries and Political Assistants are remarkable and brilliant. However, they have all disappeared when there is a need for acting up. Now that some Directors of Bureau are on leave, but none of the relevant Under Secretaries attend the Legislative Council meetings. As the Secretary said that they are so brilliant, why do they not come and attend the Legislative Council meetings to take questions? I am really puzzled and so I would like to ask this supplementary question.*

Even though the Secretary said that they had graduated from some prestigious universities and were so formidable, the most important thing is in fact their practical experience. We will also need to stand up and take questions and ask questions. Now that some Directors of Bureau are on leave but none of the Under Secretaries, who are drawing a monthly salary of $220,000, come to the Legislative Council to take questions. May I ask Secretary Stephen LAM why these brilliant officials, as described by him, have all disappeared and seem to be so mediocre? Can the Secretary give us a response to this? Will they continue to shy away from showing up for two more months until they are required to take questions when the Legislative Council of the next term has commenced after the Legislative Council election?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I think the abilities of the Principal Officials and their deputies are subject to certain limits. We have to deal with matters in the Government Headquarters or come to take questions from various parties in the Legislative Council with a humble mind.

Regarding the arrangement in this summer, as only a number of Under Secretaries have assumed office, they will be given a short period of time to familiarize themselves with the working environment. So, from now on up to

the end of this Legislative Council Session, we will still stick to our previous arrangement as a whole. For instance, if Secretary Ambrose LEE is out of town, I will take questions and deal with legislative matters on his behalf when necessary. However, I do not think that each and every Under Secretary should show up only by the end of this autumn and that is in October. We will assign a Director of Bureau or his deputy to deal with some matter in the Legislative Council in response to the need concerned after having considered which level of officials, such as that of a Director of Bureau, an Under Secretary or other colleagues, is most suitable to deal with the matter. We will implement the acting arrangement and we just adopt the previous practice as a makeshift measure in these few weeks.

MR LEE WING-TAT (in Cantonese): *The Secretary has not answered my question. Just now he explained that these Under Secretaries were very experienced. So, my supplementary question is very specific: Under the system, as the Under Secretary will act up the post of Director of Bureau when the Director of Bureau is on leave and now some Directors of Bureau are on leave, why does the Secretary not invite these experienced Under Secretaries who are now drawing a monthly salary of more than $200,000 to come here and take questions? What are the difficulties? Do they need to be trained for a few months at the expense of taxpayers' money before they can assume or act up the post of the Director of Bureau?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, there has been discussion among ourselves and we have confidence in the abilities of these Under Secretaries. We also believe they will formally act up the relevant posts after a short period of familiarization with their portfolios. They will certainly come to the Legislative Council and also explain to the media and the public the business of the Government.

PRESIDENT (in Cantonese): This Council has spent 22 minutes on this question. We now proceed to the fourth oral question.

Medical Services Provided to Residents in Kwun Tong

4. **DR KWOK KA-KI** (in Cantonese): *Madam President, some doctors of the United Christian Hospital (UCH) have relayed to me that because of insufficient resources and space, the hospital is facing various difficulties, which include the lack of rehabilitation beds, not having certain specialty services (such as neurosurgery and oncology) and shortage of consultation rooms in Kwun Tong. In this connection, will the Government inform this Council:*

(a) whether it knows if the resources allocated to the UCH will be further reduced, and if the outpatient consultation rooms of the UCH have to be split into two with partition screens due to shortage of consultation rooms, in order that more patients can be treated at the same time; if there is such situation, whether the authorities have assessed if measures need to be drawn up to improve the situation;

(b) of the measures to enable Kwun Tong residents to receive neurosurgery, oncology and in-patient rehabilitation services within the district; and

(c) whether it knows why the Hospital Authority (HA) has not expeditiously implemented the project to demolish the nursing quarters of the UCH for in-situ expansion of the hospital to help ease the plight of the UCH, and whether the authorities will provide assistance to facilitate the implementation of the project this year?

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

(a) To meet the demand for health care services in the Kowloon East (KE) region, an additional allocation of about $17.7 million has been included in the 2008-2009 subvention for the HA to implement a number of measures to enhance the services of the KE Cluster. These include setting up an ear, nose and throat specialist centre and an integrated breast centre at the UCH. In addition, the UCH will enhance its services for stroke patients and physiotherapy assessment services on neck and back. It will also set up an oncology outpatient clinic, provide occupational therapy services for psychiatric patients and provide 24-hour pharmacy services for patients of the Accident and Emergency (A&E) Department and other in-patients.

Since the expansion of the specialist outpatient clinic (SOPC) of the UCH in 1995, the attendances of the SOPC have increased from 210 000 then to 435 000 in 2007. To cope with the service demand, some consultation rooms need to be split into halves for two doctors to provide consultation services at the same time. But each half of these consultation rooms will be separated by part of the walls and curtains. In parallel, SOPC services are also provided by the Tseung Kwan O Hospital (TKOH) also under the KE cluster to facilitate Tseung Kwan O residents to utilize such services within the district.

The UCH has also reviewed the utilization of its consultation rooms and other facilities, with a view to fully utilizing the space of existing consultation rooms through flexible arrangement. For example, four available consultation rooms of the Obstetrics and Gynaecology Department are used for breast and chest out-patient services of the Surgical Department on Wednesday mornings; and six available consultation rooms of the Paediatrics Department are used for palliative out-patient services of the Medical Department on Wednesday afternoons. In addition, the UCH will continue to explore other possible ways to vacate more space for consultation services, such as to switch from the current arrangement for individual specialty to conduct patient registration separately, to a centralized registration system.

(b) Neurosurgery service has a relatively limited demand and requires complex supporting equipment and technicians to deliver. These services are currently centralized by the HA at a few tertiary services centres and are provided to the public on a cross-cluster basis. Such arrangements can achieve cost-effectiveness and help pool together the experience of health care professionals and ensure the quality of services. At present, the neurosurgery service of the KE Cluster is supported by the Queen Elizabeth Hospital (QEH) of the Kowloon Central (KC) cluster.

As regards oncology service, the KE Cluster plans to provide additional oncology specialist out-patient service and set up an integrated breast centre at the UCH in 2008-2009, so as to further enhance the oncology service in the region. It is estimated that the

oncology specialist out-patient service can serve 300 cancer patients annually, and the integrated breast centre can provide an additional 1 800 attendances each year.

As for in-patient rehabilitation service, some 300 convalescent beds are currently provided by the KE Cluster. In addition, the Kowloon Hospital (KH), the specialist rehabilitation hospital in the adjacent KC cluster, provides a further 192 convalescent beds for the KE Cluster.

(c) The HA will regularly review the services of the KE Cluster having regard to the demographic changes, increase in service demand and service utilization and will plan for services and facilities as necessary. The HA is now conducting preliminary planning on the expansion project of the UCH, and will examine the project plan and submit it to the Government for consideration in accordance with its established procedures. Details of the project are not yet available at the present stage.

DR KWOK KA-KI (in Cantonese): *Madam President, I am very disappointed. The Secretary said that the project plan will be submitted to the Government for consideration, but in truth it is for his own consideration.*

Madam President, I can now see it. I can see why doctors at the UCH have said that the hospital did not even have the money to pay for their increments in salary. One department had to slash its expenditure by $2.5 million on the first year, and $4.5 million and $8.5 million on the second and third year respectively. The health care cost of a patient in the KE cluster is on average $2,974 per day.

We now find that consultation rooms at the SOPC are split into halves by partition screens and consultation provided by pharmacists is conducted between two partition screens. The attendances have increased from 210 000 to 450 000, but the Secretary still tells us to wait.

I can now see it. Because the Government has allocated $2.84 billion to the KE cluster, so the Secretary has generously allocated an additional

$17.7 million, representing an increase of 0.62%. Madam President, it is 0.62%. I asked the Secretary what solution he has in place, and most importantly, whether sufficient resources will be provided, and when he will let the UCH have a new SOPC and implement the expansion project, but the Secretary has not replied any of these questions at all.

Can the Secretary inform us when patients in the district can end their miseries of having to receive medical consultation in a room split into halves by a cotton curtain, or having to receive medical consultation and inspection along the corridors?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, as I have already said just now, the UCH is indeed a little deficient in terms of hardware. We have thus enhanced the software and made flexible arrangement in the hospital. In the meantime, the Cluster has been strengthened with additional services provided by the TKOH. We also plan to expand the TKOH. The plan is now submitted to the Finance Committee of the Legislative Council for scrutiny.

As regards the expansion project of the UCH, I have liaised with the UCH. I just held a meeting with its staff last month and they understood the need of the project. As regards its detailed status, it is now being examined by the HA Headquarters together with other works projects. Upon completion of the examination, it will be submitted to the Government for our consideration soon as possible.

DR KWOK KA-KI (in Cantonese): *Madam President, my supplementary question was about the UCH, but the Secretary's reply was about the TKOH. Madam President, I have specifically asked the Secretary just now when the expansion project will be implemented. Can the Secretary tell us?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I have already said just now that we will expeditiously consider the expansion project upon receipt of its application.

DR JOSEPH LEE (in Cantonese): *President, the Secretary stated in part (b) of the main reply that the demand of neurosurgery service in the KE cluster is relatively limited and the service is thus provided by the QEH of the KC cluster.*

May I ask the Secretary to cite some concrete figures to illustrate the current demand of neurosurgery service in the KE cluster; for instance, the number of patients needing this service and the aggregate demand after combining with the KC cluster? As the KC cluster has to treat neurosurgery patients from the KE cluster, I am worried that patients in the KC cluster have to wait for an even longer time because the neurosurgery resources of the cluster are shared with the KE cluster?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, according to figures provided by the KE cluster, neurosurgery operations are now supported by the QEH. In the past 12 months, 576 cases have been referred by the KE cluster to the QEH, of which 322 cases were referred by the A&E Department and some 240 cases were from in-patient cases, and 248 cases required neurosurgery operations. This only accounts for a small part of the workload of the QEH.

They have made the present arrangement because they think that it is better to centralize high risk surgeries requiring advanced technology in one place, rather than to conduct such surgeries in a local hospital.

We will continue to keep a close watch on this practice before deciding whether the KE cluster needs to set up an independent neurosurgery unit. However, Members should be aware that the Government is currently considering the setting up of a territory-wide neurology specialist centre to centralize part of the neurosurgery operations and patients.

DR JOSEPH LEE (in Cantonese): *President, first of all, I wish to thank the Secretary for providing the information, but he has not answered my supplementary question.*

As 500-odd cases means almost one case per day is referred to the QEH, will this increase or decrease the workload of the QEH?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, as far as I know, this is not an arrangement which is started recently. It has been implemented for quite some time. One of the practices we have adopted is to reallocate the resources of the KE cluster on neurosurgery service to the QEH, so that the latter will increase the manpower accordingly for the extra workload.

MR CHAN KAM-LAM (in Cantonese): *President, the health care facilities for people in the KE cluster are very insufficient and far less than those for people in other clusters.*

The Secretary stated in the main reply that expansion works are being conducted in the UCH. I wish to inform the Secretary that the population of the KE region will at least increase by 100 000 in the coming five years. Even if the nursing quarters are demolished for expansion, the additional services that can be provided will still be very limited. May I ask the Secretary whether he will reconsider expediting the pace and construct, for example, a regional hospital in Kowloon Bay or the new Kai Tak area, so as to enhance the service standard of its neighbouring clusters in the coming five or 10 years?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I wish first to point out that the KE cluster of the HA also includes the TKOH. This is different from other regional delineation. We thus need to consider the clusters as a whole in addressing patients' needs.

As regards Kai Tak, the Government has reserved a plot of land there for hospital construction. But the overall planning (for example on transport and other aspects) has to be completed before proceeding to the construction. I do not believe this can be done in a few years' time. As a long-term plan, we can construct a sizable integrated hospital there because the plot of land there is very large. The hospital will then be able to benefit residents in the district and the KE region.

MR FRED LI (in Cantonese): *President, I heard just now the Secretary say that problems indeed exist in the hardware of the UCH. He mentioned in the main*

reply that the attendances of its SOPC have doubled and that the UCH will enhance its services for stroke patients.

President, stroke patients surely need rehabilitation services. At present, almost 100 elderly patients in the UCH, be they men or women, are transferred to the convalescent wards of the KH. This is precisely because the UCH does not have sufficient facilities. The Secretary said just now that he will consider this problem when the HA has completed considering the project, but this problem is already very pressing and as redevelopment takes time, can the Government, instead of following the normal procedures to wait for the HA to submit the redevelopment project, take the initiative to expedite redevelopment in conjunction with the HA?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, first of all, the HA has to take into account the needs of every cluster. I believe the UCH is in greater need of providing emergency services.

As regards rehabilitation service, as far as I know, the need of rehabilitation service has been included in the planning. We hope that after careful consideration, we can provide rehabilitation service for the patients as far as feasible in the same district.

MR FRED LI (in Cantonese): *President, the Secretary has not answered my supplementary question. I have specifically asked whether this redevelopment project can be exempted from going through the normal procedures. As the situation is so urgent, the authorities should work in conjunction with the HA, rather than waiting for the HA to submit the project to them.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I believe the HA will submit the project to us shortly because we have urged them to do so for quite some time.

PROF PATRICK LAU (in Cantonese): *President, I wish to raise a question on the expansion of the UCH. As the UCH already knew back in 1995 that its*

patients would continue to increase, why to date — after more than 10 years — its expansion project cannot be started?

May I ask the Secretary, as the UCH does not know the situation elsewhere, such as that of the TKOH, does it already have an expansion project in place? Or it already have a project in place, it is just that the HA has not executed it? I wish to know whether it has a project in place already, and can this project be expedited? This is my supplementary question.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, as far as I know, the KE cluster represents one integral planning, covering three major hospitals, namely the TKOH, the Haven of Hope Hospital and UCH. Hence, their planning is co-ordinated as a whole.

As regards the UCH project, I know the hospital has already submitted the project to the HA Headquarters which is currently considering the project together with other applications. In other words, the project will soon be submitted to us for overall consideration.

PROF PATRICK LAU (in Cantonese): *President, I think this is not a sound approach. Actually, the project should be expedited — sorry, I am asking the same question. My supplementary question just now was why do the authorities not expedite the project already in place for the UCH? If it has to be considered together with other projects, the progress will be slowed down.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, as far as I know, other districts and hospitals also have many urgent needs. We certainly have to balance between the most urgent needs and the special needs. I agree that there are definitely undesirable things in our hospitals, and improvement, renovation or even expansion works are to be undertaken gradually. Although these are necessary procedures, they should be done in a fair and just manner.

MR LEE CHEUK-YAN (in Cantonese): *The people of Hong Kong are really pathetic. The authorities are using another region to suppress the KE region while they claim to be fair and just.*

President, this happens not only to the KE region, but also to other regions. If consultation rooms in the KE cluster are separated by cotton curtains, how can patients' privacy be protected? Have the authorities considered these issues? Why is it that these issues do not seem to be urgent?

President, can the Secretary undertake that …… the HA now states that these issues will be addressed in accordance with the established procedures; but we can hardly know, according to its established procedures, how many years we have to wait before these issues can be submitted to the Health, Welfare and Food Bureau — no, it should now be the Food and Health Bureau — and then to the Legislative Council. This procedure will take a long time. Can the Secretary undertake to examine whether there is any way to expedite the progress, given that the expansion plans of all hospitals — not only those of the KE cluster — are all urgent? Or is the HA deliberately adopting a stalling tactic because once more hospitals are built, it will require additional resources for software and more manpower is needed? Is the HA deliberately making a delay? Secretary, can the overall progress be made faster?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I must clarify that the HA has been addressing their problems in a diligent and fast manner, but the problems to be addressed are plenty.

Moreover, I think Members are also aware that any project using public money will have to go through the certain procedures. If Mr LEE can propose a good suggestion to shorten these procedures, or the Legislative Council has any way to expedite the handling of these issues, I hope he can tell us his views so that we can study whether they are workable.

MR LEE CHEUK-YAN (in Cantonese): *President, I was asking whether the HA will expedite its work. I can assure him that the Legislative Council can expedite its work. Regarding the construction of hospitals, the Legislative*

Council certainly can expedite the scrutiny process, but the problem hinges on whether the HA can make its pace faster.

May I ask the Secretary to reply whether the HA — not the Legislative Council — can make things faster? What is the use of the Legislative Council making its pace faster? Will the HA do the same?

PRESIDENT (in Cantonese): You are making a comment on the Secretary's reply, and that is not part of your supplementary question just now.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I have already said just now that the HA has been making all-out efforts to do its job diligently. However, all projects will have to go through a scrutiny stage and so will this project.

PRESIDENT (in Cantonese): We have spent more than 20 minutes on this question. We now proceed to the fifth oral question.

Financial Assistance Schemes for Students

5. **DR FERNANDO CHEUNG** (in Cantonese): *Will the Government inform this Council:*

(a) apart from the review of the income ceiling for full grant assistance under the various financial assistance schemes provided by the Government for secondary, primary and kindergarten students conducted in 2006, when the Government last conducted other reviews of such schemes; whether it has revised the schemes following the reviews; if it has, of the details of the revisions, with a breakdown by scheme;

(b) of the mechanism for adjusting the amounts of assistance provided under such schemes, and how the amounts of assistance are determined; and

(c) whether currently the authorities have plans to review the above financial assistance scheme again, including adjusting upwards the household income ceiling of the applicants; if they have, when they will conduct the reviews and when the relevant revisions will take effect; if not, of the reasons for that?

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education) (in Cantonese): President, it is the Government's student finance policy to ensure that no student is deprived of education due to lack of means. At present, the Student Financial Assistance Agency (SFAA) provides various kinds of assistance to needy students through a number of financial assistance schemes. In the 2006-2007 school year, the actual disbursement of financial assistance applicable to students at pre-primary, primary and secondary levels amounted to over $1.7 billion, benefiting over 380 000 students from around 300 000 families. These financial assistance schemes include the School Textbook Assistance Scheme, the Student Travel Subsidy Scheme, the Senior Secondary Fee Remission Scheme, the Examination Fee Remission Scheme and the Kindergarten and Child Care Centre Fee Remission Scheme.

With regard to part (a) of the question, the Education Bureau and the SFAA have reviewed the income ceiling for full grant assistance applicable to the various financial assistance schemes in 2006. In fact, since 2000, we have also conducted separate reviews on the coverage, level of assistance and limits on the total disbursement in respect of individual schemes. Improvement measures have been put in place following the approval of the Finance Committee of the Legislative Council. The major improvement measures are summarized below.

In respect of the School Textbook Assistance Scheme, with effect from the 2000-2001 school year, we have removed the limit placed on the total amount of grants provided under the scheme so as to ensure that all eligible students would receive the corresponding assistance. In addition, we have increased the textbook grant for all secondary levels from 80% to 100% of the average textbook costs. We have also introduced a flat rate grant to assist needy students to pay for other school-related expenses other than textbooks.

In respect of the Student Travel Subsidy Scheme, with effect from the 2000-2001 school year, we have raised the maximum level of travel subsidy for the most needy students from half-rate grant to full-rate grant to alleviate the financial burden of their families. In addition, with effect from the 2004-2005

school year, we have removed the cross-net requirement for primary students to be eligible for travel subsidy so as to enable more needy students to benefit from the scheme.

In respect of the Senior Secondary Fee Remission Scheme and the Examination Fee Remission Scheme, with effect from the 2000-2001 school year, we have removed the limits placed on the total amount of grants provided under these schemes. In other words, all eligible students may receive financial assistance in accordance with the established criteria.

In respect of the Kindergarten and Child Care Centre Fee Remission Scheme, with effect from the 2002-2003 school year, on top of the 50% and 100% kindergarten fee remission levels, we have introduced a further level of remission at 75% to provide needy children with appropriate assistance. In addition, with effect from the 2005-2006 school year, we have expanded the scope of the scheme to cover all eligible children receiving pre-primary education services (including those attending child care centres) to support parents under a unified financial assistance scheme.

With regard to part (b) of the question, we have been determining and adjusting the amounts of grant for individual financial assistance schemes according to established mechanisms.

In respect of the School Textbook Assistance Scheme, the grant comprises a textbook grant for purchasing essential textbooks and a flat rate grant to cover other school-related expenses. Every year, the Consumer Council conducts sample survey before start of the school year on the actual costs of textbooks to be purchased for various levels of studies in various schools. The SFAA adopts the Consumer Council's survey results as the basis for determining the textbook grant rate for different levels of studies. Since the survey by the Consumer Council is conducted annually, the results reflect fully the actual costs of textbooks for the year. As regards the flat rate grant, it is revised annually according to the movement of the consumer price index.

In respect of the Student Travel Subsidy Scheme, the SFAA determines the full-rate grant having regard to the average fare on public transport payable by eligible students for home-school travels during school term time. The rate will also be revised annually in the light of the level of public transport fares provided by the Transport Department.

In respect of the Senior Secondary Fee Remission Scheme, the highest amount of fee remission is the actual amount payable by an eligible student for the year, which has already taken into account the annual adjustment of school fees. Similarly, the amount of fee remission under the Examination Fee Remission Scheme is the actual examination fees payable by the student for sitting the Hong Kong Certificate of Education Examination and the Hong Kong Advanced Level Examination, which has taken into account the annual adjustment of examination fees.

In respect of the Kindergarten and Child Care Centre Fee Remission Scheme, with the introduction of the Pre-primary Education Voucher Scheme in the 2007-2008 school year, the fee remission ceiling for half-day kindergarten places is set at a level equivalent to the ultimate value of the voucher dedicated towards fee subsidy during the 5-year transitional period that follows. The fee remission ceiling will be reviewed together with the Pre-primary Education Voucher Scheme in the 2011-2012 school year.

With regard to part (c) of the question, the SFAA administers a number of student financial assistance schemes on a means-tested basis so as to ensure proper use of public money and appropriate financial assistance for students with genuine financial need. The means test takes the form of an Adjusted Family Income (AFI) mechanism, whereby an applicant's gross annual household income and household size are taken into account in determining whether he is eligible for student financial assistance. The AFI mechanism is subject to annual adjustment in accordance with the movement of the consumer price index. All student financial assistance schemes applicable to pre-primary, primary and secondary students are not subject to any asset test.

In the 2005-2006 school year, we conducted a review of the AFI mechanism. With regard to relating factors (such as the scope, nature and so on) of the student financial assistance schemes, we considered that the mechanism for determining the income eligibility criteria for full grant assistance under the student financial assistance schemes has been operating well and should be maintained. We have reported the findings of the review to the Panel on Education of the Legislative Council in July 2006. As regards the adjustment of the amounts of grant for individual schemes, since there are established adjustment mechanisms for most of the schemes, which have adequately reflected the consumer price movement, we have no specific plan to change the present mode of operation.

DR FERNANDO CHEUNG (in Cantonese): *President, the student financial assistance schemes are very important to many poor families with children. These families have not applied for Comprehensive Social Security Assistance (CSSA) but they are equally poverty-stricken. To them, the student financial assistance schemes are an important relief in terms of school fees, travel expenses and textbook costs. However, President, if we compare the household income ceiling of these schemes with that of the CSSA scheme, we will discover that the former is actually more or less the same as the latter. For example, for a two-person household to be eligible for full-rate student assistance, its income ceiling is about $5,000, which is in fact eligible for receiving CSSA; and for a three-person household, the income ceiling is only about $6,700 to $6,800, which is still eligible for receiving CSSA.*

The student financial assistance schemes actually seek to assist poor families not on CSSA. If so, should their household income ceiling not be set at a certain percentage (such as 120%) above that of the CSSA scheme? This will then be able to assist non-CSSA families with children which are genuinely poverty-stricken. May I ask the Government whether it will use this method to determine the household income ceiling?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I thank Dr CHEUNG for his supplementary question. The CSSA scheme and the student financial assistance schemes are different in nature, but both of them are Government's effort to assist low-income families. The CSSA scheme provides a safety net for Hong Kong residents who do not have the financial means to maintain a living because of age, physical disability, illness, low income, unemployment and family problems; while the student financial assistance schemes predominantly seek to ensure that no kindergarten, primary or secondary student in Hong Kong is deprived of education due to lack of means.

Since both the CSSA and student financial assistance schemes use public money, we certainly need to ensure that the money is used properly. Thus, two different mechanisms are established under the two kinds of schemes to determine respectively who and what families are the most needy recipients of CSSA, and what families and students are the most needy recipients of student financial assistance. With this concept in mind, we establish the AFI mechanism I have mentioned in the main reply just now under the student

financial assistance schemes. The Education Bureau conducted a comprehensive review of the mechanism in 2005-2006 and the findings of the review were reported to the Panel concerned. At present, we do not notice the continuing application of the AFI mechanism will lead to needy students being deprived of the education they should have due to lack of means.

DR FERNANDO CHEUNG (in Cantonese): *The supplementary question I asked just now was whether the Secretary would consider providing assistance to children of poor families in the light of the purpose of the student financial assistance schemes, so that they would not have any difficulty in receiving education due to lack of means. And is it a little harsh that the income ceiling of the schemes is similar to or even lower than that of the CSSA scheme? It will only be meaningful if the income ceiling is set at a certain percentage above the income ceiling of the CSSA scheme. As they are also poor families, the Government should assist them. This is the original intention and purpose of the schemes. I asked whether she will do so, but she has not answered the question.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I thank Dr CHEUNG for his follow-up question. In fact, I do not wish to draw a comparison between the two kinds of schemes because they are actually two very different kinds of schemes in terms of format, but Dr CHEUNG still wishes to compare these two kinds of assistance schemes in his follow-up question. Perhaps, let me provide a brief answer to it.

In verifying a CSSA applicant, we will also conduct an asset test, but we will not do so when verifying an applicant for student financial assistance schemes. This is the first major difference. The second major difference is that for student financial assistance schemes, only 30% of the income of the applicant's brothers and sisters living in the same household is included in the calculation of the total household income, but for the CSSA scheme, 100% of such income is included in the calculation of the applicant's total household income to determine whether the applicant is eligible for applying CSSA.

President, I cite these two examples because I wish Members would understand that the CSSA scheme has a mechanism of its own, and that this mechanism is completely different from that of the student financial assistance

schemes. I believe Dr CHEUNG's intention is to ensure that no student in Hong Kong should be deprived of education due to lack of means, and we consider that the existing student financial assistance schemes can precisely achieve this purpose. Regarding other proposals to further improving the student financial assistance schemes, we have to consider them in the light of their details and justification, the public resources the Government can deploy and the priority of other education measures.

MR CHEUNG MAN-KWONG (in Cantonese): *President, over 6 000 Hong Kong students (from kindergarten, primary to secondary levels) residing in Shenzhen travel to Hong Kong to attend schools. Their railway fares are very expensive, especially when they travel between the Lo Wu to Sheung Shui section because they need to pay the cross-boundary charge, and Shenzhen itself is very large in area. In this connection, can the Government provide a cross-boundary travel subsidy under the existing Student Travel Subsidy Scheme for the increasing number of cross-boundary students and work out a formula to calculate the travel subsidy based on their actual needs?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, as far as I understand it, the SFAA will conduct on a regular basis fairly comprehensive sample surveys to find out the current daily travel expenses of kindergarten, primary and secondary students, and determine the amount of travel subsidy according to the travel expenses information collected from these regular surveys. I can relay this concern to the SFAA to see if they have included travel expenses information of cross-boundary students in their surveys.

MR LEE CHEUK-YAN (in Cantonese): *The Under Secretary for Education has not attended the meeting today. Obviously, the Under Secretaries are now a protected species, but President, this is certainly not the question I wish to ask.*

Setting aside the issue of CSSA which Dr Fernando CHEUNG mentioned just now — because the Secretary said it involves two different mechanisms here — may I ask Secretary Denise YUE a very simple question: when the total income of a four-person household reaches $8,399, it will reach the ceiling. A family earning $8,399 may not even have money for food. Why can this ceiling

of $8,399 not be raised? At present, when the total household income falls below $8,399, the household is eligible for full-rate grant; when the total income exceeds $8,399, the household is eligible for half-rate grant. When a four-person household has only an income of $8,399, this is indeed a very low income. I am not talking about CSSA. Will the Secretary be a little more sympathetic and comment whether the income ceiling of $8,399 is too low? Why can these needy families not be offered any help? We often say that inflation inflicts the greatest impact on low-income people. This is in fact the most appropriate and effective means that people of the Policy Bureau should adopt to let low-income families have a break. Can the Secretary reconsider and review this issue and discuss it with the Education Bureau? But as the Secretary today is representing the Education Bureau, can the Government review this issue and provide us with an answer as soon as possible?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I thank Mr LEE for his supplementary question. According to my understanding, when the SFAA verifies whether a household is eligible for applying various subsidies under the student financial assistance schemes, it will exclude the education expenses of the household. Therefore, the sum of $8,000-odd, as cited by Mr LEE just now, does not include any education expenses. If a four-person household with an $8,000-odd monthly income is eligible for full-rate student financial assistance, it will receive a monthly grant of about $800. In other words, if the $800 is added to the household income, that household will, in fact, have two different sources of income, one of which is from the employer, and the other from government assistance under the student financial assistance scheme concerned. Its total monthly income will then be about $9,500, which can be used on various expenses (including education). The above is purely an explanation.

I believe the focus of Mr LEE's supplementary question is whether the Government, in determining the adjustment to the household income to fully meet the limits on the total disbursement of the subsidies, can raise the income ceiling. In this regard, as I have also mentioned in my reply to Dr Fernando CHEUNG's supplementary question, we have to examine the details of any proposal to further improve the student financial assistance schemes, and more importantly, this is subject to the amount of resources appropriated to education each year. Moreover, as there are many measures that need to be implemented

in education, we have to examine the priorities under the education portfolio. Mr LEE and Dr CHEUNG may well be aware that at present, the annual recurrent expenditure the Government has devoted to education is $50 billion, which is no small amount and it accounts for about 25% of the Government's total recurrent expenditure. We thus have to thoroughly consider proposals to further improve the student financial assistance schemes in the light of each and every aspect I have mentioned just now.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. This is the end of the oral questions session.

WRITTEN ANSWERS TO QUESTIONS

Tree Transplantation

6. **MS AUDREY EU** (in Chinese): *President, at present, trees affected by working projects are being transplanted to certain sites designated by the Government (government receptor sites). In this connection, will the Government inform this Council:*

(a) of its annual expenditure on tree transplantation in each of the past three financial years;

(b) of the number, broken down by tree type, of trees being transplanted to the government receptor sites each year between 2005 and 2007;

(c) over the past three years, whether the relevant works staff had pruned the trees being transported to government receptor sites for the purpose of complying with the vehicle volumetric loading provisions in the road traffic legislation; and

(d) of the respective five-year and 10-year survival rates of trees being transplanted to the government receptor sites after their transplantation?

SECRETARY FOR DEVELOPMENT (in Chinese): President,

(a) In the 2005-2006, 2006-2007 and 2007-2008 financial years, the expenditures for transplanting a total of some 3 700 trees under public works and public housing projects were around $4 million, $3.5 million and $4.8 million respectively.

Trees affected by works projects can be divided into two groups on the basis of the arrangements for handling them. The first group pertains to those trees which can be transplanted directly to their permanent planting locations. The other group pertains to those trees which have to be moved to a temporary storage site first before being transplanted to their permanent planting locations. For the former, we will select as far as possible another location in the same project site for transplanting. Failing this, trees will be transplanted to other project sites or suitable roadside amenity areas. As for the latter, works departments or their contractors will have to make their own arrangements for identifying suitable temporary storage locations. Generally speaking, these sites include suitable private land or land granted by the Lands Department through short-term tenancy or temporary land allocation. Since 2004, the Leisure and Cultural Services Department (LCSD) has been providing space for works departments or their contractors for temporary storage of trees when space is available in LCSD's five holding nurseries and seven tree banks. However, as the space provided is limited, not all demands from works projects can be met. In such cases, the concerned works departments or their contractors will have to make their own arrangements for identifying suitable temporary storage locations.

(b) As the above temporary storage arrangement was just launched in the 2004-2005 financial year, LCSD did not receive any request for temporary storage of trees in that year. Over the past three financial years of 2005-2006, 2006-2007 and 2007-2008, the number of trees temporarily transplanted to the holding nurseries or

tree banks was 1 217 and 75 respectively (293 trees in total), with details as follows:

Financial Year	*Tree Species*	*Quantity*
2005-2006	Royal Palm	1
2006-2007	African Tulip Tree	27
	Chinese Banyan	27
	Colville's Glory Tree	24
	Tipa Tree	23
	Buddhist Pine	23
	India-rubber Tree	22
	Kassod Tree	20
	Umbrella Tree	15
	Frangipani	15
	Pink Shower	5
	Bald Cypress	5
	Big-leaved Fig	5
	Yellow Elder	3
	Flame Tree	3
2007-2008	Taiwan Acacia	39
	Kassod Tree	12
	Chinese Banyan	10
	Ear-leaved Acacia	7
	Chinese Hackberry	4
	Tree Cotton	1
	Big-leaved Fig	1
	Common Red-stem Fig	1
Total		293

(c) When trees are transported for transplanting, the concerned departments and their contractors, when necessary, will engage specialist landscaping contractors to execute appropriate pruning to the trees so as to comply with the provisions of the traffic regulations on the dimension of loads carried on vehicles. The positions for placing the trees on the trucks will also be carefully selected so as to preserve their length and breadth as far as possible and minimize the extent of pruning. Generally speaking, pruning is required only for larger trees.

Furthermore, to enhance the survival rates of transplanted trees, the Government has incorporated relevant specifications into works contracts to ensure that transplanted trees are properly handled. These specifications cover preparatory work before transplanting, restrictions on pruning of tree crowns and roots, protection measures to be adopted during transportation, maintenance of trees after transplanting, and so on.

(d) Trees stored in holding nurseries or trees banks are normally transplanted to their permanent planting locations (including areas within the original project site, other project sites or suitable roadside amenity areas, and so on) within a year. We do not have any record on the survival rates of the trees in five and 10 years after being transplanted to holding nurseries or tree banks.

Rates Concession for Properties of Hong Kong Housing Society

7. **MR WONG KWOK-HING** (in Chinese): *President, in the 2008-2009 Budget, the Financial Secretary proposed to waive rates for the current financial year, subject to a ceiling of $5,000 per quarter for each rateable tenement. This measure is applicable to the properties under the Hong Kong Housing Society (HKHS). In this connection, will the Government provide information on HKHS'refund to tenants of its properties of the rates concerned, and list the information according to the table below?*

Name of estate	*Residential tenanats*		*Commercial tenants*		*Car park tenants*	
	Number	*Whether the rates will be refunded to them (if so, of the total amount of refund)*	*Number*	*Whether the rates will be refunded to them (if so, of the total amount of refund)*	*Number*	*Whether the rates will be refunded to them (if so, of the total amount of refund)*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the HKHS indicated that the rents of the residential units and parking spaces in its rental estates are rates inclusive, whereas the rents of non-residential properties

(including commercial units, market stalls and properties for community use) are not. Tenants of non-residential properties pay rates to the HKHS separately.

Currently, the HKHS manages 20 rental estates, which have a total of 33 141 residential units, 618 non-residential properties and 3 615 parking spaces. With the Government's rates concession in 2008-2009, around $5.3 million and $34,000 in rates are waived per month for the HKHS' residential units and parking spaces respectively.

The HKHS indicated that, as in the past, it would deduct the amount of rates concession from the monthly rents of the residential units this year. The amount of rates rebate per month for the residential units of the HKHS by estate in 2008-2009 are as follows: (please see the table attached)

Estate	*Number of residential units in the estate*	*Rates rebate per month for the residential units in the estate*
Bo Shek Mansion	267	$47,942
Broadview Garden	448	$89,353
Cho Yiu Chuen	2 531	$401,362
Chun Seen Mei Chuen	1 027	$144,690
Clague Garden Estate	552	$129,019
Healthy Village	1 190	$242,192
Jat Min Chuen	3 730	$547,494
Ka Wai Chuen	1 676	$306,615
Kwun Lung Lau	2 318	$429,041
Kwun Tong Garden Estate	4 922	$767,132
Lai Tak Tsuen	2 677	$574,075
Lakeside Garden	234	$34,590
Lok Man Sun Chuen	3 676	$540,486
Ming Wah Dai Ha	3 169	$455,647
Moon Lok Dai Ha	947	$102,178
Prosperous Garden	667	$143,748
Sha Tau Kok Chuen	662	$73,758
Tui Min Hoi Chuen	302	$29,896
Verbena Heights	971	$135,856
Yue Kwong Chuen	1 175	$131,727
Total	33 141	$5,326,801

Tenants of non-residential properties will only need to pay rents, but not rates, during the period of rates concession. The HKHS does not have to arrange rates rebate to those tenants.

As for parking spaces, having regard to the fact that the average rates per month for each parking space is only about $10, and relatively high administrative costs would be involved in arranging the rebate and that it would be technically difficult to apportion the amount of rebate for individual users as some carparks are let on both a monthly and hourly basis, the HKHS will not make arrangements for rates rebate in respect of parking spaces.

Access to Small Houses in New Territories

8. **MR LEUNG KWOK-HUNG** (in Chinese): *President, I have received a complaint from a resident in Fung Yuen Village of Tai Po pointing out that as his home is encircled by small houses built one after another in recent years, he has to seek the consent of the owners of the nearby houses to pass through their private lots in order to go out of and back to his own home, which causes him great inconvenience. I visited the place concerned with staff of the Tai Po District Lands Office, and found that what he had complained was true. In reply to my enquiry, the Tai Po District Lands Office advised that as the above case involved private land ownership, the Office was not in a position to intervene. In addition, under the new Fire Safety Requirements implemented by the Government with effect from 1 July 2006, if less than 10 houses are located within a circle with a radius of 30 metres measured from a proposed small house site, the provision of an emergency vehicular access (EVA) is not required, but fire safety alternatives must be implemented instead. According to the Tai Po District Lands Office, the above case belongs to such a situation. In this connection, will the Government inform this Council:*

(a) since the implementation of the above new Fire Safety Requirements, of the number of small houses in the New Territories which have been exempted from the provision of EVA, and whether the authorities are required to inspect the small houses where fire safety alternatives are implemented; if so, of the number of such inspections conducted so far, and whether there are cases of non-compliance with the requirements; if so, of the number of cases of non-compliance;

(b) of the total number of complaints received by the New Territories district lands offices since 1 July 2006 regarding the obstruction of access to small houses; and

(c) given that the provision of EVA is to ensure that in case of emergency, emergency vehicles including fire engines and ambulances have ready access to the village houses, whether the authorities will consider amending the relevant legislation to ensure the access of emergency vehicles to villages in the New Territories, so as to avoid any delay in rescue and disaster relief operations?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the obstruction of access to village houses in the New Territories is mainly due to the encircling of the subject land by private lots nearby. This is not necessarily related to the new fire safety arrangements, and one should not mix up the two issues. As such cases often involve private land ownership, generally the New Territories District Lands Offices (NTDLOs) will advise the complainants to approach the landowners of the nearby lots to work out a practicable solution.

Under the Emergency Vehicular Access (EVA) arrangements for Small Houses introduced in 1997, for a cluster of 10 or more Small Houses, there should be, within 30 metres from each house, a vehicular access to allow emergency vehicles to arrive. For a cluster of nine or fewer Small Houses, the Administration would, depending on the actual circumstances, consider whether EVAs would be required.

The Heung Yee Kuk (HYK) and many villagers had reflected to the Administration that given the geographical constraints of villages in the New Territories, not all Small Houses could be provided with EVAs. Hence, the Administration and the HYK formed a working group to review the issue. After detailed deliberations, the Lands Department (Lands D) introduced a set of new fire safety arrangements on 1 July 2006 for processing Small House applications in a more pragmatic and flexible manner. Details of the arrangements are as follows:

(a) if a Small House application site is located less than 30 metres away from an existing EVA, or if a cluster of fewer than 10 houses

(including the application site) are located within a radius of 30 metres from the application site, provision of an EVA is not required;

(b) if a cluster of 10 or more houses (including the application site) are located within a radius of 30 metres from a Small House application site, the applicant should consider ways to provide an EVA to the application site;

(c) where an EVA cannot be provided because of geographical constraints or problems with private land ownership, the applicants must implement at least one of the following fire safety alternatives –

(i) automatic sprinkler installation; or

(ii) fire detection system and hose reel system (applicable if there is no fire separation between floors of the three-storey Small House); or

(iii) fire detection system and fire extinguisher on each floor of the Small House (applicable if there is fire separation between floors of the three-storey Small House).

For applicants who opt for fire safety alternatives (ii) or (iii) above, they are required to attend a fire safety training course arranged by the Fire Services Department (FSD).

My reply to the three-part question is set out below –

(a) As at 30 April 2008, the relevant figures are as follows:

(i) 2 472 Small House applications are not required to provide EVAs either because the application sites concerned are less than 30 metres away from the existing EVA, or because fewer than 10 houses (including the application site) are located within a radius of 30 metres from the application sites.

(ii) There are 496 Small House applications in which a cluster of 10 or more houses (including the application site) are located within a radius of 30 metres from the application sites. The applicants have to consider ways to provide EVAs. If no EVA can be provided due to the above contraints, the applicants must implement one of the abovementioned fire safety alternatives.

When these 496 Small Houses are completed and when the applicants apply to NTDLOs for certificates of compliance, the NTDLOs will liaise with the FSD for site inspection to ensure that installation of the fire safety alternatives are in compliance with the arrangements mentioned above.

As the new fire safety arrangements have only come into operation since 1 July 2006, most of the Small Houses so approved are still under construction. Only one case where fire safety alternatives are allowed has been referred to the FSD so far. The FSD has inspected the fire safety installation of the Small House concerned and no irregularities or non-compliance with the requirements has been found.

(b) Since 1 July 2006, the NTDLOs have received a total of 26 complaints regarding the obstruction of access to village houses. However, none of the sites under complaint are related to the new fire safety arrangements. Taking the case in Fung Yuen Village of Tai Po mentioned in the question as an example, the Small Houses built on the private lots encircling the complainant's land were approved in 2004.

(c) Prior to the implementation of the new fire safety arrangements, the Administration has, in collaboration with the HYK, carefully considered the geographical constraints and relevant circumstances of villages in the New Territories. We understand that it is impracticable to provide EVAs to all Small House sites. The two-pronged approach of fire safety alternatives together with fire safety training has been introduced to address the fire safety issue of Small House applications. This is a practicable way to strike a

balance between fire safety protection for villagers and geographical constraints of villages in the New Territories.

For the Small Houses without EVAs, fire appliances and ambulances of the FSD will be driven to the nearest accessible point so that emergency rescue operations, where appropriate, can be commenced as soon as practicable. If circumstances at the scene permit, the FSD will consider deploying Emergency Medical Assistant Motorcycles closer to the scene.

Development of Self-financing Degree-awarding Institutions and Private Universities

9. **MR CHEUNG MAN-KWONG** (in Chinese): *President, the Report of the Phase Two Review of the Post Secondary Education Sector recommends "the development of more self-financing degree-awarding institutions and private universities in Hong Kong" and anticipates that "the proposal to extend the Financial Assistance Scheme for Post-secondary Students to support sub-degree students articulating in self-financing degree programmes would stimulate the demand for and supply of locally-accredited degree (and top-up degree) programmes". In this connection, will the Government inform this Council:*

(a) whether it knows the details of each self-financing or top-up degree programme offered by each institution in the past three years (including the number of places, entry requirements, annual tuition fee, annual number of graduates and the name of the institution awarding the degree);

(b) whether it has set admission criteria for self-financing degree programmes offered by the University Grants Committee (UGC)-funded institutions and private operators as well as for top-up degree programmes jointly offered by these institutions or operators and non-local institutions; if it has, of such criteria; if not, how the authorities ensure that the institutions only admit students who have attained a certain academic standard and will not admit students indiscriminately;

(c) whether, according to the Government's policy, the admission, teaching and learning as well as exit standards of self-financing or top-up degree programmes offered by UGC-funded institutions should be consistent with those of their publicly-funded degree programmes, that is, attaining the prescribed academic standards and quality control; if so, of the relevant mechanism; if not, how the authorities ensure the quality of self-financing degree programmes and how the public can tell the difference between the two types of degrees awarded by the same institution;

(d) given that UGC-funded institutions have self-accrediting status, and therefore sub-degree programmes offered by their community colleges or continuing education arms are not required to undergo accreditation by external mechanism, whether it knows if the institutions have exercised quality control over the programmes offered and degrees awarded by their community colleges or continuing education arms; if they have, of the relevant mechanism; if not, the reasons for that;

(e) whether community colleges or continuing education arms of UGC-funded institutions are entitled to award local degrees; if so, of the reasons for that, and how the authorities ensure the quality of the degrees awarded by community colleges; if not, whether there is any difference, in terms of academic standards and recognition, between the degree obtained by taking a subvented programme offered by UGC-funded institutions and one operated by their community colleges, and how the authorities ensure that the overall standards and international rankings of UGC-funded institutions will not be adversely affected by awarding degrees to graduates of their community college programmes;

(f) what conditions community colleges of UGC-funded institutions and private operators must comply before they are allowed to become private universities; and what measures the Government has in place to ensure that these institutions have equal opportunities of development; and

(g) whether the institutions are allowed to redeploy resources provided by the Government for operating sub-degree programmes to develop self-financing degree programmes; if so, whether the relevant institution have to obtain prior approval and what the assessment criteria are; if approval is not required, of the reasons for that?

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education) (in Chinese): President, as regards part (a) of the question, details of the full-time self-financing degree and top-up degree programmes offered by individual institutions in the past three years, compiled on the basis of information provided by the institutions, are set out at Annex.

As regards part (b) of the question, before offering any self-financing degree programmes, a UGC-funded institution must ensure, through its internal accreditation mechanism, that the programmes offered meet the relevant criteria concerning their entry qualifications, quality and standards of teaching and learning. A local private operator, before offering such programmes, is required to have the programmes accredited by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ). The accreditation exercise will cover entry qualifications, quality and standards of teaching and learning so as to ensure the quality and the standards of teaching and learning of the programmes.

As for top-up degree programmes jointly offered by the institutions and non-local operators, they are regulated under the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) (the Ordinance), which provides for the registration of such programmes before they can be offered. Major registration criteria include the following:

(i) The awarding institution is a non-local institution recognized in the home country.

(ii) Effective measures are in place to ensure that the standard of the programme is maintained at a level comparable with a programme conducted in the home country leading to the same qualification and is recognized as such by that institution, the academic community in

that country and the relevant accreditation authority in that country (if any).

The Ordinance also stipulates that non-local programmes conducted in collaboration with a specified local institution of higher education may be exempted from registration, but such exempted programmes are still required to meet the standard expected of registered programmes.

As regards part (c) of the question, the UGC-funded institutions have self-accrediting[1] status in respect of their degree and top-up degree programmes. All these programmes, be they publicly-funded or self-financing, are subject to the internal quality assurance process of the institutions concerned to ensure that the entry qualifications as well as the quality and standards of teaching and learning of the programmes meet the relevant requirements. Furthermore, the Quality Assurance Council (QAC) under the UGC, as a third-party, undertakes quality audits of the UGC-funded institutions to ensure the quality of teaching and learning of all their undergraduate and postgraduate degree programmes (including UGC-funded and self-financing programmes).

As regards part (d) of the question, post-secondary programmes offered by the community college or continuing education arm of a UGC-funded institution are subject to monitoring by the institution. Following vetting by the relevant academic committees of the community college or continuing education arm, these programmes will be submitted to the senate of the institution for approval. Members of the relevant academic committees under the community college or continuing education arm include the president/vice-president or other senior staff members of the institution concerned.

As regards part (e) of the question, the community college or continuing education arm of a UGC-funded institution may not, on its own, award local degrees. Its self-financing degree or top-up degree programmes are, similar to those programmes offered by the institution proper, subject to the quality assurance mechanism laid down by the self-accrediting institution. Meanwhile, the scope of quality audit performed by the QAC covers all undergraduate and

[1] The Hong Kong Institute of Education has self-accrediting status in respect of its teacher education programmes at degree and above levels.

postgraduate degree programmes (including self-financing ones) leading to qualifications awarded by the UGC-funded institutions.

As regards part (f) of the question, under the existing legislation, any institution, except those established under their own ordinances[2], which intends to award local degrees must register as a post-secondary college under the Post Secondary Colleges Ordinance (Cap. 320). Before registering under the Post Secondary Colleges Ordinance, the institution must be accredited by the HKCAAVQ. Areas covered in the accreditation process will include the institution's past performance, governance structure, academic standard and quality, teaching staff, quality assurance framework and financial position. Upon registration, a post-secondary college is required to seek approval from the Chief Executive in Council before awarding degrees.

A post-secondary college offering degree programmes may further apply to the HKCAAVQ for programme area accreditation (PAA) status in specific disciplines. PAA status is equivalent to self-accrediting status in a particular discipline of an institution. An institution with PAA status may run its own programmes and award qualifications in that discipline without submitting individual programmes to the HKCAAVQ for accreditation.

A post-secondary college which has successfully acquired PAA status may apply to the Chief Executive in Council through the Education Bureau if it wishes to register under the Post Secondary Colleges Ordinance under a name containing the word "university". In general, the HKCAAVQ will undertake an institutional review to assess whether the college has the proper academic and institutional structures in place which befit the status of a university. The Chief Executive in Council will consider each application on its merits and take into account relevant factors, including the internal governance, quality assurance framework and research capacity of the institution, before determining whether to allow the college to register under a name containing the word "university".

Generally speaking, in order to ensure the quality of universities, we believe that an institution needs to operate for at least one to two assessment

[2] Currently, the institutions established under their own ordinances include the eight UGC-funded institutions, the Open University of Hong Kong and the Hong Kong Academy for Performing Arts.

cycles[3] after obtaining PAA status before it can provide sufficient information to support its application for registering under a name containing the word "university".

As regards part (g) of the question, if an institution in receipt of government resources which are designated for its self-financing sub-degree programmes wishes to redeploy such resources for its self-financing degree programmes, it should apply to the Government for approval. Approval of the application depends, first of all, on whether the institution is qualified to operate degree programmes. Other considerations include the quality of the institution and its programmes, its long-term development plan and overall supporting measures, the needs of the local community, the development needs of the sector, and so on.

Annex

Full-time Local Self-financing Degree Programmes, 2005-2006 to 2007-2008

Institution	*Academic Year*	*Number of Places*	*Entry Requirements*	*Annual Tuition Fee ($)*	*Number of Graduates*	*Awarding Institution*
Hong Kong Shue Yan University	2005-2006	735	Applicants must have obtained at least three passes in Hong Kong Advanced Level Examination (HKALE) in one sitting (that is, Use of English, Chinese Language and Culture and one other subject), and four passes in Hong Kong Certificate of Education Examination (HKCEE) (plus Level 2/Grade E or above in Chinese and English) Note Some programmes accepts equivalent qualifications applicants attained in Mainland China or overseas countries	45,000	227	Hong Kong Shue Yan University
	2006-2007	750		45,000	561	
	2007-2008	1 210		49,000	Not yet available	

[3] Duration of an assessment cycle is generally four to five years.

Institution	*Academic Year*	*Number of Places*	*Entry Requirements*	*Annual Tuition Fee ($)*	*Number of Graduates*	*Awarding Institution*
The Hong Kong Polytechnic University	2005-2006	-	-	-	-	The Hong Kong Polytechnic University
	2006-2007	-	-	-	-	
	2007-2008	40	Applicants must have obtained: (1) one pass in HKAL Chinese Literature, or Hong Kong Advanced Supplementary Level (HKASL) Chinese Language and Culture, or Grade D in a HKCEE language subject other than Chinese and English; and (2) one pass in HKASL Use of English; and (3) two passes in other HKAL subjects, or one pass in one other HKAL subject and two passes in other HKASL subjects; and (4) five passes in HKCEE subjects. Note Some programmes require that applicants must have obtained Grade C in one HKCEE subject and Grade E in HKCEE Biology or Human Biology	63,000	-	
The Open University of Hong Kong	2005-2006	550	Applicants must have: (1) a Pre-Associate Degree; or (2) completed Form Six/Seven or equivalent Note Some programmes require that applicants must have obtained two passes in HKALE, or one pass in HKALE plus two passes in HKASL, together with two passes in Use of English and Chinese Language and Culture in HKASL, or Level 2/Grade E or above in Chinese and English in HKCEE. Some programmes require that applicants must have attained the minimum qualifications required for professional training offered by the relevant professional bodies.	42,000	14	The Open University of Hong Kong
	2006-2007	700		42,000-63,000	74	
	2007-2008	700		42,000-63,000	96	

Institution	*Academic Year*	*Number of Places*	*Entry Requirements*	*Annual Tuition Fee ($)*	*Number of Graduates*	*Awarding Institution*
Chu Hai College of Higher Education	2005-2006	735	Applicants must: (1) have obtained three passes in HKCEE (including Mathematics) and Level 2/Grade E or above in Chinese and English; two passes in HKALE (that is, Use of English and Chinese Language and Culture); and one pass in other HKAL subject or two passes in HKASL subjects; or (2) reach the age of 23	45,000	0	Chu Hai College of Higher Education
	2006-2007	735		45,000	0	
	2007-2008	805		48,000	Not yet available	
City University of Hong Kong	2005-2006	-	-	-	-	City University of Hong Kong
	2006-2007	60	Applicants must have obtained two passes in HKALE or one pass in HKALE, plus two passes in HKASL subjects (excluding Use of English and Chinese Language and Culture), and passes in Use of English and Chinese Language and Culture in HKASL or equivalent Note Some programmes require that applicants should have obtained passes in specific subjects (for example, Pure Mathematics, Physics, and so on)	67,000-69,000	-	
	2007-2008	90		67,000-69,000	Not yet available	

Full-time Local Self-financing Top-up Degree Programmes, 2005-2006 to 2007-2008

Institution	*Academic Year*	*Number of Places*	*Entry Requirements*	*Annual Tuition Fee ($)*	*Number of Graduates**	*Awarding Institution*
City University of Hong Kong	2005-2006	70	Applicants must have obtained an Associate Degree or a Higher Diploma or similar qualifications awarded by a recognized tertiary institution Note Some programmes require that applicants must have attained good academic standing at the tertiary institution they have previously attended	63,000	-	City University of Hong Kong
	2006-2007	180		63,000	52	
	2007-2008	224		63,000	Not yet available	

Institution	*Academic Year*	*Number of Places*	*Entry Requirements*	*Annual Tuition Fee ($)*	*Number of Graduates**	*Awarding Institution*
Hong Kong Baptist University	2005-2006	81	Applicants must have obtained an Associate Degree or a Higher Diploma in related subjects awarded by a recognized tertiary institution in Hong Kong Note Some programmes require that applicants must have attained specific language standards	63,000	-	Hong Kong Baptist University
	2006-2007	180		63,000	75	
	2007-2008	210		63,000	Not yet available	
Lingnan University	2005-2006	100	Applicants must have a recognized Associate Degree or equivalent qualifications	60,000	-	Lingnan University
	2006-2007	100		70,000	64	
	2007-2008	60		80,000	66#	
The Hong Kong Polytechnic University	2005-2006	905	Applicants must have an Associate Degree or a Higher Diploma in related subjects or equivalent qualifications	42,000-96,000	438	The Hong Kong Polytechnic University
	2006-2007	800		42,000-96,000	563	
	2007-2008	735		48,000-96,000	Not yet available	
The Open University of Hong Kong	2005-2006	200	Applicants must have obtained an Associate Degree or a Higher Diploma or equivalent qualifications	49,000-55,000	54	The Open University of Hong Kong
	2006-2007	400		42,000-55,000	235	
	2007-2008	400		44,000-55,000	406	

\# Provisional figure pending the approval of the Senate.

* "No. of graduates" refers to students who graduated in the corresponding academic year. In general, undergraduate programmes last for three to four years while top-up degree programmes last for two years.

Impact of Pollutants Generated by Castle Peak Power Station on Environment of Tuen Mun District

10. **MR ALBERT HO** (in Chinese): *President, regarding the impact of the pollutants generated by the Castle Peak Power Station (CPPS) on the environment of the Tuen Mun district, will the Government inform this Council:*

(a) how the data obtained by the relevant department by measuring the concentrations of various types of air pollutants in Tuen Mun in the past five years compare to the relevant data for other districts, and whether the Government has assessed if the current air quality in Tuen Mun is poorer than that in other districts;

(b) of the situation regarding the emission of air pollutants by CPPS in the past three years, and the Government's measures to ensure the CLP Power Hong Kong Limited provides to it accurate monitoring data in respect of CPPS; and

(c) whether there are measures to monitor the impact of the fuel ashes generated by CPPS on the surrounding environment; if so, of the monitoring results for the past three years; if not, the reasons for that?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) The Environmental Protection Department's ambient air quality monitoring station (AQMS) at Yuen Long monitors the ambient air quality of the north-west New Territories, covering areas of Tuen Mun, Tin Shui Wai and Yuen Long. Hence, the air monitoring data from the Yuen Long AQMS can reflect the air pollution level of Tuen Mun district.

The annual average concentrations of major air pollutants measured at the Yuen Long AQMS as well as those at the urban and new town areas for the past five years from 2003 to 2007 are shown in Table 1 to Table 4 below.

Generally speaking, the air monitoring data from the Yuen Long AQMS indicate that the respirable suspended particulates (RSPs) and sulphur dioxide levels in the north-west New Territories, including Tuen Mun, are higher in comparison to the levels in other areas. The nitrogen dioxide level is slightly higher than that of other new towns but slightly lower than the urban area. The ozone level is slightly lower than the level of other new towns but generally comparable with the urban area. Besides the influence from the local polluting sources, the higher RSPs and sulphur dioxide levels in the north-west New Territories could be due to the fact that such area, being located in the north-west side of Hong Kong, is more susceptible to the influence of air pollution and photochemical smog in the Pearl River Delta Region. However, there was no obvious deterioration in the levels of major air pollutants in the past five years.

Table 1: Annual average sulphur dioxide concentration in different areas (in ug/m^3)

Area (Note)	*2003*	*2004*	*2005*	*2006*	*2007*
Yuen Long AQMS (covers Tuen Mun, Tin Shui Wai and Yuen Long)	18	31	28	28	24
New Town	15	24	20	21	19
Urban	19	26	23	23	23

Table 2: Annual average nitrogen dioxide concentration in different areas (in ug/m^3)

Area (Note)	*2003*	*2004*	*2005*	*2006*	*2007*
Yuen Long AQMS (covers Tuen Mun, Tin Shui Wai and Yuen Long)	60	67	58	58	55
New Town	48	51	46	49	48
Urban	63	66	60	60	61

Table 3: Annual average ozone concentration in different areas (in ug/m^3)

Area (Note)	*2003*	*2004*	*2005*	*2006*	*2007*
Yuen Long AQMS (covers Tuen Mun, Tin Shui Wai and Yuen Long)	31	35	32	32	36
New Town	42	47	37	38	41
Urban	34	37	29	30	31

Table 4: Annual average concentration of RSPs in different areas (in ug/m^3)

Area (Note)	*2003*	*2004*	*2005*	*2006*	*2007*
Yuen Long AQMS (covers Tuen Mun, Tin Shui Wai and Yuen Long)	61	71	62	62	64
New Town	54	61	54	53	53
Urban	53	60	55	54	55

Note:

i. The data of New Town were determined from the annual average air pollutants concentrations measured at Sha Tin, Tai Po and Tung Chung AQMS.

ii. The data of Urban area were determined from the annual average air pollutants concentrations measured at the Central/Western, Eastern, Kwai Chung, Kwun Tong, Sham Shui Po and Tsuen Wan AQMS.

(b) The emissions of CPPS in the past five years are as follows:

	2003	*2004*	*2005*	*2006*	*2007*
Sulphur dioxide (kilotonne)	51.0	51.6	45.9	35.8	35.0
Nitrogen oxides (kilotonne)	36.8	26.5	25.7	22.5	28.8
Particulates (kilotonne)	1.7	2.2	1.8	1.4	1.5

Under the specified process licence terms and conditions, CPPS is required to monitor continuously the emissions of sulphur dioxide and nitrogen oxides and determine emission of RSPs in accordance with the internationally recognized methods specified by the Authority. They are also required to transmit the instantaneous monitoring data to the Environmental Protection Department for scrutiny and implement the quality assurance and quality control programme according to the European Standard EN 14181 for ensuring data reliability and accuracy.

(c) Under the specified process licence, CPPS is required to use high efficiency electrostatic precipitators to control the emission of particulates (that is, ash) from coal-fired power generation. The power station is also required to continuously monitor the particulates emission by means of opacity from the stack and the relevant data is transmitted to the Authority for online monitoring to ensure compliance with the licensing requirements. In the past five years, the particulates emission arising from the plant operation complied with the licensing requirements and the emissions are unlikely to cause adverse impact on its surroundings.

Light Pollution

11. **MR JAMES TO** (in Chinese): *President, on the reduction of light pollution, will the Government inform this Council:*

(a) as the Government advised in its reply to my question on 28th of last month that over the past three years, there were a total of 48

complaints about the nuisance caused by lights from government facilities other than pitches/courts managed by government departments, street lamps and car parks inside public housing estates (PHEs), of a breakdown of such complaints by the receiving departments, the location and type of facilities involved in each complaint, and the remedial measures taken by the Government for each complaint;

(b) as the Housing Authority has drawn up guidelines to ensure that the public will not be affected by outdoor lighting facilities of PHEs, when these guidelines were promulgated; whether any PHE fails to comply with these guidelines at present; if so, whether the Government has any plan to conduct a comprehensive review on street lamps and other luminous devices in various PHEs, and to take remedial measures to reduce light pollution; whether it has inspected PHEs to ensure that the Housing Department staff comply with the guidelines for installing and using outdoor lighting facilities in PHEs; if it has, whether incidents of non-compliance with these guidelines have been detected over the past three years;

(c) as the Business Facilitation Advisory Committee has proposed to open up government slopes, street lamps and flyovers/footbridges for use as advertising spaces, whether guidelines or provisions on reducing light pollution caused by advertisements (such as prohibiting the installation of flashing advertisement signboards and restricting the brightness of advertising spotlights) have been set out in the advertising contracts granted by the Government; whether the Government has monitored if advertising lightboxes at bus stops and the relevant devices installed at other advertising spaces (the usage of which must have the approval of government departments) cause light pollution; and

(d) as the Environmental Protection Department (EPD) is currently not empowered to regulate light pollution and investigate such complaints whether the Government will enhance the role of EPD in this regard, such as assigning EPD to take up the responsibility of receiving complaints on light pollution?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) Detailed information of the nuisance caused by lights from Government facilities other than pitches/courts managed by Government departments, street lamps and car parks inside PHEs in the past three years is set out at the Annex.

(b) The Hong Kong Housing Authority (HA) promulgated the design guidelines on external public lighting installations as early as in 1998 to minimize the impact of external lighting installations of PHEs on the public. The HA updated its design guidelines in 2007. In the updated guidelines, reference has been drawn from the Public Lighting Design Manual issued by the Highways Department and include advice that floodlights should not be installed in ball game areas where official competitions would not be held to avoid creating possible nuisance. Estates under the HA have met the relevant requirements for their external lighting installations. In addition, the HA will make appropriate arrangements taking account of individual circumstances and residents' needs.

(c) The Lands Department had followed up on the proposal of the Business Advisory Group to open up government slopes, street lamps and flyovers/footbridges for use as advertising spaces. The Department issued two short-term tenancies in November 2000 and February 2002 for displaying advertisement on slopes. Conditions were included in the relevant tenancy agreements to prevent light nuisance from such advertisement. Specifically, no lighting of any kind which will have a glaring effect to any motorist passing by shall be allowed and no occulting or flashing light system shall be permitted.

As regards publicity materials on footbridges and street lamp, currently display of these materials generally does not involve lighting installations. As for advertisement light boxes at bus shelters, according to the guidelines issued by the Transport Department for the erection of bus shelters, the illumination level of advertisement light boxes should be designed to avoid nuisance to drivers and pedestrians.

(d) At present, external lighting such as advertisement light boxes and spot lights, and so on, are subject to regulation by various Government departments including the Buildings Department, the Fire Services Department, the Marine Department, the Hong Kong Police Force, the Civil Aviation Department and the Food and Environmental Hygiene Department for various purposes. All relevant government departments including EPD, regulatory authorities and the facility managers will continue to respond to and follow up on public complaints against external lighting in accordance with their respective jurisdictions.

Annex

Detailed Information about the Nuisance Caused by Lights from Government Facilities other than Pitches/Courts managed by Government Departments, Street Lamps and Car Parks inside Public Housing Estates

	Location of facility	*Type of facility*	*Government follow-up action*	*Receiving Department*
1	Statue Square Gardens	Garden	The number of billboards was reduced. Spotlighting at reasonable illumination was reduced to a few hours a day.	Leisure and Cultural Services Department (LCSD)
2	Victoria Park	Park	The angle of the floodlights was adjusted and some of the lightings were switched off.	LCSD
3	Chai Wan Swimming Pool	Swimming Pool	Timers were installed to switch off the floodlights.	LCSD
4	Hang Fa Chuen Playground	Playground	The angle of the floodlights was adjusted and part of the lightings were switched off.	LCSD
5	Chai Wan Swimming Pool	Swimming Pool	The lightings would be switched off immediately after the daily cleansing work.	LCSD
6	Junction Road Park	Park	The number of bollard light was reduced.	LCSD
7	Junction Road Park	Park	The angle of the floodlights was adjusted.	LCSD
8	Lok Fu Park	Park	The angle of the park light was adjusted.	LCSD
9	Tai Wan Shan Swimming Pool	Swimming Pool	The angle of the spotlights was adjusted.	LCSD
10	Hong Ning Road Park Phase I	Park	LCSD has explained to the complainant that Hong Ning Road Park is open for public use daily round the clock. To facilitate our staff to perform patrol duty and for public safety, it is necessary to switch on the park lights overnight until 5.30 am of the following day (from May to October) or 6.30 am (from November to April).	LCSD

	Location of facility	*Type of facility*	*Government follow-up action*	*Receiving Department*
11	Lai Chi Kok Park	Skateboard Ground	The light illumination angle was adjusted.	LCSD
12	Sham Shui Po Park Swimming Pool	Swimming Pool	The light illumination angle was adjusted.	LCSD
13	Sham Shui Po Park Swimming Pool	Swimming Pool	After investigation, the case was found not substantiated.	LCSD
14	Sham Shui Po Park Swimming Pool	Swimming Pool	After investigation, the case was found not substantiated.	LCSD
15	Lai Chi Kok Park Swimming Pool	Swimming Pool	Cover for the lighting was installed.	LCSD
16	Sheung Li Uk Garden	Garden	The lighting on the slope close to the nearby housing estate was switched off.	LCSD
17	Ferry Street Playground	Park	Park lights of improved design were put in place as replacement.	LCSD
18	Kowloon Park (Maze Garden)	Park	The Electrical and Mechanical Services Department (EMSD) arranged addition of louvers to the floodlight concerned and adjustment of floodlights angle.	LCSD
19	Hong Kong Cultural Centre Podium	Cultural venue	LCSD explained to the complainant that the energy-efficient lighting was installed for the 13-minute light show of "A Symphony of Lights", which should not affect the star gazing activity.	LCSD
20	Hong Kong Coliseum External Walls	Cultural venue	The projection and testing of lights for "A Symphony of Lights" will take place only at an angle not affecting the nearby hotel.	LCSD
21	Promenade facing Tsim Sha Tsui Star Ferry Pier	Promenade	The lighting level facing the Tsim Sha Tsui Star Ferry Pier was suitably adjusted.	LCSD
22	Man Tung Road Park	Park	The lighting was rearranged.	LCSD
23	Tai Tsoi Yuen Garden	Sitting-out area	The light intensity of some path lights was adjusted.	LCSD
24	Shek Wu Hui Complex Podium Garden	Garden	One of the light bulbs in each lamp post was turned off. LCSD is planning to reduce the number of light bulbs, that is, from existing double bulbs to single bulb.	LCSD
25	Ma On Shan Recreation Ground	Park and Playground	The broken lighting cover has been replaced.	LCSD
26	Sam Mun Tsai Children's Playground	Park and Playground	Semi-transparent cover for the light bulbs and 70-watt yellow light bulbs were installed as replacement at the playground. Since the lighting was installed for the playground users, the village representatives disagreed with any reduction of the existing lighting level, which might affect the playground users.	LCSD

	Location of facility	*Type of facility*	*Government follow-up action*	*Receiving Department*
27	Chung Nga Road Children's Playground	Park and Playground	As advised by EMSD, the lighting level fell within the standard level.	LCSD
28	Hong Kong Coliseum External Walls	Cultural venue	The projection and testing of lights for "A Symphony of Lights" will take place only at an angle not affecting the nearby hotel.	LCSD
29	Tai Po Waterfront Park	Park and Playground	The lighting decoration was arranged by Tai Po District Office of the Home Affairs Department (HAD) on a temporary basis. The case was referred to HAD for follow-up.	LCSD
30	Tai Po Sports Centre	Sports Centre	The number of spotlights was reduced from 20 to 8 on the condition that energy saving could be achieved without jeopardizing public service.	LCSD
31	Yuen Chai Tsai Park	Park and Playground	Lower watt level light bulbs were installed as replacement.	LCSD
32	Tsuen Wan Riviera Park	Park	The test conducted by EMSD indicated that the lighting level met the standard requirement. The lighting was adjusted downward to concentrate on the central part of the grass pitch to reduce the nuisance to the nearby residential blocks.	LCSD
33	Sha Tsui Road Playground	Park and Playground	The test conducted by EMSD indicated that the lighting level met the standard requirement. Some of the bollard lights were switched off.	LCSD
34	Wu Shan Riverside Park	Park	In view of the low usage of facility at night, auto timer switch was installed and the spotlights concerned will be turned off from 11 pm.	LCSD
35	Light Box (facing the side door) outside the Tuen Mun Town Hall	Cultural venue	The light box was managed by a private company, to which LCSD had referred the complaint. The company had adjusted the lightings of the light box.	LCSD
36	Light Box (facing the main door) outside the Tuen Mun Town Hall	Cultural venue	The light box was managed by a private company, to which LCSD had referred the complaint. The company had adjusted the lightings of the light box.	LCSD
37	Dragon Park, Tin Shui Wai	Garden	Louvers were installed to reduce the light intensity.	LCSD
38	Stonecutters Island Sewage Treatment Works	Sewage treatment works	The number of lamps was reduced.	EPD
39	Sha Tsui Road Playground	Playground	The number of lamp posts to be lighted had been adjusted to reduce the overall light intensity.	EPD
40	Tuen Mun Town Hall	Cultural Venue	The complainant agreed to liaise with concerned authority direct.	EPD

Eight other complaints received by the EPD were found to be unrelated to facilities managed by the Government after investigation.

Penalties for Public Cleanliness Offences and Smoking Offences

12. **MR ALBERT CHAN** (in Chinese): *President, since the end of June 2003, the fixed penalty for public cleanliness offences has been raised to $1,500, and with effect from 1 January 2007, the coverage of statutory no smoking areas is expanded, and smoking offenders are liable to a maximum fine of $5,000 upon conviction. It has been learnt that, since the implementation of the relevant legislation, many members of the public who committed the above offences had been detained for not being able to pay the fines, causing tremendous disturbances to their state of mind and daily life. In this connection, will the Government inform this Council:*

(a) in each month since the implementation of the relevant ordinances, of the respective numbers of cases in which fixed penalty notices were issued to persons for littering and summons were issued to persons for smoking in statutory no smoking areas, together with a breakdown of illegal smoking cases by the penalty imposed;

(b) among the cases referred to in (a), of the number of those in which the offenders concerned were unable to pay the fines; and

(c) whether the Government will consider amending the relevant legislation to replace the above fines with community service orders, so as to avoid detention of low-income people because they are unable to pay the fines; if so, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, my reply to the question raised by the Honourable Albert CHAN is as follows:

(a) and (b)

Since the end of June 2003 when the fixed penalty for public cleanliness offences has been raised to $1,500 till end of March this year, the number of fixed penalty tickets issued in relation to littering by the seven government departments as well as the number

of cases therein in which the fixed penalty has not been paid leading to the issuance of summonses or court orders are listed as follows:

Month		*Number of Fixed Penalty Tickets*	*Number of Cases in which no payment of fixed penalty led to issuance of summonses or court orders*
2003	July	1 781	33
	August	1 720	41
	September	1 708	35
	October	1 886	45
	November	1 576	41
	December	1 406	34
2004	January	1 192	24
	February	1 602	27
	March	1 991	39
	April	1 843	37
	May	1 883	29
	June	2 064	39
	July	1 941	33
	August	1 868	51
	September	1 915	49
	October	1 818	34
	November	1 771	36
	December	1 698	28
2005	January	1 594	42
	February	1 233	16
	March	1 786	41
	April	1 773	31
	May	1 767	30
	June	1 836	43
	July	2 006	32
	Aug	1 954	38
	September	2 021	39
	October	2 129	48
	November	2 129	44
	December	2 109	45

Month		*Number of Fixed Penalty Tickets*	*Number of Cases in which no payment of fixed penalty led to issuance of summonses or court orders*
2006	January	1 811	42
	February	1 768	24
	March	2 318	34
	April	2 011	42
	May	2 256	49
	June	2 232	40
	July	2 175	48
	Aug	2 086	56
	September	1 941	44
	October	2 250	70
	November	1 995	49
	December	2 258	50
2007	January	1 916	55
	February	1 622	53
	March	2 220	76
	April	1 913	58
	May	2 017	75
	June	1 984	54
	July	2 045	76
	Aug	2 143	86
	September	1 925	88
	October	2 285	114
	November	2 272	148
	December	2 401	184
2008	January	2 289	175
	February	1 621	144
	March	2 443	116

On the other hand, since 1 January 2007, the number of summonses issued by the Tobacco Control Office (TCO) of the Department of Health and the Police Force is listed as follows, on a monthly basis:

Month		*Number of Violation of the Smoking Ban*	
		TCO	*Police*
2007	January	92	211
	February	101	133
	March	200	150
	April	178	190
	May	267	254
	June	318	187
	July	338	216
	Aug	445	213
	September	398	135
	October	493	147
	November	438	184
	December	512	167
2008	January	582	229
	February	567	173
	March	671	184
	April	570	191
	May	517	200
	Total	6 687	3 164

The penalty for the 6 635 cases of smoking offence imposed by the court is as follows:

Penalty ($)	*Number of Cases*
0	9
50	2
100	12
150	1
200	39
250	7
300	70
350	12
400	35

Penalty ($)	*Number of Cases*
450	9
500	479
600	402
700	2 512
750	9
800	174
850	848
900	166
950	1
1,000	376
1,200	88
1,300	90
1,500	1 286
1,600	4
1,800	1
2,000	3
Total	6 635

As at 12 June 2008, there were 226 cases left unsettled with due date expired.

(c) Legally speaking, community service order is a more serious penalty than penalty. According to section 4 of the Community Service Orders Ordinance (Cap. 378), "where a person of or over 14 years of age is convicted of an offence punishable with imprisonment, the Court which sentences him for that offence may make an order requiring him to perform, during the life of the order, unpaid work in accordance with this Ordinance".

At present, smoking offence itself is not one that is punishable with imprisonment. There is no provision in existing law which allows offences that are not punishable with imprisonment to have community service orders as the alternative penalty.

Separately, if an offender wishes to dispute the issue of a fixed penalty notice on littering, he/she can ask the concerned enforcement department to arrange a hearing of the case by the Court. If the offender is convicted by the Court, the Court would

impose the sentence it deems most appropriate, including the level of fine and/or imprisonment terms or a Community Service Order, on the offender. Should the offender have financial difficulties in paying the fine, he/she might appeal to the Court for a lower fine. Under the Fixed Penalty (Smoking Offences) Bill which is being scrutinized by the Legislative Council, the same arrangement is being proposed by the Government for smoking offences.

In fact, members of the public need not worry about the penalty amount if they comply with the public cleanliness law and do not smoke in no-smoking areas. Also, we cannot presume that the reason for people not to pay the penalty was all because of financial problems. We would continue to help members of the public comply with relevant requirements through education and publicity so as to save financial burden arising from paying penalties.

Postal Services

13. **MISS CHOY SO-YUK** (in Chinese): *President, regarding postal services provided by the Hongkong Post, will the Government inform this Council:*

(a) how many post offices were opened, closed and relocated respectively last year, the expected corresponding numbers for next year, and the relevant details;

(b) whether it has consulted the District Councils concerned before closing and relocating the above post offices; if it has, of the details; if not, the reasons for that;

(c) of the respective numbers of street posting boxes newly provided, cancelled and relocated last year; and

(d) of the number of applicants who have completed the application procedure for renting private post office boxes and are currently waiting for such post office boxes, broken down by name of post office, and the current average waiting time?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President,

(a) In the past year, Hongkong Post has closed five post offices, relocated two and temporarily closed one post office. For those post offices that have been closed, new posting boxes have been installed in the vicinity. At present, Hongkong Post has no plan to close existing post offices or open new post offices in the coming year, but individual post offices might need to be relocated to premises within the district due to special circumstances (such as renovation of shopping centres).

(b) Hongkong Post would explain the situation to the relevant District Council in advance of the closure of a post office. In cases of relocation, Hongkong Post would display notices at the concerned post offices, issue press releases to inform the public, and notify the District Council.

The details of closure, relocation and temporary closure of post offices in the past year are at Annex 1.

(c) In the past year, Hongkong Post has installed 11, withdrawn seven and relocated nine street posting boxes.

(d) Among the 45 post offices that provide Private Post Office Box rental service, 27 have vacant boxes. Hence, members of the public who apply for such service will not need to wait. For the other 18 post offices, applicants will have to wait as there are no vacant boxes. As at 5 June 2008, there are 1 102 applications on the waiting list for Private Post Office Boxes (details at Annex 2). The waiting time depends on the number of applications on the waiting list at the relevant post office and the number of existing users ceasing to rent their boxes. Apart from a few post offices, the waiting time is in general less than six months.

Annex 1

Post Office	*Closure/ Relocation Date*	*Reasons & Details*	*Details of Attending Meetings of or Informing District Councils*
Closure of Post Office			
Wong Chuk Hang Post Office	2 October 2007	Demolition of Wong Chuk Hang Estate	- Postmaster General attended the Southern District Council meeting on 28 June 2007 to brief members on the postal service in the Southern District and details of the closure of the Wong Chuk Hang Post Office due to the demolition of Wong Chuk Hang Estate
Garden Road Post Office	1 November 2007	Low utilisation of the post office and existence of sufficient post offices in the area to serve the public	- Postmaster General attended the Central & Western District Council meeting on 28 June 2007 to brief members on the postal service in the Central & Western District and details of the closure of the Garden Road Post Office and Harbour Building Post Office - Postmaster General attended the Culture, Leisure & Social Affairs Committee meeting of the Central & Western District Council on 19 July 2007 to further explain the details of the closure of the Garden Road Post Office
Harbour Building Post Office	1 November 2007	Same as above	Same as above
Canton Road Post Office	2 January 2008	Same as above	- Due to the suspension of District Council meetings from October 2007 to December 2007, Hongkong Post wrote to the Secretariat of Yau Tsim Mong District Council on 31 October 2007 to explain to the District Council the details of the closure of the Canton Road Post Office
North Point Post Office	19 May 2008	Significant rent increase and existence of sufficient post offices in the area to serve the public	- Postmaster General attended the Eastern District Council meeting on 21 September 2007 to brief members on the postal service in the Eastern District and inform the District Council in advance that the North Point Post Office might have to be closed due to significant rent increase after expiry of the tenancy, and the existence of sufficient post offices in the area to serve the public - Hongkong Post wrote to the Secretariat of the Eastern District Council on 14 March 2008 to inform the District Council the details of the closure of the North Point Post Office

Post Office	*Closure/ Relocation Date*	*Reasons & Details*	*Details of Attending Meetings of or Informing District Councils*
Relocation of Post Office			
Kowloon Bay Post Office	27 August 2007	Unable to reach an agreement on tenancy renewal with the landlord. The post office has been relocated to Enterprise Square, Sheung Yuet Road	- Postmaster General attended the Kwun Tong District Council meeting on 19 July 2007 to brief members on the postal service in the Kwun Tong District and inform the District Council in advance that the Kowloon Bay Post Office might have to be relocated if an agreement on tenancy renewal could not be reached with the landlord
Texaco Road Post Office	21 April 2008	Due to the condition of the premises, Architectural Services Department recommended against the renewal of the tenancy. The post office has been relocated to Indihome, Yeung Uk Road	- Assistant Postmaster General (Corporate Development) and General Manager (Planning and Development) attended the Community Affairs Committee meeting of the Kwai Tsing District Council on 8 April 2008 to brief members on the details of the relocation of the post office
Temporary Closure of Post Office			
Causeway Bay Post Office	18 February 2008	The landlord resumed the premises upon the expiry of the tenancy. Hongkong Post is searching for suitable sites to relocate the post office in the vicinity	- Hongkong Post wrote to the Secretariat of the Wan Chai District Council on 4 January 2008 to explain to the District Council the details of the temporary closure of the post office - Assistant Postmaster General (Corporate Development) and General Manager (Planning and Development) attended the Development, Planning and Transport Committee meeting of the Wan Chai District Council on 1 April 2008 to brief members on the details of the temporary closure of the post office

Annex 2

	No. of Applications on the waiting list of Private Post Office Boxes (as at 5 June 2008)
Hong Kong	
Aberdeen Post Office	23
Gloucester Road Post Office	21
Hennessy Road Post Office	17
Hing Fat Street Post Office	34

	No. of Applications on the waiting list of Private Post Office Boxes (as at 5 June 2008)
King's Road Post Office	31
Tsat Tsz Mui Post Office	11
Wan Chai Post Office	59
Shau Kei Wan Post Office	15
Kowloon	
Mong Kok Post Office	15
Sham Shui Po Post Office	38
New Territories	
Ma On Shan Post Office	23
Fanling Post Office	14
San Tin Post Office	5
Shek Wu Hui Post Office	364
Tuen Mun Central Post Office	186
Tsuen Wan Post Office	115
Yuen Long Delivery Office	44
Yuen Long Post Office	87
Total	1 102

Determination of Mean Site Formation Level

14. **DR DAVID LI**: *President, in reply to my question at the Council meeting of 28 May 2008, the Government advised that, of the building plans approved by the Building Authority between 1 January 2004 and 31 December 2007, the sites in 125 building plans were located within zones in Outline Zoning Plans (OZPs) subject to a maximum building height given in metres or metres and number of storeys without reference to metres above the Hong Kong Principal Datum (mPD). In this connection, will the Government inform this Council:*

(a) of the departmental guidelines regarding the determination of "mean site formation level", and whether these guidelines will allow the "mean site formation level" to be established in whole or in part with reference to a point or points located outside the zoned area concerned; if so, of the reasons for that;

(b) among the above 125 building plans, of the number of those which have one or more accesses or egresses at a ground elevation below the "mean site formation level", and for the buildings involved in each of them, the street address, the permitted building use, the elevation above or below the "mean site formation level" for each and every ground level access to or egress from the buildings, the perpendicular distance from the ground level at the lowest access or egress point to the main roof level, as well as the permitted maximum building height prescribed in the relevant OZP; and

(c) whether, in order to enhance public accountability, the Government has any plan to require the publication and retention, on a government website, of information on the "mean site formation level" and the method of its determination for each approved building plan, in which the maximum building height is given in the relevant OZP in metres or metres and number of storeys without reference to mPD?

SECRETARY FOR DEVELOPMENT: President,

(a) as explained in my reply to Dr the Honourable David LI's written question on 28 May 2008, the concept of "mean site formation level" is adopted in calculating the height of buildings in cases when the permitted maximum building height prescribed in the relevant OZP has been given in metres only, with no reference to the mPD. Mean site formation level is a term commonly adopted by the industry. It means in general the average formed level of a site ready for development. While the term is not defined in departmental guidelines, the Planning Department, in advising the Building Authority on whether specific building works would contravene any approved or draft plan prepared under the Town Planning Ordinance including on the aspect of building height, calculates the mean site formation level as follows under the two common scenarios:

- where a formed site is completely flat, the mean site formation level is the level of the formed site on which the building stands; and

- where a formed site is not completely flat, the mean site formation level means the average level of the different points of the formed site on which the building stands.

Building height exceeding the restriction stipulated requires permission from the Town Planning Board.

Where there is more than one building in a development project and the buildings are located on different formed sites at various levels, the measurement of the mean site formation level of each building should be confined to the part of the formed site upon which the building stands, rather than the entire site of the development project. In other words, the mean site formation level will not be established with reference to a point or points located outside a building, let alone outside the zoned area concerned.

(b) It has not been possible to go through all of the individual building plans in the time available. As the concern is apparently with buildings with access or egress below the mean site formation level, we consider it more relevant to look at buildings on a formed site that is not flat, that is, building plans with basements or on sloping or stepped sites. Among the 125 approved building plans, we have identified some 30 belonging to this category and on closer examination, cases where there is no access or egress below the mean site formation level are excluded. This leaves 15 cases and the detailed information of these cases arranged by district is annexed.

(c) As the concept of means site formation level and the method of its determination are technical issues not of interest to the general public, we do not see the need to publish them on the Government website. The Building Authority approves building plans in accordance with the law and takes account of guidelines issued from time to time as Practice Notes for Authorized Persons and Registered Structural Engineers. In any case, information regarding the calculation of building height and building height restriction on an OZP can be provided to an applicant for building plan approval upon request.

Annex

Approved Building Plans with Accesses/Egresses Below Mean Site Formation Level

Site Address	*Lot No.*	*Permitted Building Use*	*Elevation(s) of access/ egress above the mean site formation level (that is, elevation of access/egress — mean site formation level)* *(m)*	*Elevation(s) of access/ egress below the mean site formation level (that is, mean site formation level — elevation of access/egress)* *(m)*	*Perpendicular distance from the ground level at the lowest access/ egress point to the main roof level (that is, main roof level — elevation of the lowest access/egress)* *(m)*	*Building height restriction in the relevant OZP* *(m)*
Hong Kong Island						
1. 20 Tung Shan Terrace	IL 2953	Residential	No	6.455 4.688	17.125	10.67
New Territories East and Islands						
2. San Shek Wan, Lantau Island	DD 332 LOT 727	Residential	No	3.3	10.5 6.875 7.5	7.6
3. Cheung Chau	CC Lot 252 s A RP	Government, Institution or Community	3.15	1.6	13.1	12
4. Anderson Road, Sai Kung	SD 2 LOT 1984	Residential	No	10	19	9
5. Anderson Road, Sai Kung	SD 2 LOT 1984	Residential	No	12.85	21.85	9
6. Anderson Road, Sai Kung	SD 2 LOT 1984	Residential	No	House A = 12.8 House B = 7.48	House A = 21.2 House B = 16.11	9
7. Mang Kung Uk, Sai Kung, New Territories	DD 243 LOT 1447	Residential	No	3.93	10.97	9
New Territories West						
8. Wai Tsai, Ngau Tam Mei Road, Yuen Long	DD 104 Lot 4773	Residential	No	House Type 1 = 3.65 House Type 2 = 2.53 House Type 3 = 5.23 House Type 4 = 6.35 House Type 5 = 9.65 House Type 6 = 10.78 House Type 7 = 12.75 House Type 8 = 14.18 House Type 9 = 16.05 House Type 10 = 17.4	House Type 1 = 12.75 House Type 2 = 12.75 House Type 3 = 15.45 House Type 4 = 15.45 House Type 5 = 19.88 House Type 6 = 19.88 House Type 7 = 22.45 House Type 8 = 23.2 House Type 9 = 25.75 House Type 10 = 26.5	9
9. Tong Yan San Tsuen, Yuen Long	DD 121 Lot 2131	Residential, Government, Institution or Community, Industrial and Green Belt	Site A = 2.15 Site B — No	Site A = 0.85 Site B = 0.85	Site A = 18 Site B = 18	Residential — 15 Industrial — 13

Site Address	*Lot No.*	*Permitted Building Use*	*Elevation(s) of access/ egress above the mean site formation level (that is, elevation of access/egress — mean site formation level)* *(m)*	*Elevation(s) of access/ egress below the mean site formation level (that is, mean site formation level — elevation of access/egress)* *(m)*	*Perpendicular distance from the ground level at the lowest access/ egress point to the main roof level (that is, main roof level — elevation of the lowest access/egress)* *(m)*	*Building height restriction in the relevant OZP* *(m)*
10. 93 San Tam Road, Ngau Tam Mei, Yuen Long	DD 104 Lot 4784	Residential	Houses 32, 33, 35 and 36 = 0.75 Houses 37 and 38 = 0.65 Houses 39 and 50 = 0.55 Houses 51, 52, 53 and 55 = 0.85 Houses 56 and 57 = 0.6 Houses 58 and 59 = 0.35 Houses 60 and 61 = 0.22	House 1 = 7.49 House 2 = 6.81 Houses 3 and 5 = 6.24 House 6 = 5.94 House 7 = 5.35 House 8 = 4.77 Houses 9 and 10 = 4.3 Houses 11 and 12 = 3.8 Houses 15 and 16 = 2.25 Houses 17 and 18 = 1.84 Houses 19 and 20 = 1.25 Houses 21 and 22 = 0.91 Houses 23 and 25 to 31 = 0.2 Houses 62 and 63 = 0.15 Houses 65 and 66 = 1.76 Houses 67 and 68 = 2.22 Houses 69 and 70 = 1.82 Houses 71 and 72 = 2.08 Houses 73 and 75 = 2.5 Houses 76 and 77 = 4.9 House 78 = 5.63 House 79 = 5.96 House 80 = 6.29 House 81 = 6.63	House 1 =15.56 House 2 = 15.03 Houses 3 and 5 = 14.4 House 6 = 14.1 House 7 = 13.52 House 8 = 12.94 Houses 9 and 10 = 12.47 Houses 11 and 12 = 11.97 Houses 15 and 16 = 9 Houses 17 and 18 = 8.65 Houses 19 and 20 = 8.18 Houses 21 and 22 = 7.48 Houses 23 and 25 to 31 = 6.78 Houses 32, 33, 35 and 36 = 5.83 Houses 37 and 38 = 5.93 Houses 39 and 50 = 5.93 Houses 51, 52, 53 and 55 = 5.73 Houses 56 and 57 = 5.98 Houses 58 and 59 = 6.23 Houses 60 and 61 = 6.5 Houses 62 and 63 = 6.78 Houses 65 and 66 = 8.34 Houses 67 and 68 = 8.79 Houses 69 and 70 = 11.63 Houses 71 and 72 = 12.01 Houses 73 and 75 = 12.4 Houses 76 and 77 = 12.79 House 78 = 13.1 House 79 = 13.43 House 80 = 13.77 House 81 = 14.1	9
11. Ngau Tam Mei, Yuen Long	DD 104 LOT 4783	Residential	No	2.25	10.2	9

Site Address	*Lot No.*	*Permitted Building Use*	*Elevation(s) of access/ egress above the mean site formation level (that is, elevation of access/egress — mean site formation level)* *(m)*	*Elevation(s) of access/ egress below the mean site formation level (that is, mean site formation level — elevation of access/egress)* *(m)*	*Perpendicular distance from the ground level at the lowest access/ egress point to the main roof level (that is, main roof level — elevation of the lowest access/egress)* *(m)*	*Building height restriction in the relevant OZP* *(m)*
12. 20 Nam Pak Road, Ping Shan, Yuen Long	DD 122 Lots 611 and 1732, and STT 1285	Village and Government, Institution or Community	2.03	2.04 2.14 2	12	Village = 8.23
13. Ma Fung Ling Road, Tong Yan San Tsuen, Yuen Long	DD 122 LOT 1740	Residential	No	Site A = 3.206 Site B = 2.323	Site A = 15.106 Site B = 14.223	15
14. St Andrews Place, Sheung Shui	DD 94 LOT 943	Residential	No	House 12 = 0.49 House 15 = 1.53 House 16 = 2.57 House 17 = 3.6 House 19 = 3.3 House 20 = 2.74 House 21 = 2.19 House 22 = 1.63 House 23 = 1.07 House 25 = 0.52	House 12 = 9.5 House 15 = 9.5 House 16 = 9.24 House 17 = 9.5 House 19 = 9.5 House 20 = 9.5 House 21 = 9.5 House 22 = 9.5 House 23 = 9.5 House 25 = 9.5	9.5
15. Phase II, Wai Tsai, Ngau Tam Mei Road, Yuen Long	DD 104 Lot 4773 and Extension thereto	Residential	No	Type 1 = 10.73 Type 2 = 14.13	Type 1 = 19.4 Type 2 = 22.8	9

Use of Personal Data of Electors Kept by Professional Bodies

15. **MR SIN CHUNG-KAI** (in Chinese): *President, under the Legislative Council Ordinance (Cap. 542), electors for geographical constituencies are eligible to be registered as electors for functional constituencies (FCs) only if they are members of the bodies specified in the Ordinance, including specified professional bodies or trade associations. Those specified bodies, therefore, keep a large amount of personal data (for example, the names, residential addresses, telephone numbers, e-mail addresses and names of the organizations in which they work) of the people who are eligible to be registered or have already registered as electors for the FCs concerned. Such data are even more detailed than the electors' information provided to the candidates concerned by the Registration and Electoral Office. According to past records, some of the candidates of the Legislative Council FC elections were also the managerial personnel or directors of those specified bodies, and because of their duties, they*

had the right to inspect or handle the personal data of members kept by such bodies. In this regard, will the Government inform this Council:

(a) whether it has drawn up any guidelines or best practices to regulate how the above specified bodies use their members' personal data in a fair and just manner during Legislative Council elections, so that candidates of the various FC elections concerned are treated fairly, and thus ensure the fairness of the elections; and

(b) how it ensures that FC election candidates who are the managerial personnel or directors of such specified bodies will not have, because of their duties, the right to inspect or obtain the personal data of members of such bodies, so as to prevent those candidates from gaining an unfair advantage in liaison with electors and electioneering work?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, professional bodies, trade associations or other bodies collecting personal data of their members in the FCs for Legislative Council elections, as well as the management or directors of the above bodies, should handle and use the personal data of their members in accordance with the data protection principles set out in the Personal Data (Privacy) Ordinance (PD(P)O) (Cap. 486).

The Office of the Privacy Commissioner for Personal Data has prepared a guidance note on "Personal Data Privacy : Guidance on Electioneering Activities", to set out how to comply with the requirements of the PD(P)O in relation to electioneering activities that may involve the collection and use of personal data. These include the requirements that personal data should be obtained by lawful and fair means, and that the use of the data should be directly related to the purpose for which the data were originally collected. The guidance note is included as an appendix to the Guidelines on Election-related activities issued by the Electoral Affairs Commission (EAC).

Moreover, if the EAC receives a complaint of unfair or unequal treatment of candidates by any bodies or organisations, and is satisfied that the complaint is justified, the EAC may make a reprimand or censure in a public statement which may include the names of the candidates favourably and unfavourably treated.

According to law, the Chief Electoral Officer will supply to each candidate in an FC election the personal data contained in the final register of the electors of the FC concerned. Moreover, candidates may apply to the Electoral Registration Officer for an extract from the register of the relevant FC for any purpose related to an election. Given the above statutory requirements, each candidate participating in an FC election can fairly obtain data about the electors involved, so that the election can be conducted in a fair, open and just manner.

Drug Administration in Public Hospitals

16. **MS EMILY LAU** (in Chinese): *President, it has been reported that the New Territories East Cluster (NTEC) of the Hospital Authority (HA) has implemented the revised "3 Checks and 5 Rights" procedures since April 2006 with a view to reducing errors in dispensing drugs. Yet, a medication incident in which health care practitioners dispensed the wrong drugs to an elderly patient for seven consecutive days still occurred in the Shatin Hospital under NTEC last month. In this connection, will the Government inform this Council whether it knows:*

(a) if HA has conducted a thorough investigation into the aforesaid incident; if it has, of the investigation results; if not, the reasons for that;

(b) the number of medication incidents that have occurred in the public hospitals under NTEC since the implementation of the revised "3 Checks and 5 Rights" procedures, and how the figure compares to those of the two years before implementation;

(c) as the Chief Executive of NTEC said in September last year that upon the implementation of the "3 Checks and 5 Rights" procedures, there might still be loopholes in the dispensation procedures that could lead to the dispensation of wrong drugs, with the main loopholes being health care practitioners misidentifying drugs or patients, insufficient communication among staff during shift handovers and illegible handwriting on doctors' prescriptions, what measures HA has put in place to plug these loopholes;

(d) as some experts have pointed out that the increasing numbers of items of check-ups and laboratory tests on patients in recent years have made it more difficult for health care practitioners to cross-check information, whether HA has assessed if there are currently enough frontline staff to perform the "3 Checks and 5 Rights" procedures; if there are enough staff, of the details; if not, the reasons for that; and

(e) as HA advised in September last year that it was studying the introduction of an electronic procedure for dispensing drugs in hospital wards, of the latest progress of such a plan?

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

(a) the incident took place on 14 May this year when a nurse of the Prince of Wales Hospital (PWH) mistakenly filed a prescription record of Patient A in the medical record of Patient B, who was subsequently transferred to the Shatin Hospital (SH) together with the medical record on the same day. After a doctor of SH attended Patient B, the doctor wrote a prescription to Patient B by reference to Patient B's treatment record at PWH. Being unaware of the fact that Patient A's prescription record was mistakenly filed in Patient B's medical record, the doctor was misled to prescribe to Patient B a drug (Lisinopril, which is a light dosage of an anti-hypertensive drug) that Patient B did not need to take. Later, when the doctor reviewed Patient B's medical record and found that Patient A's prescription record was mistakenly filed therein, the doctor immediately stopped prescribing the drug and explained the situation to Patient B. After a physical examination on Patient B, it was confirmed that Patient B was in stable condition and showed no signs of adverse effect caused by the drug. Patient B was discharged on 23 May after recuperation. The hospital also confirmed that no other patient was affected in this incident.

On the other hand, as Patient A's prescription record was mistakenly filed in Patient B's medical record, the nurse of PWH was unable to locate the prescription record in Patient A's medical record. The nurse then informed the doctor who subsequently

wrote a new prescription to Patient A. Under such circumstances, Patient A's condition was not affected in this incident.

Both PWH and SH attached great importance to this incident and have already made a report of this incident to the Cluster Management through the Advanced Incident Reporting System. Upon investigation, it was revealed that the incident was caused by negligence of individual staff. The staff involved were admonished by their hospital while the frontline healthcare staff were reminded to keep and check patients' medical records and prescription records in a proper manner and strictly observe the relevant prescription guidelines. In case any problem or any loss of record is found, a report must be instantly made to the officer-in-charge in order to heighten staff's vigilance and to take necessary follow-up actions.

(b) to (e)

The New Territories East Cluster implemented the revised "3 Checks and 5 Rights" procedures since April 2006. From May 2006 to April 2007, the number of incidents of wrong dispensation of medicine by nurses occurred in the public hospitals under the Cluster was 71, while that occurred in the 12 months before (that is, April 2005 to March 2006) was 106. This reflects a drop by 31% in the occurrence of such incidents after implementation of the revised procedures. For 2004 and before, since HA did not systematically record the number of incidents of wrong dispensation of medicine by nurses, accurate statistics is not available.

HA has all along attached great importance to the proper handling of drugs and implemented a number of measures in this regard in addition to making improvements to the design of the current system. These included (i) formulation of a set of nursing rules on verification of patients' identity in 2004 and a set of self-evaluation guidelines on medication safety in 2005 in a bid to heighten frontline staff's vigilance in verifying patients' identity; (ii) since April 2007, healthcare staff can make a report of medication incident through a one-stop electronic Advanced Incidents Reporting System and at the same time study the causes and draw useful lessons from such incidents; (iii) making improvements to the design of identification

bracelets for in-patients by using larger fonts to show patients' important identifying particulars to facilitate verification of patients' particulars by healthcare staff.

The "3 Checks and 5 Rights" procedures are the basic rules and operational procedures in nursing activity. HA has all along made efforts to enhance the training for all frontline healthcare staff so as to heighten their vigilance. As regards the introduction of an electronic procedure for dispensing drugs in hospital wards, this would involve different steps and considerations and HA is now studying the feasibility.

Childhood Immunization Programme

17. **MR FREDERICK FUNG** (in Chinese): *President, regarding the Childhood Immunization Programme (CIP), will the Government inform this Council:*

(a) whether the study commissioned by the Department of Health (DH) and undertaken by a university on the cost-effectiveness of incorporating pneumococcal vaccine, chickenpox vaccine, hepatitis A vaccine and Haemophilus influenza type B vaccine into CIP has been completed; if so, of the findings; if the Scientific Committee on Vaccine Preventable Diseases (SCVPD) under DH has made recommendation whether the aforesaid vaccines should be included in CIP; when the authorities will decide to introduce changes to CIP;

(b) as it has been reported that the Government has decided to abandon its original plan to inoculate all children under 12 years of age with influenza vaccines for free, and will instead provide financial support in the form of $100 each for children aged between six months and five years to receive inoculation against influenza at private clinics, of the details of the new plan, the annual expenditure involved and the rationale for adopting the new plan, as well as how it addresses the problems of the significant differences in and insufficient transparency of the fees charged by private doctors for the inoculations; and

(c) as it has been reported that the Government is considering inoculating all children under two years of age with pneumococcal vaccine for free, of the details of this plan and the annual expenditure involved; whether it has estimated the amount of annual savings, after implementing this inoculation plan, in medical expenditure for treating complications arising from pneumococcal infections?

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

(a) and (c)

The Centre for Health Protection (CHP) of the DH has commissioned a local university to conduct a study to review the cost-effectiveness and cost-benefit of incorporating four child vaccines into the Childhood Immunisation Programme (CIP). The findings of the study have already been submitted by the university concerned to the Secretariat of the Research Fund for the Control of Infectious Diseases (RFCID) for review, while the initial findings have also been discussed earlier at a meeting of the SCVPD under CHP of DH. The study will only be finalized after going through the review process by RFCID. After the review and endorsement of the study, the Government will consider its findings and the recommendations of the SCVPD before making a decision on whether it is necessary to incorporate new vaccines, including pneumococcal vaccines, in our CIP.

(b) Each year, the SCVPD recommends the target groups for influenza vaccination in the light of the review of local and overseas scientific evidence regarding influenza vaccination, the World Health Organization's recommendations and assessment of the latest influenza situation. The SCVPD has already submitted to the Government its recommendations on influenza vaccination for 2008-2009, and the recommendations have also been uploaded onto the CHP's website.

This year, in addition to the target groups already covered in 2007-2008, the SCVPD has recommended the inclusion of "children

aged two to five years" on top of the existing group of "children aged six to 23 months" so as to reduce their hospital admissions. Meanwhile, the SCVPD has also proposed that "persons with chronic neurological condition, whose respiratory function is compromised or who lack the ability to care for themselves" be included in the group of "patients with chronic illness". In other words, the SCVPD has recommended that this group of patients to receive influenza vaccination.

Our vaccination policy is devised on the basis of scientific evidence. Though a vaccine can help reduce our risk of contracting infectious diseases, at the same time, it may also pose certain risks such as side effects and adverse reactions. We are studying the recommendations of the SCVPD seriously and will carefully consider how best the target groups recommended by the SCVPD should be vaccinated.

The total number of "children aged two to five years" plus "children aged six to 23 months" as previously recommended by the SCVPD is about 330 000. While parents have the right to decide whether to let their children receive influenza vaccination, we hope that by putting in place some measures, we can encourage parents and facilitate them to take their children at the appropriate age to receive the vaccination.

While the provision of influenza vaccination at government clinics is surely one of the feasible options, we are also considering other alternatives, for example, the provision of a fixed subsidy to encourage children aged six months to five years to receive influenza vaccination at private clinics. This can help promote the participation of private doctors in the provision of preventive healthcare and it is also in line with the Government's policy direction of establishing a family doctor system and fostering public-private partnership in the provision of healthcare services.

However, the implementation of such a subsidy scheme requires comprehensive planning and must be in compliance with some basic principles, including: the targets of government subsidies are children who receive vaccination rather than private doctors; the

pricing of vaccination service provided by private doctors should be based on the price of vaccine plus a reasonable fee for inoculation service; the pricing should be transparent and reasonable to enable the public to make an informed choice; participating private doctors are required to register with the Government beforehand, store the information and statistics relating to the vaccination properly, including children's names, addresses, schools, and so on, and furnish the Government with relevant information for verification and surveillance purposes.

We, together with DH, are holding discussions with private doctors and the departments concerned to look into the details of this subsidy scheme. Depending on the outcome of our discussions, we do not rule out the possibility that in the end the Government will provide the vaccination service for the children. Our aim is to provide a subsidy for children aged six months to five years to receive influenza vaccination during this year's influenza season.

Property Development Rights Granted to Railway Corporations

18. **MR LAU KONG-WAH** (in Chinese): *President, in reply to my question raised at the Council meeting of 23 April this year, the Government provided profit figures of the former MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC) in respect of property developments for the period 2003-2007. The profits were generated from the property development rights granted by the Government as funding support to the former MTRCL for undertaking the Airport Railway and the Tseung Kwan O Line projects, and to the KCRC for undertaking the Tsim Sha Tsui East Extension and the Ma On Shan Line projects. In this connection, will the Government inform this Council:*

(a) of the amount of profit it estimated that the railway corporations would derive from each of the property developments when the property development rights were granted to them for the aforesaid railway projects, and whether it knows the actual amount of profit that the railway corporations have derived from each of the property developments; and

(b) as the Government has stated that owing to various factors, it did not compare the actual and estimated revenues of the property developments concerned after granting the property development rights to the railway corporations, whether it has considered that in the absence of such comparisons, how it can ascertain the extent to which its original estimates of the revenues to be generated from the property developments are accurate, and that not having such comparison figures is also not conducive to making more accurate estimates when property development rights are granted to the railway corporations in the future?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, railway projects require huge capital investment during both the construction and operation stages. For new railway projects which will benefit the society but will not be financially viable, the Government will consider, on a case-by-case basis, different ways of funding support to finance these projects, with a view to achieving the Government's responsibility in providing fast and convenient transport infrastructures. Granting property development rights to railway corporations is one of the means in bridging the funding gaps of the railway projects.

My reply to the questions is as follows:

(a) The estimated profits generated by the granting of property development rights for financing the implementation of railway projects such as the Airport Railway, Tseung Kwan O Extension and East Rail Extensions[1] are listed as below:

Railway Project	*Estimated Property Development Profits[2] (HK$ Million)*
Airport Railway	3,700
Tseung Kwan O Extension	5,200
East Rail Extensions[1]	4,300

Note 1: The "East Rail Extensions" project consists of three railway projects namely Tsim Sha Tsui East Extension (TST East Extension), Tai Wai to Ma On Shan Rail Link (MOS Line) and Lok Ma Chau Spur Line (Spur Line).

Note 2: In price level at the time of proceeding with the project.

The Hon LAU Kong-wah raised a question on 23 April 2008 about property development profits attained by the former MTR Corporation Limited (MTRCL) and Kowloon-Canton Railway Corporation (KCRC). I have responded to that question. However, as the property developments for the above railways have not yet been fully completed, the actual figures of profit from property developments are not yet available.

(b) Railway projects require intensive capital investment. In consideration of the financial support for a new railway project, the Government will assess the cash flows during the operating life of the railway over a period of 50 years, and to take into account a basket of factors that might affect the annual cash flows during the project operating life, such as capital cost, operating and maintenance expenditure, transport demand, population and economic growth. Based on the above factors, the Government will assess the funding gap of individual project, and decide a means of funding support for the project. As a matter of fact, we will use a financial model in assessing the financial proposal of the railway project. In it, we have made assumptions on the concerned parameters. The revenue and expenditure incurred during the operation period, such as the operating and maintenance expenses, fare and related revenue as well as profits from property development, may differ from those at the time of financial assessment. However, we will try our best in conducting the assessment. Once the project agreement is signed, the financial risk will be totally borne by the railway corporation. Hence, it may not reflect the real financial situation if only the profits from property developments up to present were focused.

As I pointed out in my written reply dated 23 April 2008, for the railway projects that are under planning, the Government will engage independent consultants to assess the project cost estimates. In the case when "rail-plus-property" is being considered as a means to provide the funding support, the Government will also engage an independent property consultant to assess the probable profits to be generated from the property development rights. A proper mechanism will be devised to ensure that the estimated profit to be derived from the property development rights will be comparable to the estimated funding gap of the projects.

Automatic Discharge from Bankruptcy

19. **MR LEUNG KWOK-HUNG** (in Chinese): *President, the Bankruptcy (Amendment) Ordinance 1996 (Amendment Ordinance), which set up the automatic discharge system, has commenced operation since 1 April 1998. In this connection, will the Government inform this Council:*

(a) since the commencement of the Amendment Ordinance, whether the Official Receiver has, in any case of doubt or difficulty in enforcing the relevant legislation, applied in the first instance to the Court for directions under rule 158 of the Bankruptcy Rules (Cap. 6 sub. leg. A); if so, of the details of the applications concerned (including the issues involved, application dates and court directions); if not, the reasons for that;

(b) given that in the investigation report published in March 2002 regarding a bankrupt's complaint about the enforcement of the Amendment Ordinance's provisions on discharge from bankruptcy by the Official Receiver's Office (ORO), The Ombudsman pointed out that in respect of the application to the Court for directions, ORO had not given sufficient consideration to the complainant's interests, and that in objecting to the complainant's application for early hearing of the appeal against the court direction, ORO had not acted reasonably; and The Ombudsman therefore recommended that ORO should consider apologizing to the complainant and the recommendation was accepted by ORO, whether ORO will apologize to the public and take responsibility for its failure to give sufficient consideration to the interests of the affected members of the public in enforcing the Amendment Ordinance; and

(c) given that under the Amendment Ordinance, a first-time bankrupt can be automatically discharged from bankruptcy four years after his bankruptcy order takes effect, unless the Court orders that the bankruptcy period be extended to a maximum of another four years on the application of his trustee or creditor who makes a valid objection; and the maximum length of the bankruptcy period is therefore normally eight years under the present system; and in reply to my question at the Legislative Council meeting on 2 May 2007, the authorities advised that since the Amendment Ordinance

has provided a one-year transitional arrangement for those persons adjudged bankrupt before the operation of the Amendment Ordinance on 1 April 1998, for the bankrupts whose bankruptcy orders were made more than 42 months (including those made more than eight years) before 1 April 1998, they would not be automatically discharged from bankruptcy upon the commencement of the Amendment Ordinance, whether the authorities have reviewed if it is an misinterpretation of the relevant provisions of the Amendment Ordinance and the legislative intent of the Ordinance to deem the one-year transitional period as an extension of the bankruptcy period?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the Administration's responses are as follows:

(a) To clarify on any particular matter arising under bankruptcy, the Official Receiver has from time to time sought directions from the Court pursuant to Section 82(3) of the Bankruptcy Ordinance and Rule 158 of the Bankruptcy Rules (Cap. 6). Examples of the directions sought by the Official Receiver from the Court include: (a) the obligation of the Official Receiver under section 30C; (b) the jurisdiction of the Court under section 30A(9); and (c) the proper interpretation of section 30A(10)(a). The ORO does not maintain a separate register on such applications and hence cannot readily provide details of all such applications.

(b) As regards the case raised in the question, the Official Receiver has accepted and implemented the recommendation of The Ombudsman and tendered an apology to the complainant. On the other hand, it should be noted that, The Ombudsman had concluded that there was no evidence that the ORO had acted on a mistake of law in the handling of the complainant's application for discharge from bankruptcy. There was no further query from The Ombudsman and the case was then closed.

(c) The transitional arrangement under the Amendment Ordinance stemmed from the recommendation of the Law Reform Commission's Report on Bankruptcy "…… that persons bankrupt

under the (present) provisions should be automatically discharged from bankruptcy 12 months after the introduction of the new provisions …… to give the Official Receiver sufficient time to review all cases of bankruptcy and decide which of the cases warrant objections being made to the court". Hence our answer given at the Legislative Council Meeting on 2 May 2007 was consistent with the Law Reform Commission's Report and there is no misinterpretation of the relevant provisions.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2008

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2008.

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 Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2008

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move the Second Reading of the Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill).

One of the important measures announced by the Financial Secretary in this year's budget is to make a one-off injection of $6,000 into the Mandatory Provident Fund (MPF) account of lower-income working people in order to enhance their retirement protection. All MPF scheme members who earn not more than $10,000 a month and all MPF-exempted Occupational Retirement Scheme (ORSO scheme) members as at the end of February this year, as well as all holders of an MPF contribution account or ORSO scheme members who have been employed and met the salary limit requirement one year prior to the delivery of the budget are eligible for the injection. About 1.7 million people will benefit from the relevant measure.

The Bill seeks to provide a legal framework for empowering and going through the Mandatory Provident Fund Schemes Authority (MPFA) to implement this measure for the benefit of the people. As the existing Mandatory Provident Fund Schemes Ordinance does not provide for contributions to be made to MPF accounts by any party other than employers, employees and self-employed persons, we must amend the law to allow the MPFA to instruct the trustee to credit the specified amount of money to the MPF accounts of qualified persons after receiving the funds provided by the Government under this measure. Moreover, since the MPFA does not have information of the members of MPF or ORSO schemes, the Bill is required to provide the MPFA with the power to collect, consolidate and verify the relevant information for the purpose of compiling a list of eligible recipients and their accounts.

The Bill seeks to set out clearly the powers and responsibilities of the MPFA and MPF trustees, and so on, for the purpose of the implementing the injection proposal. The Financial Secretary has already announced the eligibility criteria, which are not included in the scope of the amendment.

The injection proposal has gained general support from members of the public since its announcement in February this year. The Financial Secretary announced the expansion of the coverage of the proposed injection in late April this year after giving due consideration to the views expressed by Members and the public. The Financial Services and the Treasury Bureau and the MPFA will immediately take follow-up action and undertake the preparatory work necessary for the implementation of the proposal, including defining the scope of amendment and deciding on the details of the amendment. We have already speeded up the process of drafting the provisions of the amendment legislation.

In May this year, when consulting the Panel on Financial Affairs of the Legislative Council on the specifics of implementing the injection proposal and the relevant legislative proposals, we pointed out that we would table a bill in this legislative session as soon as possible. The MPFA is required to be empowered by the Bill and be given adequate time to conduct data collection and processing for the purpose of compiling a list of eligible recipients and their accounts. Therefore, we hope that the legislative exercise will be completed as soon as possible to enable the MPFA to activate the relevant process immediately, so as to implement the relevant measure as soon as possible. The Bill will go through the First Reading in the Legislative Council today and we will do our best to facilitate the handling of the Bill by the Legislative Council.

After the Bill has been passed into legislation, we will make an application to the Finance Committee of the Legislative Council for funding. Our target is to commence the injection of funds into the relevant accounts within 2008-2009.

I hope Members will support and pass the Bill as soon as possible, so as to implement this measure conducive to enhancing the retirement protection for lower-income people.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2008 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.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2007

Resumption of debate on Second Reading which was moved on 9 January 2008

PRESIDENT (in Cantonese): Mr James TIEN, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

MR JAMES TIEN (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 (the Bills Committee), I would like to submit the report of the Bills Committee. In principle, the Bills Committee supports the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 (the Bill), which seeks to improve the operation, in particular the enforcement, of the Mandatory Provident Fund (MPF) system. However, some Bills Committee members are gravely concerned about whether or not the proposals can effectively plug the existing loopholes and produce sufficient deterrent effect.

One of the major proposals of the Bill is to provide that an employer who does not enrol his relevant employee into an MPF scheme is still liable to pay MPF contributions for that employee and the Administration can also bring prosecution against an employer for non-payment of MPF contributions. All Bills Committee members support the proposal and note that the Mandatory Provident Fund Schemes Authority (MPFA) can recover from the employer the outstanding contributions which should have been payable as early as from 1 December 2000 through civil proceedings.

The Administration's view is that according to the above proposal, the employer is liable to pay retrospective mandatory contributions comprising both the employer's and the employee's portions. Some Bills Committee members are of the view that such requirement may be tantamount to requiring the employer to pay the employee's portion of MPF contributions twice if the employer has not made any deduction from the employee's relevant income in the past. The Administration indicated that in that case, the employer might recover the amount paid as a civil debt from the employee concerned. Some Bills Committee members doubt the fairness of this approach because it is the employer's responsibility to enrol its employees and make contributions.

The Bill also proposes to increase the maximum penalties for MPF-related offences so that they align with those for default on payment of wages and unlawful deductions of wages under the Employment Ordinance. Some Bills Committee members think that the proposed penalties are too heavy and others also question the deterrent effect. Moreover, members are gravely concerned that some employers of limited companies will still default on MPF contributions although they have been ruled by the Court to be responsible for them. To address such concern, the Administration will move a CSA to the proposed clause 43BA of the Bill to provide that non-compliance of a court order to compel an employer to enrol his employees into an MPF scheme and to pay the outstanding contributions is an offence which is liable to a penalty of a fine and imprisonment. This amendment has won the support of all members.

Some members are of the view that the above proposals will not be effective in recovering the MPF contributions in arrears from employers. After deliberations, based on the decision reached by a majority of members in voting, the Bills Committee will move in its name two amendments: The first is to impose the onus of proof on the defendant director and the second is to provide that, in certain specified circumstances, the directors of a persistently defaulting company including its shareholders, should be held liable for the unpaid contributions. Members of the Liberal Party and I do not support these two proposed amendments and the Government has also indicated that it will not support them. Therefore, these two proposed amendments will be moved by Mr CHAN Kam-lam, Deputy Chairman of the Bills Committee.

Madam President, next, I wish to talk about the views of the Liberal Party on these two amendments.

Madam President, the Liberal Party believes that there is indeed room for improvements to be made to some areas of the legislation on MPF after it has operated until now. If employers did not make contributions, of course, the Government should recover the outstanding contributions from employers. However, our initial concern was that many examples had shown that not only did some employers fail to make their portion of contributions, but they also failed to make contributions for their employees. Now, after we have amended the legislation, instead of not having to assume liability, as is the case now, employers will be held liable and have to make contributions for their employees. The Liberal Party supports this point.

Of course, we also support the following measure: If an employer pays the outstanding contributions for an employee which should have been payable for a number of years, the employer can seek to recover the paid contributions through civil proceedings, be it through negotiations or compromise. The Liberal Party also considers this feasible. Of course, under the present proposal, employers have to shoulder liability. If they do not make any contributions, they have to assume criminal liability. We also support this.

Regarding instances in which unscrupulous employers conspire with employees in not making contributions, the relevant penalty has been increased substantially to a fine of $350,000 and imprisonment for three years. The Liberal Party also supports this.

In addition, in some instances, although the employers have deducted the income of their employers, they have not paid the sum into the relevant MPF accounts together with their portion of contributions. The Liberal Party believes that in these circumstances, such employers have committed an aggravated offence, therefore, we support increasing the penalty to a fine of $450,000 and imprisonment for four years.

In the course of debate and deliberation, many Bills Committee members cited the example of the *Sing Pao Daily News*. Regarding this particular case, we believe that it is necessary for the Government to examine if the liquidation procedure has to be reinforced in the future because the fact that the *Sing Pao Daily News* was willing to make the payments was attributable to the fact that the Government employed an ultimate weapon, that is, applying for liquidation. However, I believe this kind of behaviour as exhibited by the *Sing Pao Daily News* is rare. They exploited a legal loophole to the fullest extent to their advantage and I think what they did was a disgrace to employers and state enterprises in Hong Kong. They put all the assets in one company while another company was set up to hire employees but that recruiting company never made any contribution whatsoever, so one can see that they had planned everything carefully in advance. I believe the great majority of employers in Hong Kong would not devote their energy to doing such things, nor would they be involved in such scheming. However, should such unfortunate instances recur, the Liberal Party believes that it may be necessary to carry out the liquidation exercise earlier. Of course, some people think that liquidation will have a great impact and may not entirely be favourable to employees because should liquidation be carried out and the liquidator take over, the company

concerned will have to stop operation and the jobs of the employees may be affected immediately and they may even have trouble getting their wages, not to mention making contributions to the MPF. However, the Liberal Party believes that it is necessary to deal with this issue.

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

The Liberal Party will not support the two amendments proposed by Mr CHAN Kam-lam on behalf of the Bills Committee. First, the onus of proof is put on the directors or shareholders. This approach is different from the present one for criminal cases at common law. Moreover, such an approach is not applied to limited companies, which is a universal system. In all the situations involving the offer of evidence, the people concerned have to adduce evidence to prove their innocence. However, such a practice cannot be found in Hong Kong. We could see on the television yesterday that in a case in which a manager of the Centaline Property had been found guilty, the Independent Commission Against Corruption had to prove his guilt and one could not possibly do it the other way round by asking him to prove his innocence.

It is proposed in another amendment that if a company really defaults on contributions or is incapable of making contributions, its shareholders and directors have to make contributions for employees out of their own pockets. While this will certainly enhance the deterrent effect, we have to look at this from a holistic and macro perspective because we have to take into consideration the company laws in Hong Kong, consider the definitions of limited companies, directors, independent directors and shareholders. Moreover, shareholders can be classified into minority and majority shareholders. It may not be practicable to hold shareholders liable for these sums of money.

Finally, concerning these two proposed amendments, in fact, after the representatives of employees and employers in the MPF Schemes Operation Review Committee have held discussions, they do not approve of them, so the Government also disapproves of them. For these reason, the Liberal Party will not support these two proposed amendments. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, a number of amendments have been made to the Mandatory Provident Fund Schemes Ordinance (MPFSO) since it took effect in 2000. If a new law is found to be problematic after its enactment, rectification must be made promptly.

However, I am still concerned whether the amendments have completely plugged the loopholes in law. In recent years, the most serious problem with the MPF is non-payment of mandatory contributions by employers or, worse still, non-payment of mandatory contributions by employers after withholding the wages of the employees. The Hong Kong Federation of Trade Unions (FTU) has received countless complaints from employees, and the situation is found to be the worst with the catering and construction sectors.

Deputy President, the current amendments proposed by the Government seek to increase the maximum penalty for non-payment of mandatory contributions or non-enrolment of employees in an MPF scheme to a fine of $350,000 and a prison term of three years, to bring it on the same par with the maximum penalty for default in wage payment under section 63C of the Employment Ordinance. The FTU agrees with the proposal because default in wage payment and non-payment of mandatory MPF contributions should be treated equally. Incidentally, the FTU proposes that, when a minimum wage is to be implemented in future, employers failing to observe the minimum wage should also face the same penalty.

In our opinion, the offence committed by employers withholding the wages of their employees without making mandatory contributions is even more serious. The FTU fully supports the Government's proposal to raise their maximum penalty to $450,000 and a prison term of four years. I believe all employers with a conscience should raise no objection to that because it is pretty obvious that employers withholding the wages of their employees without making mandatory contributions are cheating their employees. No employers with a conscience would find this acceptable.

But the point is: Will the Court impose the maximum penalties even if the penalties are made stiffer? According to our observation and experience gained over many years, the answer is very often "no". Actually, the Government should request the Court to impose stiffer penalties for employers who have repeatedly defaulted in mandatory contributions. Otherwise, even if the legislation is amended with a view to raising penalties and prison terms, it would

still be pointless to do so should the Court treat unscrupulous employers leniently. Actually, in serious cases, the non-complying employers should be sentenced to jail before a deterrent effect can be achieved.

These amendments to the MPFSO indeed raise the penalties and rectify some loopholes. However, it is still very difficult for employees to recover MPF contributions. Under the first scenario, some employers prefer paying fines to public coffers and treating the fines as costs to paying mandatory contributions to employees. The *Sing Pao Daily News* incident is a case in point. The newspaper preferred a fine to making mandatory contributions.

During the deliberation of the Bill, the Government explained that the fines received could not be transferred to employees of defaulted payment of MPF contributions. In other words, even though employers have been fined by the Government, employees will still not get any benefit. It is ridiculous that employees of defaulted payment of contributions in Hong Kong have become a money-spinner for public coffers. I hope the authorities concerned can exhaust all possible means to make employers settle the defaulted contributions expeditiously. I would say that mandatory liquidation is the most effective weapon. Once this weapon was used, *Sing Pao Daily News* had to pay.

Deputy President, the Mandatory Provident Fund Schemes Authority (MPFA) submitted a paper to the Bills Committee in May explaining how defaulted mandatory contributions are recovered by the MPFA. The recovery process is found to be very long and complicated procedures are involved. First of all, on the advice that an employer has failed to make mandatory contributions within 10 days after the pay day, the MPFA will issue a notice to the employer requesting for payment of outstanding contributions within 14 days — the two add up to 24 days — as well as a surcharge. It is only after the MPF trustee has not received the defaulted contributions within 10 days that he would inform the MPFA. The MPFA would then begin investigation and request the employer to settle the defaulted payment. This process alone would take 34 days. Obviously, MPF contributions form part of the wages of employees, and defaulting wages for seven days is already treated as an offence. Why should the MPFA treat employers defaulting on mandatory contributions so leniently and allow them to default on payment for 34 days?

Upon proving that an employee is defaulted on the mandatory contributions, the MPFA would seek to recover on his behalf the defaulted

contributions from his employer through civil action. However, a lengthy court procedure will then be involved. It is most terrible that we cannot ascertain how long it will take for the unpaid contributions to be recovered. Once an employer is convicted by the Court — however, a process involving making an appointment and obtaining evidence must be completed before the Court can convict the employer. Should the employer continue to default on mandatory contributions, prompt recovery action should have been taken by the MPFA. However, this is actually not the case. The kind-hearted MPFA would remind the employer to expeditiously settle the contributions before considering, after a torturing process, whether the employer should be asked to opt for winding up or liquidation. Furthermore, these complex procedures involved are not subject to any time limit. Therefore, wage earners might have to wait several years before they can recover their defaulted mandatory contributions. How ridiculous this is.

Actually, once the Court rules that an employer has defaulted on mandatory contributions, the MPFA should take action promptly to ascertain the assets possessed by the employer for winding up or liquidation purposes. In particular, some employers who have the money to carry on business would not want to go into liquidation because all business operations would have to cease once a liquidation order is issued. *Sing Pao Daily News* is a typical example. It was just one day before the liquidation order issued by the MPFA came into effect that all the defaulted wages and mandatory contributions were settled by the newspaper. It is thus evident that liquidation order is an effective weapon.

In this connection, I have proposed a motion during the discussion, and the motion was passed by the Bills Committee at that time. The motion urges that the MPFA should take prompt action after a ruling is made by the Court against employers and a specific time limit for the action to be taken should also be stipulated.

The MPFA has accepted my proposal and heeded my advice. On 16 May, a paper (CB(1)1525/07-08(1)) captioned "Enforcement of court judgment" was submitted to undertake that, within 14 days after the due date for payment of the adjudged sum in arrears, the MPFA will check whether the employer has made the payment and the MPFA will take action within 10 days after having confirmed that the employer has not made the payment. The MPFA will also consider serving a statutory demand at the same time as adopting other recovery options such as applying for bailiff action, or applying for a

charging order or a garnishee order for recovery of the arrears, as a basis for filing winding-up petitions against employer companies defaulting on mandatory contributions, thereby greatly speeding up the recovery process. Furthermore, the last sentence of the paper reads, "the MPFA will proceed with the action of issuing statutory demands and filing winding-up petitions against employer companies without hesitation, particularly those that have persistently defaulted in making MPF contributions for their employees." I am quoting this paragraph in the hope of putting it on record to draw the attention of the employers throughout the territory to the fact that the MPFA has acceded to our suggestion and will enforce and use this effective weapon within a time limit because we hope employers will stop defaulting on mandatory contributions for various reasons. I hope the MPFA can really honour its undertaking in the paper and stop acting hesitantly from now on. I welcome the MPFA and the Government's acceptance of my proposal.

Deputy President, during the discussion on the amendments to the Bill, the Bills Committee agreed to propose two amendments. These also reflect the majority view of participating members. Despite the objection from the Chairman of the Bills Committee, I still believe that the two amendments are genuinely needed.

The first one I would like to discuss is clause 12A which is concerned about the evidential onus of proof. Why should this onus be imposed on employers and managerial staff? Actually, the reason is very simple. From the management's perspective, employers and the management are in full control of all information and data. However, wage-earners whose mandatory contributions are defaulted do not have such information, thereby making it very difficult for them to adduce evidence. Therefore, if the MPFA receives reports and finds out during its investigation that there are defaults on mandatory contributions, the employers and the management concerned should adduce evidence for the purpose of proving that there is no deliberate negligence or non-compliance on their part.

Furthermore, we have also seen that, when employees intend to testify, unscrupulous employers or the management would threaten them with job security. If employees intend to step forward to testify, I think they would be dismissed before they can ever do so. I have personally handled a lot of such cases. This is why I believe the amendment to clause 12A can address the relevant situation, and it therefore makes sense for the amendment to be

proposed. Nevertheless, I will provide additional information when the amendment is debated later in the meeting.

As regards clause 12B, which is concerned with the imposition of civil liability on directors and shareholders of a company, I also believe that it makes sense for members to propose this amendment. For instance, why should we show mercy to those unscrupulous employers or repeated offenders who have been convicted more than once? As regards the addition of paragraph (b) to deal with the unsuccessful recovery action by the MPFA against employers because they have insufficient assets, these unscrupulous employers have actually been exhausting all possible means to transfer their assets by changing names and companies to prevent the authorities concerned from issuing summonses and issuing a writ of *fieri facias* against their companies. Should we fail to address these circumstances seriously, it will be impossible for us to protect employees from being defaulted on mandatory contributions.

Some companies obviously do have money to run their business but still they are reluctant to make contributions — *Sing Pao Daily News* is a typical example, and many such cases can also be found in the catering industry — with employers defaulting on mandatory contributions on the one hand and setting up new companies on the other. This is why I believe it is entirely appropriate to add a provision on personal liability in this amendment. In this respect, I will speak to provide additional information when the debate concerning this is held later.

Generally speaking, there is progress with this amendment to the Ordinance, and it warrants our support, though there is still inadequacy in it. I hope the Government and the MPFA will not feel complacent by thinking that, after this amendment *(The buzzer sounded)* …… everything is settled.

DEPUTY PRESIDENT (in Cantonese): Time is up.

MR CHAN KAM-LAM (in Cantonese): Deputy President, on behalf of the DAB, I will speak on the Bill.

The Bill seeks to achieve two major objectives to, first, raise the penalty for employers failing to fulfil their obligations under the MPF scheme and, second, expressly provide that the employer still has an obligation to make

mandatory contributions to the MPFA even if the relevant employee has not been enrolled in an MPF scheme. The DAB believes that the employee's statutory rights and interests must be protected. The Bill proposes to bring the penalties for defaulting employers and non-payment of mandatory contributions after withholding wages on a par with the penalty for default in wage payment under the Employment Ordinance. This is worthy of our support. Default in mandatory contributions, though representing just a small proportion of employees' wages, is by nature no different from default in wages. It is therefore reasonable for similar penalties to be imposed.

Furthermore, the Bill requires that an employer still has an obligation to make mandatory contributions to the MPFA even if the relevant employee has not been enrolled in an MPF scheme. This amendment would plug a loophole in the existing legislation to enable the MPFA to prosecute employers failing to enrol their employees while at the same time, impose criminal liability on them for their failure to make mandatory contributions for their employees and also enables the MPFA to take recovery action through civil actions. The DAB supports this amendment. Given the mandatory contributory obligation imposed on employers which has been in existence since the implementation of the MPFSO, it is reasonable for express provisions to be made to enable the MPFA to take recovery action through civil actions against failure to enrol employees in MPF schemes as well as non-payment of mandatory contributions. This amendment, which is by no means a new obligation imposed on such employers, is therefore not in conflict with the legislative intent.

During the deliberation of the Bill, some members held that legislation should be further stepped up to provide more effective deterrence against the breach of the MPFSO with the consent or connivance of officers of a company, which would undermine employees' interests. After discussion, it was decided that, as Deputy Chairman of the Bills Committee, I would propose two amendments on behalf of the Bills Committee. The first amendment provides that, in the event of a company violating the Ordinance, unless there is evidence to the contrary, an offence committed by the company is presumed to have been committed with the consent or connivance of the officers and managers concerned. Moreover, the officers and managers concerned will be treated as committing the same offence as the company. The second amendment provides that, if a company continues to carry on its business though it has been convicted more than once for default in mandatory contributions, and recovery action by the MPFA against the employer has been unsuccessful because that company has

insufficient assets, the Court may order the directors and shareholders of the company to personally pay off the outstanding contributions if the Court is satisfied that it is equitable to order so.

Perhaps I should take this opportunity to express our views on the two amendments so that I would not need to repeat when the amendments are proposed later in the meeting.

Deputy President, the DAB has all along been in support of strengthening legislation and law enforcement to curb unscrupulous employers evading their obligation of making mandatory contributions, with a view to protecting the rights and interests of wage-earners. For some people seeking to evade their obligation as employers by operating their business in the form of limited companies, we consider it equally unacceptable and serious punishment should be imposed. Actually, regarding the requirement for managers to assume criminal liability for the offence committed by their company, it is already provided in section 44 of the MPFSO that if it is proved that an offence under this Ordinance is committed with their consent or connivance, they will be treated as committing the same offence and may be proceeded against. However, the first amendment proposed by the Bills Committee seeks to shift the evidential onus of proof to company managers who are required to produce evidence to prove that the offence is committed by the company not with their consent or connivance. We have reservations about this because criminal liability is involved. We do not consider it appropriate to change the evidential onus of proof easily.

According to this proposed amendment, once a company is proceeded against, irrespective of not the offence is committed for the first time, the offence committed will be presumed to have been committed with the consent or connivance of the managers concerned. They will be required to assume, to a certain extent, the evidential onus of proof to prove their innocence. Whether the change in the evidential onus of proof is considered "reasonable and proportional" in law is easily disputable. It will definitely be problematic if this amendment alters the constitutional principle that the prosecution must prove that the defendant is guilty beyond reasonable doubt. However, if this principle is not altered as a result of this amendment, that would mean that the original liability of both the prosecution and defence will not be changed substantially and hence, prosecution will not become easier. So is there a need to introduce an amendment purely on the basis of form? We are doubtful about this.

As for the second amendment proposed by the Bills Committee, we still consider that the most effective way to curb evasion of employer liability by individual shareholders or directors of limited companies is to make use of criminal recovery provided for in section 44. If these directors or shareholders do not even fear criminal liability, I believe they can hardly be deterred even if civil litigation is instituted to require them to settle MPF arrears.

Broadly speaking, the authorities concerned and the MPFA should inject more resources, strengthen law enforcement and hold shareholders or directors responsible for the violation of the MPFSO by their company under the existing legislation criminally liable and make it clear that they will not be tolerated. This is the most effective way to deal with such people. In comparison, the two proposed amendments made by the Bills Committee are not more desirable. According to the information provided by the authorities, 430 summonses were issued by the MPFA in 2006-2007, with nearly one-fourth of them issued to company directors or managers. While this ratio does not appear to be low, actually only 10-odd company directors or managers were targeted. Have the law enforcement authorities given adequate attention to, and made adequate effort to deal with, the personal liability of the managers involved in other cases? At any rate, we consider it necessary for the authorities to conduct constant reviews and upgrade efficiency in law enforcement, especially in upgrading their competence in conducting investigation. This is the correct way to curb and deter individuals from controlling a company in breach of the MPFSO.

Deputy President, with these remarks, I support the Second Reading of the Bill. As for the two amendments proposed by the Bills Committee, the DAB will abstain from voting in view of our views as stated above. Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, first of all, I have to declare that I am a Director of the Mandatory Provident Fund Schemes Authority (MPFA). However, I will speak today as a representative of the labour constituency of the Legislative Council and express our views on the contents of the Bill. The labour constituency welcomes the amendments made to the MPFSO today because the Bill has plugged some of the legislative loopholes enabling employers to evade their obligation to enrol their employees in an MPF scheme and raised the penalty for these employers.

One of the controversial points of the numerous amendments is that employers who have failed to enrol their employees in an MPF scheme are required to, in addition to pay back the outstanding contributions, be responsible for the contributions which should originally be made by employees and recover the paid contributions from the employees through civil claims. Members of the Bills Committee were greatly divided on this point. Some members even argued that holding employers responsible for settling the employees' contributions is tantamount to requiring them to pay for employees' contributions twice, which is unfair to employers. Similarly, I have reservations about this amendment. However, the problem with this amendment has nothing to do with employers being treated unfairly. On the contrary, it is unfair to employees. By appearance, this arrangement has struck a balance between the interests of employers and employees. However, it might put those wage-earners who have to continue working to support their living into dire straits because these low-income employees simply have no spare money to cope with the claims arising from their employers' failure to enrol them in an MPF scheme. Those people who think that the amendment is unfair to employers have never mentioned that it is the obligation of employers to enrol their employees in an MPF scheme. I cannot see why the problems arising from defaults by employers have to be shifted to the employees, especially when these problems might cause the employees to face unbearable legal liability and financial pressure.

During the deliberation of the Bill, the legal advice obtained by the Government and the Legislative Council has come up to different interpretations with respect to the liability of the part concerning employees' MPF contributions. The provision of the existing amendment has not expressly provided for the liability of employers defaulting on employees' MPF contributions. Instead, the problem is to be resolved through consultation and compromise between employers and employees. This arrangement is not satisfactory because consultation cannot specifically protect the rights and interests of the employees. Nevertheless, I respect the decision made by the majority of the Bills Committee. However, there is one point to be taken into account when MPF contributions are to be recovered from employees: If the employees concerned are put into dire straits because of the recovery action, the MPF scheme will not be able to serve its purpose of protecting the livelihood of employees after retirement. It might even act as an accomplice in strangling the working life of the employees. This would run counter to the objective of enacting the MPFSO.

Another point which is relevant to the rights and interests of employees is how to effectively recover MPF contributions in arrears. There are indeed some unscrupulous employers in Hong Kong who have been exhausting every possible means to get every cent out of their employees with infinite ways ranging from disregarding court rulings, transferring the assets of their companies and disappearing after liquidation, to carry on business with companies with no assets and continue to default on MPF contributions. Here I would like to speak in particular on the latter because the Deputy Chairman of the Bills Committee will propose an amendment on behalf of the Bills Committee to stipulate that the Court may make an order, at the request of the MPFA, to require the directors and shareholders of the company continuing to carry on business even though it has no assets to settle the outstanding contributions. Members representing the business sector have expressed in the Bills Committee that they will not support the relevant amendment. However, I am of the opinion that in order to protect the rabbits in the forest from being killed by the lions, more restrictions must be imposed on the pack of lions. Because the company has no assets, it has often been difficult for the MPFA to recover MPF contributions in arrears from the employer. The requirement for the directors and shareholders of the company to assume the responsibility is merely imposing a slight restriction on the reckless and unbridled lions.

During the deliberation of the Bill, we have also discussed whether the scope of protection of the Protection of Wages on Insolvency Fund should be widened to include the MPF arrears ruled by the Labour Tribunal or broaden the scope of protection of the compensation fund for the MPF to ensure that employees can recovery MPF contributions in arrears from employers. Although these proposals have not been fully discussed in the Bills Committee with relevant amendments made, I personally feel that these valuable opinions should not be forgotten when the deliberations on the Bill are over. The relevant discussions should be encouraged, be it in the Labour Advisory Board, the Legislative Council or at other levels in the community, for the purpose of further improving the protection for employees under the MPFSO.

Deputy President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, I welcome today's amendments because the Hong Kong Confederation of Trade Unions has over the past years pointed out the existence of a loophole in the relevant legislation,

and the loophole will finally be plugged today. I will elaborate on the loophole later in the meeting.

It is now an appropriate time because the Government will inject $6,000 into every eligible MPF account as it has mentioned earlier. Whenever the Government's injection of $6,000 was mentioned when I went out, I would sense the nervousness of MPF contributors. This was a side-effect. As a representative of the labour sector, I feel quite ashamed about this. I was asked by some people whether they would be able to benefit from the injection should the Government really go ahead with its injection plan. This was because they had the feeling that they had no MPF accounts because their employers had simply not made any MPF contributions for them. My reply was that, if they had no MPF accounts, they would be unable to benefit from the Government's injection. They would then ask anxiously, "Does it mean that we will lose the $6,000?" My reply was in the affirmative, they would not be eligible for the $6,000. When they asked me what they could do, I advised them to report their employers to the authorities concerned to demand their employers to make MPF contributions for them.

Sometimes, I feel quite ashamed too. Actually, employees should make reports promptly should their employers fail to make MPF contributions. As employees, they are very helpless because of their disadvantaged position. Because of the fear of dismissal, they would not dare to make reports even if their employers have failed to make MPF contributions. Now they are taking the matter more seriously because they see no reason for not getting the $6,000 from the Government as everyone deserves it, and there is no reason for them not to take it. As a result, they have come me to find out more about the situation. This is not a bad thing. In fact, after I had talked for 10-odd minutes on a radio programme, I received phone calls from more than 20 listeners enquiring about MPF matters. It is evident that employees are caring more and more about their own MPF accounts.

The loophole to be plugged by today's amendment concerns the issue I have just mentioned. For instance, at present, an employer is not required to make MPF contributions for an employee who has worked for him for four or five years simply because the employee has never been enrolled in an MPF scheme. The most crucial part of today's amendment is that the retrospective effect can be dated back to several years ago or even to 1 December 2000. This is the most important point. What happened before the amendment is

introduced? The situation was very ridiculous. In the past, even if an employer had all along failed to enrol an employee in an MPF scheme after his employment, the employee could only initiate criminal proceedings against the employer, but the employee was not entitled to recover the default contributions from the employer, as the employer is not held responsible for the past contributions. However, after the amendments today, in addition to criminal proceedings, the authorities concerned can compel and order the employer to enrol the employee again in an MPF scheme. If the employer has never made any contributions in the past, the Court may recover the full sum from him, which would mean that he will be required to pay back all the default contributions. This is indeed vital for the protection of rights and interests.

Hence, I would appeal to all wage-earners here, if they have worked for years without having an MPF account, it is now time to recover all contributions in one go. Nevertheless, I find the recovery procedure quite complicated at times. Actually, the relevant procedures for recovering MPF contributions or default wages can be very complicated. In this respect, I will explain how the procedures can be streamlined later. The amendments proposed today can at least provide a sound basis for recovery of default payments for employees.

I would like to tell the Secretary that this is the advice I give to other people, though I am not sure whether I am right or not: It would be fine should an employee be able to recover the $6,000 injected by the Government to his MPF account because this would prove that he has already had an MPF account at that time and upon proving this, his employer would have to pay back the default MPF contributions. At the same time, the Government would have no reason to refuse injecting $6,000 into the employee's MPF account. This was the explanation I give to other people. I hope the Secretary can tell me if my explanation is wrong. This is the advice I give to employees when I encourage them to recover MPF contributions from their employers and that is, if their employers have not paid MPF contributions for them in the past, they may now recover the contributions in one go. So long as he can prove that he was previously in possession of an MPF account, the $6,000 to be injected by the Government will go to his account in future. This will have to be put straight. I hope the Secretary can let me know if I have some misunderstanding about this. Should that be the case, I would ask the Secretary to introduce an amendment to ensure that this can be achieved.

After the passage of the amendments to the legislation today, I hope all wage-earners without MPF accounts can take prompt action to recover default contributions in one go. During the deliberation of the Bill by the Bills Committee, we expressed a concern that, if recovery action was taken, the employer concerned had to pay all the contributions in arrears — contributions made by both the employer and employee over a period of five or seven years — but can the employer recover the part of contributions the employee should have paid? Insofar as this aspect is concerned, there was a difference of legal opinion. I am really a bit worried about the employees.

In any case, the employees must get back their entitled contributions first. Whether the employers can recover contributions from the employees and whether the former will recover contributions from the latter is another matter. Both employers and employees will have to face the matter again by then. Our legal adviser has once indicated that no recovery action can be taken because of time lapse. At present, the employers are merely required to honour their due obligation, and there is no ground for them to recover contributions from the employees again. However, I am not clear about the situation. We can examine the matter later. However, the amendments today can at least plug the loophole in this respect. We hope all employees who have not been enrolled previously can recover arrears in one go and employees who are not enrolled in the future can take recovery action promptly.

Furthermore, as another improvement to the Ordinance, the amendments seek to raise the penalty. At present, the penalty for non-payment of MPF contributions is on a par with that for wage default, with the maximum penalty being a fine of $350,000 and a prison term of three years. During the deliberation of the Bill by the Bills Committee, I have persistently raised a proposal to the MPFA which has finally been accepted, and it is, heavier penalty should be imposed should an employer pocket the employee's contributions. As everybody knows, MPF contributions are divided into two parts, namely employers' contributions and employees' contributions. If an employer takes away the part of wages put aside as contributions and fails to put it into his employee's MPF account, the penalty for such an employer will be increased to a fine of $450,000 and a prison term of four years. Therefore, there are two different sets of penalties. I welcome this because this is exactly what we have been fighting for. It is extremely dangerous and unfair for employers to pocket employees' contributions. I would say that this is tantamount to stealing money

from employees because they are entitled to this portion of wages, which was originally intended to be deducted for MPF contributions, but it was pocketed by the employer instead of being injected into the MPF account concerned. The penalty for this offence is now raised to a fine of $450,000 and a prison term of four years. I welcome this move to make the penalties stiffer.

However, there still remains a problem. Even if all this has been done, we still hope that, after the passage of the Bill, the MPFA can monitor the penalties imposed by the Court. If the penalties imposed by the Court are still too light, we hope an appeal can be made by the MPFA to ensure that the overall penalties imposed by the Court are raised. As Members are aware, even if the maximum fine is raised, the level of penalties imposed by the Court for wage defaults or non-payment of MPF contributions can still be extremely low. The present level of penalties imposed by the Court is very low indeed. In the case of the *Sing Pao Daily News*, although it is known throughout the territory that the newspaper has defaulted on MPF contributions, it was fined only $4,000 for the first time. The fine which is as low as $4,000 is even less than the interest earned by the arrears. The Court is in practice encouraging other employers not to make contributions. However, the Government has been unable to do anything even though the level of penalties meted out by the Court is so low. If the penalties prescribed by the legislation will now be raised, I hope the overall penalties imposed by the Court will be raised accordingly. I also hope that the MPFA can ensure that the Court will raise the levels of penalties in the future by expressing concern and engaging in monitoring. Otherwise, we can only resort to appeals and actions to pursue the employers to the utmost.

During the deliberation of the Bill, we also discussed how employees could be assisted in recovering contributions. According to the MPFA, it has several tricks to recover contributions, with liquidation being the last trick to be used. However, this trick has proved to be useless, since it has been used only in five cases. It is clearly seen in the case of *Sing Pao Daily News* that payment was made instantly when the newspaper was notified that liquidation would be enforced if payment was not made within 21 days. This is better than getting entangled with the newspaper, as what the MPFA did during the preliminary stage, by such means as bailiff action or charging order, which have ultimately been proved to be completely futile. The method we hope to adopt is very simple. Once an employer is found to have defaulted on contributions, he would be warned of liquidation which is the most severe form of punishment. When the employer realizes that a guillotine is in sight, he will make payment

promptly. He would be acting shamelessly should he fail to do so. In our opinion, prompt action should be taken against unscrupulous employers as this is the employees' hard-earned money and defaulted wages. Everyone should be fair. Lastly, I think that this must be tackled expeditiously, and there should be no delay. Otherwise, employers would have the incentive not to make contributions. If there is no delay, and the order made by the Court is enforced right in the beginning, companies failing to make payments will then have to face liquidation. This will be much more efficient and effective. I hope the MPFA can employ this "lethal weapon" as soon as possible in assisting employee in recovering arrears.

Lastly, I wish to solicit Members' support for the amendment proposed by the Bills Committee. This amendment which has been passed by the Bills Committee is very simple: the directors are to be held civilly and criminally liable. I will explain this from two aspects. The provision for holding directors criminally liable is already in existence and it is nothing new. This applies to wage default as well as non-payment of MPF contribution cases. However, it is very difficult to institute a prosecution. Why? It is because in order to hold directors criminally liable, employees must adduce evidence that the relevant offence has been committed with the consent or connivance of the directors or out of the negligence on the part of the directors. I have handled a number of wage default cases. When I discussed the cases with the Labour Department (LD), I was told that it was very difficult to prove because officers would definitely not co-operate with the complainants. And when junior staff or unpaid employees attended the statement-taking sessions, how could they know whether the relevant offence has been committed with the consent or connivance of the directors? Therefore, nothing can be done about it. As for the *Sing Pao Daily News* incident, we are helpless in doing anything too. Though it is pretty obvious to us that the newspaper has defaulted on wages and MPF contributions, there is nothing we can do. Hence, this amendment is intended to vest more power in the authorities concerned so that prosecutions can be instituted successfully.

Lastly, there is no cause for concern about unfairness because the first step to adduce evidence is to be taken by directors while the second step by the prosecution. What does it mean by the first and second steps to adduce evidence? We were advised during our discussion with our Legal Adviser that, as the first step, the directors had to prove that the offence in question was not committed with their consent or as a result of their negligence. They would be

prosecuted should they fail to adduce evidence. As the second step, after prosecution was instituted, the prosecution would have to prove that the offence in question was committed with the consent of the directors. I wonder if Honourable Members can get this straight. Hence, with respect to the onus of proof, the directors are not wholly responsible for assuming the burden of proof. Instead, should they fail to adduce evidence, the MPFA will institute prosecution against them. However, the prosecution would similarly be required to adduce evidence when prosecution is instituted. Therefore, this is not an easy task, only that prosecution would be instituted more easily. The shortcoming now is that the prosecution mechanism cannot be activated. Once it is activated, evidence has to be adduced to prove that the offence in question has been committed with the consent of the directors or as a result of their negligence. However, it would be unnecessary to do so in future. If the directors fail to adduce evidence, the prosecution mechanism will be activated. However, the prosecution would have to give evidence after the mechanism is activated. I hope I can clarify this complicated conceptual issue. We have discussed this issue with our Legal Adviser, and we were told that evidence must be adduced in the end.

The second point is concerned with civil liabilities. Frankly speaking, I am not entirely satisfied with this amendment. Actually, it is very difficult to handle such cases, and it will not be easy at all to recover the contributions because several things have to be proved before a company can be held civilly liable. I also understand that it is conceptually difficult to hold a limited company civilly liable because the whole idea about a limited company is that its responsibility is limited. So how can its directors be held liable?

Therefore, I have accepted a relatively stringent formula for producing proof. If a company is to be held civilly liable, a number of steps must be taken. As the first step, the company must be criminally punishable. As the second step, it still carries on business. If the company has opted for liquidation, the case will be deemed as closed. After these two steps, the third step will be taken to hold the company civilly liable. Therefore, this is a very difficult task. First, the company must be criminally punishable. Second, it must carry on with its business. Only under such circumstances will a company be held civilly liable. If the company still wishes to carry on business under such circumstances, it should be held civilly liable even if liquidation is not enforced. Am I right?

So I hope Members can support the two amendments proposed by the Bills Committee. In addition to cases of defaulting on MPF contributions, we also hope to handle wage default cases in the same manner. This is a series of proposals we have made in the hope of protecting the rights and interests of employees. Thank you, Deputy President.

MR SIN CHUNG-KAI (in Cantonese): Deputy President, the speech delivered by Mr LEE Cheuk-yan just now was not so well-worded, for he said that the levels of the Court should be raised. But I believe he was trying to say the "penalty levels" of the Court should be raised. He has no intention of offending the Court.

Furthermore, he has bundled the $6,000 with the amendments on this occasion — the Secretary is present at the moment — which is actually a positive attempt. However, it is the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2008 (sic) which is going to be passed today. The injection of $6,000 is originally a simple matter. The Bill is to be read the First time today. I note that the relevant document consists of eight pages, or 10 pages if the cover and the back are included. However, I believe the Bill can hardly be passed within this year. Secretary, there is actually no need to hurry. Despite the fact that allocation of funds is involved, the sum of money can be used only after employees have reached the age of 65 …… However, there are some problems because I am not sure whether an employee who dies during this period, that is, before the funds are allocated, will be deprived of his rights and interests. Therefore, it is good for the matter to be dealt with expeditiously. I hope the legislative work can be completed within this year.

These amendments have been prompted by the growing public concern about the loss of their previous rights and interests. When Ms LI Fung-ying spoke earlier …… Of course, I have great sympathy for the dilemma facing the grassroots. As they are too busy earning a living, they can only cope with their daily needs at present without the spare capacity to take care of their retirement lives. I also agree that retirement is an important matter. In brief, the problem raised by Ms LI should not have occurred: despite the failure of their unscrupulous employers to pay their due contributions, employees can only suffer in silence for fear of dismissal.

These amendments, such as raising the penalties and so on, will greatly ameliorate the loopholes in the legislation. For instance, as prescribed in the Bill and mentioned by a number of Honourable colleagues earlier, people not enrolled in a MPF scheme would also eventually have the responsibility to make contributions and the responsibility would be introduced when the contributions are made.

Actually, we will support all the amendments proposed today, whether by the Democratic Party or the Government. We will also support the Committee stage amendment proposed by Mr CHAN Kam-lam. As the two amendments will be debated later in the meeting, I would discuss them in detail in the relevant session. However, the new clause 12A is actually not …… the Government explained that it was unacceptable …… of course, the amendment itself is not perfect, but still we will support it because we think that we should support this amendment (I am referring to the one proposed by the Bills Committee, not the Government) because it is nothing new. Concerning the issue of liability raised by Mr LEE Cheuk-yan earlier, a similar approach can also be found in the Copyright Ordinance and the Unsolicited Electronic Messages Ordinance. There is nothing new about it. It is just that employers react immediately when they see that their responsibility has been made greater. The Democratic Party will support the Bill as well as the amendments proposed by the Bills Committee. I will speak in the debate again in the relevant session.

MR RONNY TONG (in Cantonese): Deputy President, when the first piece of legislation on MPF was passed, in fact, everyone knew that it had some internal or structural contradictions. There was some confusion about the basic concepts, that is, about where the ultimate responsibility for opening accounts and making contributions lay. This basic contradiction is attributable to the unequal bargaining power of employers and employees. It seems this point has been disregarded in the legislation and employers and employees are regarded as equal and on an equal footing to bargain with one another in a reasonable manner.

Deputy President, if Members have a good understanding of the basic requirements of this piece of legislation, they will see that be it in law or in administration, employers should assume absolute responsibility. Concerning their legal responsibilities, of course, employers have to open accounts and make

contributions and they also have to make contributions for their employees. In administration, employers can decide by themselves what approach should be adopted and the services of what kind of investment company should be used when handling such matters. In fact, employers have all along insisted on having this kind of administrative right, believing that they can cope with such administrative matters only by having such a right. Employers also believe that this is favourable to their administration.

Deputy President, even so, when we were scrutinizing the amendments, I could hear many Honourable colleagues claiming to represent employers voice frequently their opposition to making employers assume greater responsibilities in the discussions on the amendments and I find this very strange. Deputy President, I do not think that all employers in Hong Kong want to have the cake and eat it. Since they want to have administrative convenience and administrative rights, they should also assume the corresponding responsibilities.

Deputy President, over the past four years, we have been having discussions on this piece of legislation in this legislature and we also hope that the Government will make some fundamental changes to this piece of legislation, for example, by allowing employees to open accounts or choose the method of making contributions by themselves. However, these proposals were time and again opposed by Honourable colleagues led by the Liberal Party. Up to now, these proposals can still not be implemented. In the absence of such a legal basis, I think if it is provided in the legislation that ……

(Mr James TIEN stood up)

DEPUTY PRESIDENT (in Cantonese): Mr James TIEN, is it a point of order? Do you want Mr Ronny TONG to clarify his comments or do you want to clarify your own comments?

MR JAMES TIEN (in Cantonese): …… I want to ask Mr Ronny TONG to elucidate. Just now, he said that Members of the Liberal Party had presented a lot of obstacles in respect of the legislation. I was the Chairman and only Mr Andrew LEUNG and I sat in the Bills Committee. I do not think that we presented a lot of obstacles and caused a lot of delays. Will he please clarify this point ……

DEPUTY PRESIDENT (in Cantonese): Do you want Mr Ronny TONG to clarify this point?

MR JAMES TIEN (in Cantonese): Yes, will he please clarify?

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, are you willing to clarify?

MR RONNY TONG (in Cantonese): I believe it is the words "presented a lot of obstacles" that calls for clarification. What I said just now was that they opposed making employers assume greater legal responsibilities and I remember these were the words I used just now. I did not say they "presented a lot of obstacles". As regards my comments just now that employers opposed a system of portable accounts, we raised this point on various occasions in the past and the Liberal Party was always opposed to it. I believe I have not said anything wrong. Deputy President, if I have said something wrong, I am willing to withdraw it.

Deputy President, in these circumstances, I think the amendments proposed by the Government on this occasion have not got to the heart of the matter and have not dealt with the fundamental issues. However, in this fundamental system, it is impossible for us to give an overhaul to the proposals put forward by the Government. Therefore, in these circumstances, we are forced to support these amendments. However, I believe that the Government should give serious thoughts to the negligence in opening accounts and the non-payment of contributions in particular. In fact, the Government should consider amending the legislation to make employers assume all liabilities in these aspects.

Deputy President, why do I say so? Because no matter if employers violated the responsibilities imposed on them due to negligence, on purpose or with a view to getting any advantage, this may make employees …… for example, after some years, it will be very difficult for employees to pursue the responsibility of their employers in making contributions payment by at one go and employees may suffer losses as a result. Who then should assume responsibility for such losses? I think this is very obvious and any reasonable

person would know that obviously, such a responsibility should fall on the employers concerned. This is because as I said just now, the fundamental and foremost legal basis of this piece of legislation is that employers have legal and administrative responsibilities. Therefore, Deputy President, on this issue of default on contributions, I believe it is beyond any doubt. However, I believe that although the amendments today may not be as ideal as many employees would like them to be, at least, they are a step in the same direction. For this reason, the Civic Party definitely supports the amendments proposed by the Government.

(THE PRESIDENT resumed the Chair)

President, I also want to talk about the amendments proposed by the Bills Committee. In fact, I also think that the amendments proposed by the Bills Committee cannot be described as adequate. However, we all understand that in the course of scrutiny, all people have voiced their views and accepted others' views, that is, there was a give and take among them. So in this regard, it was impossible for us to propose amendments that employees may consider more refined. As regards the demand that directors should assume liability, I think this is nothing new at all and this is absolutely appropriate for Hong Kong society, and the business environment in particular. All of us understand that in law, the definition of an employer is the person or body corporate who hires workers and it is possible for this body corporate to have no assets whatsoever or even to be an overseas company. That means the law may not be able to attain its basic goal, that is, someone has to assume actual liability. In fact, to impose this liability on directors is also not a new approach in law.

In fact, there are many past examples. For example, under the Copyright Ordinance, the Companies Ordinance and the Bankruptcy Ordinance, often, directors have to assume certain responsibilities and the definition of director includes people who are not formally appointed as directors but are given the rights or status of directors. In the Companies Ordinance, there is a term called shadow director. A shadow director means a person who usually gives directions in the operation of the company and this person has to assume the liability of a director. In view of this, I think that to require directors or shadow directors as I have mentioned just now to assume liability definitely meets the requirements of society and the law.

As regards the onus of proof, even though Mr LEE Cheuk-yan is not a lawyer, what he said just now was absolutely correct. In the parlance of lawyers, in fact, the Chinese term "舉證責任" has two different meanings. In common law procedures, an evidential burden is different from a legal burden, that is, the onus of proof in law and a genuine and purely evidential burden. The difference is that the onus of proof lies in the defendant but the ultimate responsibility of prosecution in law lies in the prosecution. This completely complies with the requirements of the law. Such a distinction is clearly spelt out in more than one judgment of the Court of Final Appeal. This is acceptable in law and does not contravene the requirement in the Basic Law that this area has to comply with the International Covenant on Human Rights — if I remember correctly, the requirement stipulated in Article 14. Therefore, this is absolutely in line with our legal system.

As regards civil responsibility, I personally have some reservation. I think civil responsibility is in fact of little help because ultimately, it is dependent on the application of legal aid by the employees concerned and their overcoming a multitude of obstacles to recover the money through legal procedures. For this reason, I think this is of little help. However, of course, Members who represent workers understand the views of workers in this regard and I absolutely respect their views. If they think that this will offer extra protection and find this acceptable, we will definitely give our support, even though I personally think that in fact, we can take one more step forward. I hope the composition of the next Legislative Council will enable Members to make further improvements in this regard.

Thank you, President.

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

DR KWOK KA-KI (in Cantonese): Madam President, I support the Second Reading of this Bill.

In fact, many past instances show that in the Mandatory Provident Fund Schemes Ordinance (MPFSO), in particular, in the part concerning the mandatory contributions made by employers for employees, there are many loopholes and it is also these loopholes that prompted the Government to propose

the amendment proposals on this occasion. In particular, the new section 7AA provides that an employer who does not enrol his employees in an MPF scheme is still liable to pay mandatory contributions. To all employees, this is a legal provision that represents progress and more careful thought.

However, ever since the MPFSO has been implemented, the Government has only proposed this one or rather restricted amendment, so I have to express my great disappointment. Members will still remember that several months ago, the Chairman of the MPFA, Mr Henry FAN, who is also a member of the Executive Council, said that although employers and employees worked very hard to earn money to pay the contributions, in fact, their MPF was substantially eroded by the exorbitant management fees charged by MPF operators and fund managers. In view of the spirit of the entire piece of legislation, it is necessary for the Government to better regulate these commercial organizations offering MPF-related services, so that the charges levied and the profits made by them are all subject to regulation. The existing MPFSO only targets the legal responsibilities that employers have to fulfil. It is true that this will solve some of the problems that we have found since the implementation of the MPFSO in 2000. However, we are unable to tackle another even bigger "blackhole". After the Government has listened to so many views, including those of the MPF Schemes Operation Review Committee and the Chairman of the MPFA, it is still incapable of proposing further amendments. I have to express my great disappointment with this.

In fact, the discussion on the MPFSO nowadays, in particular, the discussion on such provisions as sections 7 and 43B has assumed a greater significance. Three months ago, the Government proposed a new document on health care financing and in one of the health care financing proposals, it is hoped that contributions can be collected from the public or employees along the line of the MPF to meet the expensive medical bill in future. However, we can see that various problems have arisen in the implementation of the MPFSO and the MPF schemes so far, including those relating to employer contributions and the lack of regulation on the exorbitant management fees, service charges and company profits relating to MPF schemes by means of legislation. In fact, many employees in Hong Kong will have to rely on the MPF for a living in the future. If the Government implements health care financing regardless of the situation and shifts the responsibility to the public by means of a new piece of legislation on health care contributions, this will precisely have the effect of

handing over more hard-earned money of the public or employees to fund managers and fund operators.

After the passage of this Bill, the Government has the responsibility to refine the mode of operation of the MPF, in particular, by devising more effective legislation and arrangements, so that the funds and contributions of employees and employers will not be gobbled up by commercial fund operators and their fund managers. I think it is necessary for the Government to introduce some new legislation shortly, so that the MPF system, on which many members of the Hong Kong public depend for their retirement protection, can be improved.

I so submit. Thank you, Madam President.

MR ALBERT HO (in Cantonese): President, the Democratic Party supports the Second Reading of the Bill and all the amendments proposed by the Bills Committee.

The main goal of the Bill is to enhance the power of the enforcement authority, that is, the MPFA, to ensure that employers fulfil their responsibility of making contributions and increase the civil and criminal liability of employers in making contributions in accordance with the law. We think that this is the right thing to do. Of course, it would have been even better if this particular amendment is able to come into effect earlier.

I only wish to give a brief response by pointing out that the amendment is controversial. In particular, in cases in which the employer is a limited company, the civil liability of its directors is a subject of debate. I remember that one of the points most stressed by Honourable colleagues opposing this amendment and by government officials is that this amendment may violate a basic principle underlying all commercial laws, that is, if a company is operated in the mode of a limited company, the liability of its shareholders should be limited.

Some Honourable colleagues voiced some views just now and I am not going to repeat them. However, I wish to stress that conceptually — I am not going to talk about exceptions — in fact, the limited liability of a limited company should apply to people having business dealings with the company.

That is to say, if someone has business dealings with a limited company, he should know that the other party only has limited responsibility. If the company loses money, only the capital invested in it will be lost. However, how can this concept be applied to the employees working for it? They have toiled to serve the company and helped it make money but the employers of limited companies are going so far as to say that sorry, since the company has no money and has only limited capital, so employees will be deprived of the opportunity to even get a little something out of their rice bowls. How can this make sense? For this reason, conceptually, I have all along considered it untenable to say that the principle of "limited company" reduces employers' responsibility and enables them not to pay wages in arrears. On this point, I do not care if the same exception can be found in other pieces of legislation. I believe as far as wages are concerned, it is only fair to pay wages to employees. I cannot see how employers can say that since a limited company has only limited liability, there is no need to assume responsibility.

In addition, in managing their companies, directors know how many assets there are in their companies and the state of their companies. They want employers to continue to work for them, in the hope that in an unfavourable business environment, employees can continue to hold out and so employees can have some hope …… in fact, companies should give this assurance to employees. Since employees are willing to fight for the survival of the company to the last, how possibly can companies not assume any responsibility?

According to this amendment, in fact, it is not possible to take recovery action against the money from directors immediately and it will still be necessary to clear several hurdles. One of the hurdles is the inability to recover the money because the company concerned is still in operation. As we all know, such instances exist, probably because no one embarks on the procedure to apply for liquidation, so things just drag on and the business operation continues. Such instances are common. Even though it is known that the director is applying for liquidation, it is still no easy task to recover the money because ordinary people applying for liquidation have to pay more costs.

In fact, I also raised one point in the Bills Committee. Personally, it is possible for me not to support this amendment. However, I have one request, that is, the wages in arrears should be paid to employees out of the Protection of Wages on Insolvency Fund (PWIF). The PWIF is a system that requires employers to make contributions. Employers jointly guarantee that should

certain unscrupulous employers — I would not say there are many of them — be unwilling to pay workers their hard-earned money, the PWIF will assume collective responsibility. I remember that at that time, some Honourable colleagues from the business sector again opposed this proposal, saying that the PWIF was not intended to serve such a purpose, that it was not designed to offer guarantee on such matters and that employers did not want to make additional contributions. I am sorry but if Members want to continue to dispute in this way, I cannot see why other Honourable colleagues should not join hands in supporting this amendment. Just now, I have given the reason and it is very simple, that is, as employers, there is no reason for companies not to fulfil their basic responsibility by paying their own employees their hard-earned wages. Employees have worked so hard for their employers. If they cannot even get "a bowl of rice" as the return, this is absolutely unacceptable.

Concerning criminal liability, just now, Mr LEE Cheuk-yan has elaborated on this and Mr Ronny TONG has also given us an explanation. Mr Ronny TONG is a well-experienced barrister, so he knows the legal principles clearly and he has also given us a clear explanation. I only wish to stress one more point. Just now, I heard Mr CHAN Kam-lam voice the grounds of opposition on behalf of the DAB and they were mainly founded on legal grounds. He sounded as though the principles and the onus of proof under the common law had been violated, that if such changes were made, apparently, the human rights of some people would be encroached upon. His claims deserve our taking them seriously and respond to them. Of course, two Members have already given their explanations, so I hope they will go back and …… the DAB has over 70 lawyers, so in fact, there should not be any difficulty in clarifying the viewpoints voiced by him just now and they also have the time to do so later.

However, I only wish to stress that after the reunification, that is, after the Basic Law had come into effect, the Court of Final Appeal once again affirmed, as Mr Ronny TONG said just now, that at the level of evidence, the onus of proof can sometimes fall on the defendant. Apart from the fact that this complies with the Basic Law, I also have to stress once again that in fact, there are many laws in Hong Kong proven in the course of many years which show that if the onus of proof is not placed on the defendant or the party suspected of an offence in some special circumstances, it will not be possible to enforce the law.

One of the examples is that in the past two or three decades, the reason for the success of the anti-corruption efforts in Hong Kong is that there is the onus of

proof in the Prevention of Bribery Ordinance. I think the President and Members all know clearly that if the income of a civil servant is not commensurate with his standard of living or if his income is not commensurate with his wealth, it is necessary for him to account for this. He has to explain why he has so much money. After deducting the expenses from the income, why does he still have so much income? Why can he enjoy such a living standard? If he cannot explain this, it will be assumed that he is involved in corruption and he should be penalized. This provision has been one of the most effective tools for the Independent Commission Against Corruption for many years.

Of course, the examples are not confined to this area alone. This is also the case for drugs. If drugs are found in certain premises, the person in possession of the premises may have to explain whether or not he has no knowledge of the drugs. Why are the drugs found in premises in his possession? If it is necessary for the prosecution to find all the evidence in all matters, in that case, even if it is found that someone only earns a monthly salary of some tens of thousand dollars but is leading the life of a billionaire, if no evidence can be found to prove that he is on the take, this person may be able to escape the net of the law. May I ask how our entire system can remain sound? Therefore, this kind of onus of proof does exist in the legal system in Hong Kong and it also exists in many important laws.

For this reason, as Mr CHAN cast such a fundamental doubt just now, I am a little concerned. Perhaps he has not sought the advice from the numerous lawyers well-versed in law in his party. Otherwise, they would have told him that this kind of view is wrong. I hope he can think over this again later, then, in his capacity as the Chairman of the Bills Committee, support the amendments proposed by the Bills Committee. Thank you, President.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, have your comments been misunderstood? You may clarify the part of your speech which has been misunderstood.

MR CHAN KAM-LAM (in Cantonese): Yes, President. President, Mr Albert HO said that we would oppose the two amendments to be moved later but in fact, I did not say we would oppose them. We only have some reservation about

some problems with the amendments, so we will abstain from voting. Moreover, the views we have expressed have not touched on the issue of human rights. Regarding the other issues Mr Albert HO has raised, I am not going to repeat them or refute them here. I only wish to make this clarification in particular. Thank you, President.

MR ALBERT HO (in Cantonese): President, please allow me to clarify again because it seems he has also ……

PRESIDENT (in Cantonese): Has he also misunderstood your comments?

MR ALBERT HO (in Cantonese): Yes. In fact ……

PRESIDENT (in Cantonese): In that case, you can only clarify the relevant part because this is not a debate.

MR ALBERT HO (in Cantonese): In fact, I only told him that …… just now, I made it very clear that in fact, he cast doubts on the ground of legal principles and if he makes those remarks again, it seems he is denying that they have expressed doubts on the ground of legal principles. In view of this, I stress again that, first, their viewpoint is that of a legal principle and second, I said he opposed it because in group voting, abstaining is tantamount to voting against the amendment. This is what I mean.

MR CHAN KAM-LAM (in Cantonese): I think I have to make a further clarification. First, this speech was drafted for me by our lawyers. Second, we also voiced our views from a legal viewpoint. If Mr Albert HO did not listen to my explanation carefully, I am willing to let him look at my draft speech. Thank you, President.

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

MR LEUNG YIU-CHUNG (in Cantonese): President, when the MPF was first implemented, it was criticized by many members of the public, in particular, employees voiced a lot of opinions. They considered that if they had to set aside part of their salaries as contributions and could only get it back after they turned 65, this would impose a heavy burden on their daily living. This was their view at that time. In fact, many low-income people are still saying this to me nowadays. Their income is not so low as to enable them to be exempted from making contributions but even though their income is not high, they still have to make contributions and so this kind of pressure still exists and this problem cannot be solved even up to now.

In any event, the message conveyed by this piece of legislation is that we will have retirement protection in our old age and this is the spirit of this piece of legislation. However, unfortunately, although the MPF schemes have been implemented for a number of years since 2000, we still find that some employers have not opened MPF accounts for their employees. As a result, when the employees concerned retire in future, they probably will not get any protection. We must face up to this problem and today's amendment legislation is precisely intended to target this issue by putting forward some proposals. The direction is correct and I think it must be done. However, the question is whether all the problems can be solved after this piece of amendment legislation has been put in place. I think this is the issue that calls for more in-depth discussion and greater attention from the Bureau.

President, why do I say so? This is because since the implementation of the legislation concerned, we can see some very commonplace occurrences. The first is employers default on contributions. Just as Mr Ronny TONG said just now, this piece of legislation failed to accord employers and employees an equal status. If employers are unwilling to make contributions, employees may take the risk of turning against their employers by taking legal actions against them. However, what will doing so lead to? To the possible loss of their jobs. Such a problem really exists. Often, employers may default on contributions for a long period of time, consequently, employees cannot get any benefits. This is the first kind of occurrences.

The second kind of occurrences is more or less the same as the first, that is, some employers have all along been making contributions for their employees but subsequently, their financial situation deteriorates, so they stop making contributions and even fold their businesses. Then, they even disappear and so

are the contributions. This kind of occurrences can be seen from time to time. Since a company has folded, what can one do? It is practically impossible for employees to recover anything and this will have a great impact on their future living.

The amendment legislation today is intended to plug these loopholes but can they be completely plugged? I am concerned that this may not be possible. Just now, I have also mentioned one situation, that is, if an employer keeps dragging his feet in making contributions and in the end, he even winds up his business and applies for liquidation, then what can be done? Is it possible to cover this kind of situation in law? The employees concerned have indeed worked for their employer for some time and some employers have even deducted part of their employees' wages as contributions and keep the money in their pockets. Now that even the money is gone, what can one do? I call on the Secretary to give an explanation to us later. In these circumstances, will this piece of legislation be of any help? As far as I know, it seems that this piece of legislation will not be of any help because no protection is provided therein. Many Honourable colleagues asked if it was possible to extend the scope of the Protection of Wages on Insolvency Fund to cover this area. This is why we have the discussions on this occasion although this does not fall within the scope of the legislation being discussed today. Nevertheless, President, I can tell you that such instances are not uncommon, moreover, there are indeed quite a lot of them. That employees cannot get any protection is a major problem and I wonder when the Secretary will help us by plugging the loophole in this regard. I cannot say that this problem is prevalent but the situation is serious. I hope that the loophole in this regard can be plugged; moreover, this is a very urgent task.

In addition, so far, some problems relating to the MPF have still not been dealt with, for example, cases involving inequalities. Originally, the legislation states that employers and employees have to make contributions equivalent to 5% of an employee's wages respectively but I often receive complaints alleging that employees have to shoulder all the contributions amounting to 10% of their wages because the contributions have been deducted solely from the employees' wages, so the employers concerned does not have to make any contribution at all. Many employers request employees to shoulder the whole amount of contributions or to quit if they are unwilling to do so. Employees can only have two choices. They can either make contributions amounting to 10% of their wages or lose their jobs. To employees, although the money will ultimately be theirs and they can get it back in the future, in fact, in the present circumstances,

their salaries are virtually reduced and obviously, their wages are really reduced. However, the existing legislation fails to help them and this is also one of the problems. Members may ask if such instances exist. President, the answer is they definitely do. I have told the President about this many times that this is what happens to my younger sister and this is really the case. In that case, how can the legislation help? It is of no help in this regard. Therefore, I hope the Secretary can find ways to plug the loophole in this regard. Otherwise, the legislation is just useless or it will put the wage-earners in a very unfavourable position. I hope improvements can be made to this area.

In addition, it is proposed in this amendment legislation that the penalties be increased and this is indeed desirable. However, I wonder if the Secretary can give me an explanation on a kind of situation, that is, after the implementation of the legislation, if the employers concerned admit to the non-payment of contributions on their own and resume making contributions soon afterwards, furthermore, they also pay the contributions in arrears, in this case, will they be regarded as having violated the legislation? If employers will not be regarded as having violated the legislation after paying the contributions in arrears, I hope the Secretary can extend the period of exemption so that employers can pay contributions in arrears as soon as possible. This is in any event more desirable than to pursue responsibility and to take such cases to Court because litigation will drag on for some time and it is not known what actions affecting the interests of employees that employers will take in the meantime. Therefore, I hope the Secretary can give us a clear explanation on this area.

Finally, many Honourable colleagues, in particular, Mr SIN Chung-kai, also said that a sum of $6,000 has been deposited into the MPF accounts of some employees. Is this measure relevant to this piece of legislation? In fact, it is relevant. Mr LEE Cheuk-yan and I have both received enquiries from many workers asking whether or not they have any chance of getting this sum of $6,000 if employers do not open accounts for them, even though they have all along been in employment. I hope the Secretary can clarify how it can be ensured that those employees who have not opened any account will also have the opportunity to receive this sum of $6,000 after the implementation of this piece of legislation. Many employees are very concerned about this issue, so I hope the Secretary can clarify this a little and comment on these few areas.

President, at present, generally speaking, this amendment legislation is a major one in a number of years and this will be quite a heavy blow to

unscrupulous employers. I support this move but many loopholes can still be found. I hope the Secretary can listen to our views and plug those loopholes expeditiously in the future, so as to protect the interests of employees.

President, I so submit. Thank you.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, today, we are discussing the amendments to the MPFSO and they have to do with increasing the penalties and plugging some of the loopholes in the legislation. If the Government has tabled the amendments as they are, I would not have opposed them. However, frankly speaking, it is unfortunate that this amendment does not deal with some of the existing loopholes in the MPF schemes in earnest, for example, outstanding contributions owed by employers, employers defaulting on employees' contributions after them from employees' wages. Some employers also deal with various groups of employees differently and are bent on continuing with their misdeeds relating to the MPF. The employer of the *Sing Pao Daily News* is one example.

Madam President, these examples are presenting themselves to us. Apparently, the *Sing Pao Daily News* owed its employees wages in arrears but it also owed them MPF contributions in arrears. Subsequently, the Government exerted pressure on it a number of times and recently, in April, it deployed its ultimate weapons by making it known that if the *Sing Pao Daily News* did not pay the outstanding contributions amounting to several million dollars, it would shutter the company.

Madam President, I talk about this because this issue gives me a lot of food for thoughts. I also took part in the scrutiny of the legislation on the MPF. Originally, I did not like the MPF and I preferred the CPF, that is, the Central Provident Fund. Madam President, you also know that all along, the FTU does not like the MPF. However, we had no choice at that time because the principal legislation had been tabled to the Legislative Council, so we could only put forward some of our proposals on the basis of the legislation.

When scrutinizing the Bill, we voiced our views on outstanding contributions and the behaviour of some employers, including on a protection fund put forward by the Government recently. The Government said that a

protection fund was intended to provide protection to all of us, saying that it was the suggestion of Miss CHAN Yuen-han. This is complete nonsense. How can protection be provided? At that time, we raised all these issues.

All right, these problems were all foreseen by us, as though we had a crystal ball, and they have unfortunately turned into reality. Next, I wish very much to stress that in fact, the Government has not taken our proposals seriously.

Madam President, recently, I encountered some cases requesting assistance and they all had to do with default contributions and outstanding contributions for the MPF. A lot of people are requesting assistance from us. In view of this, we are not against patching up the legislation, for example, by increasing the penalties. However, in reality, are these measures adequate for solving the problems? No, they cannot solve the problems. Madam President, I believe that in the past year or so, the MPFA also tabled amendments to the Legislative Council on two or three occasions, so it can be seen that they also propose amendments frequently. However, these amendments are immaterial and fragmented, so the effort was only cosmetic.

I wish to talk about the proposed amendments on this occasion. Although the Secretary has assumed office only not long ago, I also hope that he can examine this piece of legislation from the angle of a scholar who loves to probe into issues and find out where exactly the problems lie. I hope the authorities can really adopt a better approach in operation, so that they do not have to adopt on our Committee Stage Amendments.

Madam President, last month, an office of our labour union in a local community got news of the closure of a cafeteria in Tin Shui Wai and its employer owed his employees over $200,000 of wages in arrears. Apart from this sum of wages in arrears, it was also found that in fact, the employer had never made any MPF contribution for his employees. The Secretary may say that in that case, the employees should lodge a complaint. Frankly speaking, often, whenever there are such instances, the MPFA would say this to me. I have also pointed out and everyone knows that if an employer defaults on contributions, a complaint should be lodged. I have dealt with many complaint cases of this nature before. However, I told the MPFA that even if a complaint had been lodged, in the end, the matter still could not be resolved because of the problem of manpower and the problems in adducing evidence.

Often, the authorities would tell us that if an employer defaults on contributions, the employees should notify the authorities immediately. I told the authorities that this had been done but it was to no avail. The response of the authorities was that, of course, since the employees were unwilling to give their names when reporting to the authorities, how can the authorities recover the money from their employers? However, employees asked the Secretary if he was aware that if they disclosed their names, the employees concerned would end up being sacked? Ever since the implementation of the MPF more than seven years ago, I have encountered some complaints cases in which the complainants disclosed their names. However, all of them did not fare well in the end and they were all sacked immediately by their employers.

Madam President, according to the unemployment situation published yesterday, we can see that the unemployment rates in the catering and retail industries are on the increase. Just imagine: In order to retain their jobs, even if they know full well that their employers have defaulted on contributions, all they can do is to look for us. Moreover, they will definitely not disclose their names to us because they are afraid of losing their jobs. In fact, given the present circumstances, how possibly can employees have the boldness to tell everything? The Secretary has got to understand this. Why are they unwilling to provide evidence to the MPFA? Because if they do so, they will lose even their jobs, so they can only endure quietly. I once came across a very typical case. The employees endured in silence for several years but in the end, the employer disappeared. Their situation was really miserable. For this reason, the MPFA should try to look at this matter from the angle of employees and grassroots workers and ponder over this tricky issue and various situations objectively.

In addition, regarding the complaints actually lodged to the MPFA, in one case, the employees of a cafeteria chain knew that since 2002, their employer had deducted their wages as MPF contributions but had never paid them into the MPF accounts. For this reason, many of them had approached the MPFA. The approach adopted by the MPFA in this case was, as I said when talking about this case just now, really over the top. When the MPFA carried out an investigation, it asked the employees who among them had gone to the MPFA to lodge a complaint. In these circumstances, would WONG Kwok-hing in the cafeteria dare come out and admit? Would CHEUNG Man-kwong working in the cafeteria have the guts to come out and say, "I made the complaint"? Of course, they would not have the guts to do so, would they? To ask "who has

come to our office to lodge a complaint" is a damning approach. Are the officers of the MPFA totally detached from reality?

In citing such instances time and again, I hope that the Secretary will understand our situation and difficulties. Some people said that the approach adopted by officers of the MPFA was very bureaucratic and far removed from reality. To be honest, when the authorities carry out an investigation, they should gather evidence. When we scrutinized the relevant legislation, we conferred great power on the MPFA and if it is found that there is any default of contributions, they can use the ultimate weapon, including shuttering the businesses concerned, just in the case involving the *Sing Pao Daily News*. It is possible to take these measures. However, this is not what is done in reality. The authorities do not carry out any investigation and their approach is just like that taken by a certain official, who only asked, "Who came to our office to lodge a complaint?" This situation made those employees who gave their names and address when lodging their complaints very angry. If the Government wants to know about the details, I can tell it about them.

The original intention of implementing the MPF schemes is to offer retirement protection to workers. However, since their implementation, a host of issues as I have pointed out just now has arisen. Nowadays, when workers do not have any bargaining power in a market determined by supply and demand, the MPFA has not come up with any protection for them at all.

Moreover, in the course of implementing the MPF schemes, the workers in many industries, in particular, those in the construction and catering industries, are turned into self-employed persons. Secretary CHAN is not familiar with those industries and he may not know that after construction workers become self-employed persons, although on the face of it, there is no difference, if these workers are then injured at work, they are not covered by employment compensation and they cannot claim any compensation, so one can see how miserable workers in the construction industry are. In the first two or three years after the establishment of the MPFA, there were a lot of complaints of this kind. Each time, I would be queried by the members of the public concerned who asked me, "Miss CHAN, why did you support such a piece of legislation", and the like. The situation of these workers is really miserable. After they have become self-employed, if they are injured at work, they cannot claim any compensation, so you can see how miserable they are. Just imagine: Construction workers sustain injuries so frequently. Is the Government aware

of such a situation? Has it done anything in this regard? No. The Government just looks on when grassroots workers are in such a situation.

Madam President, in fact, here, I also want to criticize the MPFA. The MPF Schemes Operation Review Committee (the Review Committee) was established under the MPFA and I do not know if its chairman has been replaced. Its former chairman was Mr Ronald ARCULLI and Mr KWONG Chi-kin was also once a member of the Review Committee but subsequently, he withdrew from it, probably due to the differences in opinion. The Review Committee is responsible for identifying the loopholes in the relevant legislation and in theory, if a loophole is found, it should be dealt with in a matter-of-fact manner. However, often, after we have voiced some views and believed that the Government has to do something, the authorities would just do nothing. Since the Government is unwilling to take action, officers of the MPFA then made the amendments this time according to the views of the policy bureau concerned. They are right in increasing the penalty to deter employers who default on contributions. However, can increasing the penalty plug the loophole that I have pointed out just now effectively? Sorry, on the whole, the loopholes cannot be plugged.

When it comes to these problems, since we are talking about wages in arrears today, I have pointed out from day one of scrutinizing the relevant legislation in the Legislative Council that we are facing a very serious problem, namely, that of offsetting. As its name indicates, the MPF is intended to save for rainy days so that we can have protection in retirement. Even though the protection that we get is insignificant like some vegetable or an orange, at least, we have some vegetable or an orange. However, the problem is that after the introduction of the MPF schemes, we can see that so many problems exist and a particularly serious one is that of offsetting. With this element of offsetting, it means that if CHAN Yuen-han has worked in three or four jobs in her working life and each company she worked for all shared the fate of Da Da, Yaohan or Daimaru, in that case, all the MPF contributions that my employers made for me in the course of my life would go down the drain. Assuming that the MPF schemes have been in operation for 30 years and coincidentally, all these companies closed down at that period of time, in that case, all my contributions will be offset by the severance payment and the employers do not have to make any provisions for this part of the contributions. Therefore, this is really advantageous to the employers.

For this reason, I often point out that the original intention of the MPF is to provide protection to workers in their retirement in future, even though what the workers will get is only some vegetable or a mandarin orange. However, so far, the schemes have been in operation for seven years, or almost eight years, and many problems have arisen in the process. After the schemes have been in operation for 20 years, we will find that the problems will become apparent. By then, we will all become old folks and if we are unable to get by, we will also apply for CSSA from the Government and our situation will also be miserable. By then, the Government will have to think of ways to solve these problems again. This is a major loophole in the legislation.

However, so far, the Government has still not given all these any thought, nor has it proposed any solutions for these hard facts in the Review Committee. The Government only said that when the labour sector discussed the MPF schemes with the Government, the business sector told the Government that this was all that it could afford and the offsetting approach had to be included. However, nowadays, as times have changed, so will it be necessary for the Government to give this matter some thoughts? This is one point that I want to make.

In addition, of course, I have also said that in fact, the existing retirement protection must solve the problem of retirement protection for young people nowadays, that is, for people who will retire in the future, as I have said just now. On this, it is still possible for the authorities to make an effort to help the society as a whole rather than just the labour sector. What efforts can be made? To introduce the universal retirement protection system.

This is the case of Singapore. Singapore started out with the CPF, that is, the Central Provident Fund, then carried out tinkering in some areas, added some more elements, then made some more tinkering again. I have been wondering why the Government does not consider introducing universal retirement protection. I have said here a number of times that at present, many old folks, like me CHAN Yuen-han, who are about to retire, have only made contributions to the MPF for seven or eight years or eight to 10 years. If I have no other financial resources, how can I have enough money to sustain my living after retirement? I am very poor, so what should I do? If a universal retirement protection scheme is in place, I believe old folks like me will fare better.

"Fat Pang" (Chris PATTEN) once proposed the OPS, that is, the Old Age Pension Scheme. Well, the Administration at that time cheated the public and did not deliver. Nowadays, how can the Government provide for this group of retired elderly people and housewives? Had universal retirement protection been put in place, some of the existing loopholes could have been plugged. However, the Government did not establish it.

Madam President, concerning the amendments proposed by the Bills Committee this time, we request that if employers, directors, shareholders, and so on, persistently default on contributions, they have to pay the outstanding contributions within the specified time. Otherwise, they have to assume personal liability. Madam President, when I attended the Chinese People's Political Consultative Conference (CPPCC) in Beijing in March, I raised the case of the *Sing Pao Daily News* because the boss on top of the employer of the *Sing Pao Daily News* is a mover and shaker on the Mainland. I also said it was obviously that in doing business in Hong Kong, the people concerned had resorted to their financial ploys to do some misdeed. No matter if one company or 10 companies had been used to pay different wages and deal with the same matter in different approaches, in the end, the workers could not recover their wages in arrears. I asked the CPPCC in Beijing whether the mainland Government should also carry out supervision on these people in view of such a situation. However, they said, "Miss CHAN, we are sorry but the government at the place where they break the law should be responsible for this." They also pointed out that according to the common law, which we are familiar with, this course of action should be taken. At that time, I could only remain silent but I still followed this matter up. Moreover, I continued to carry out lobbying.

I wish to tell the Secretary that the *Sing Pao Daily News* is obviously a readily available and typical example in which any recovery action would be futile. On the first occasion when it owed its employees wages, such was the behaviour exhibited by it and the Government could do nothing about it. On the second occasion when it owed its employees wages, it also ignored the authorities. Frankly speaking, in the face of such a situation, I believe there is no need to talk about things of the past. The Government should simply stipulate in the legislation that people who are directors or who were once directors all have to shoulder responsibility. At present, the approach is not like this. The Government says that it has to issue summonses first. In theory, directors are to acknowledge receipt of the summonses but many directors cannot receive them, so what should be done? Some people also said

to me, "Miss CHAN, please do not be so harsh. These directors have a lot of post titles.". However, I believe that "you have made your own bed and you must lie on it.". Since they have accepted the posts of directors, they should try to understand more, that is, if there are penalties in the legislation, at least, they have to be extra careful in this regard. If people say that the companies under them have owed wages in arrears many times, they must watch the management closely, so that their companies will not become a liability to them. Otherwise, they will also get into trouble in the future. The phrase I have used is "many times", not "once".

Madam President, in fact, I hope very much that the Liberal Party can support the amendments we have made. Employers with scruples should not be afraid of accepting these amendments.

Madam President, lastly, I wish to stress one point. Having implemented the MPFSO thus far, a comprehensive review should be conducted to see whether it is necessary to introduce universal retirement protection. For example, when it is no longer possible to patch up the loopholes in various pieces of legislation, should the Government not follow the practice of the Wages on Insolvency Fund? Should an advance payment fund for the MPF be established? In fact, concerning the MPF, including the issue of offsetting, the Government really has to carry out a comprehensive review.

Madam President, today, Members are looking at a very important system relating to our retirement. I hope very much that we can all think about how the loopholes in the legislation can be filled up better. I believe that apart from the efforts made by the Government, each Legislative Council Member also has the duty to vote.

I so submit. Thank you, Madam President.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I would like to express my heartfelt gratitude to the Chairman of the Bills Committee, Mr James TIEN, as well as members of the Bills Committee, for the valuable views they have put forward in the scrutiny of the Bill. In response to the views of Bills Committee members, we have submitted the proposed amendments. I will move the amendments at the Committee Stage.

As we all know, since its inception in December 2000, the MPF system has been in operation for more than seven years. The Government and the MPFA will review various arrangements under this system from time to time in the light of actual operation. At the same time, the Bureau will also make improvements to various measures according to the views expressed by Members, the public and the industry so as to enhance efficiency.

Early this year, the Administration made amendments to the MPFSO to enable the MPFA to implement over 20 improvement measures, including the cancellation of a 30-day settlement period for mandatory contributions, so as to speed up the process of recovering arrears of MPF contributions; to expand MPFA's power to require the production of records from employers and other persons for the purpose of law enforcement, and so on. These amendments are conducive to the law enforcement efforts of the MPFA. Through the Bill now under deliberation, the authorities further propose a number of specific measures to step up efforts to deter employers from committing the offences of not enrolling employees in an MPF scheme and defaulting on making MPF contributions for employees.

Just like Members, the Government and the MPFA are also very concerned about cases of defaulting on contributions for employees. For this reason, we are actively making improvements to the legislation and the MPFA has also committed considerable resources to enforcing the law in earnest. The MPFA will do its utmost to take civil action in the Court for affected employees and to pay all recovered funds into the MPF accounts of the employees concerned, so as to protect the rights of employees. There is a dedicated team consisting of 200 people in the MPFA to follow up cases and all relevant legal costs are borne by the MPFA. After intervention and follow-up action by the MPFA, over 90% of the cases of contributions in arrears are resolved. According to the figures of 2007-2008, about 94% of the sums claimed were

paid after court orders were obtained. The MPFA will continue to strive to enforce court orders and recover outstanding contributions for employees.

In order to target a very small number of recalcitrant employers, we propose in the Bill that after the conclusion of criminal trials, the Court be empowered to issue orders to employers to require them to enrol employees in an MPF scheme and to settle the default contributions in full within the specified time. In order to enhance the deterrent effect of the proposed provision, we will propose an amendment later to stipulate clearly in the legislation that non-compliance of court order is a criminal offence which would be subject to a maximum penalty of a fine of $350,000 and imprisonment for three years, and to a daily fine of $500 for each day during which the offence is continued. I wish to stress that under this proposal, if a company fails to comply with a court order and does not make remedies to an offence within the specified time, the directors and managers of the company may be held criminally liable in accordance with section 44 of the MPFSO. Therefore, this new provision will greatly enhance the deterrent effect of the legislation.

It is also proposed in the Bill that the present maximum penalty for failing to enrol employees in an MPF scheme and the non-payment of contributions be increased to a fine of $350,000 and imprisonment for three years. Regarding those unscrupulous employers who have deducted the employees' portion of mandatory contributions from the employees' wages but have not paid all of them to MPF schemes, we propose that the penalty be further raised to a maximum fine of $450,000 and imprisonment for four years, so as to underline the gravity of the offence. If the amendment is passed, the Court can take into consideration the newly laid down maximum penalty and the criminal record of employers who are repeat offenders when deciding the penalty. We believe this proposal will achieve both punitive and deterrent effects. Another major amendment in the Bill is to specify clearly in the legislation that an employer who does not enrol his employees into an MPF scheme is still liable to pay the mandatory contribution for the employees. This amendment will enable the MPFA to take criminal action against defaulting employers and carry out civil recovery actions.

I am aware that during the scrutiny of the Bill, many Members expressed concerns about the procedures taken by the MPFA to recover outstanding contributions for employees and the effectiveness of such procedures. The MPFA has already explained the relevant procedures to the Bills Committee and

agreed that in future procedures to recover outstanding contributions, it will consider serving statutory demands and winding-up petitions to the employers concerned at an earlier stage.

Madam President, I am very pleased that the Bill and the amendments proposed by the Government are both supported by the Bills Committee. I sincerely call on Members to support the Bill and the amendments to be moved by me at the Committee Stage. As regards the two Committee Stage Amendments to be proposed by Mr CHAN Kam-lam on behalf of the Bills Committee later, they have not won the support of all Bills Committee members. I therefore call on Members to oppose these amendments. I will further elaborate on the Government's position when responding to these two amendments later.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007.

Council went into Committee.

Committee Stage

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

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2007

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007.

CLERK (in Cantonese): Clauses 1, 2, 6 to 9, 13 to 16, 18, 19, 21, 23, 24, 26 to 30 and 33.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 5, 10, 11, 12, 17, 20, 22, 25, 31 and 32.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move the amendments to the clauses read out just now, as printed on the papers circularized to Members. I would briefly explain the major amendments.

Clause 3 of the Bill seeks to amend section 43B of the Mandatory Provident Fund Schemes Ordinance (MPFSO) in respect of the penalty for failure to enrol an employee in a Mandatory Provident Fund (MPF) scheme and for non-payment of MPF contributions. This amendment we propose is a technical amendment to provide that the existing penalty for breaching sections 7A(1) and (2) will remain in force after section 43B is amended. Another objective of this amendment is to provide more clearly that a unscrupulous employer who has made a deduction from an employee's income as the latter's MPF contributions but embezzled the money without paying the full amount of the deducted income as the employee's MPF contributions is liable to a heavier penalty, namely, a fine of $450,000 and imprisonment for four years. As the amendment proposed under clause 11 of the Bill is similar to that under clause 3, it is therefore necessary to amend clause 11 in a similar way as clause 3 is amended.

Clause 5 of the Bill seeks to add the new section 7AA to the MPFSO to provide that an employer who does not enrol an employee in a MPF scheme is still liable to pay MPF contributions. In order to more clearly provide for employers' obligation to pay MPF contributions, we have proposed an amendment to the drafting of this new section. Moreover, as Saturday is not a clearing and settlement day for banks, in response to a suggestion made by the Bills Committee, we have proposed that the definition of "contribution day" in section 7AA be amended to exclude Saturday from the meaning of "contribution day".

Clause 12 of the Bill empowers the Court, upon completion of the hearing of cases of non-enrolment or non-payment of mandatory contributions, to make an order to compel an employer to enrol its employees in a MPF scheme and to pay the outstanding contributions. We propose an amendment to clearly provide for the criminal liability for non-compliance of the court order by employers, in order to create a greater deterrent effect. The amendment proposes that non-compliance of the court order would be subject to a maximum penalty of a fine of $350,000 and imprisonment for three years, and to a daily fine of $500 for each day during which the offence is continued.

Clause 31 of the Bill seeks to clearly provide for the approval requirements that can be imposed by the Mandatory Provident Fund Schemes Authority (MPFA) on controllers of approved trustees of MPF schemes to enhance monitoring over the trustees. At the suggestion of the Bills Committee, we have proposed amendments to revise the references to "indirect controllers" in clauses 31 and 32(b) to "shadow directors", in order to be consistent with the wording of the Companies Ordinance. Moreover, we have accepted another suggestion made by the Bills Committee in respect of clause 31 in that the meaning of substantial shareholder as referred to in the clause will be amended to the effect that any person, including an associate as referred to in schedule 8, will be considered as a substantial shareholder of the trustee when acquiring 15% or more voting shares of the approved trustee.

Madam Chairman, all these amendments have the support of the Bills Committee. I urge Members to endorse the amendments I am going to move.

Thank you, Madam Chairman.

Proposed amendments

Clause 3 (see Annex I)

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 10 (see Annex I)

Clause 11 (see Annex I)

Clause 12 (see Annex I)

Clause 17 (see Annex I)

Clause 20 (see Annex I)

Clause 22 (see Annex I)

Clause 25 (see Annex I)

Clause 31 (see Annex I)

Clause 32 (see Annex I)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 5, 10, 11, 12, 17, 20, 22, 25, 31 and 32 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 12A Liability of officers, managers and partners.

MR CHAN KAM-LAM (in Cantonese): Chairman, I move that new clause 12A be read the Second time.

In the course of scrutinizing the Bill, the Bills Committee is concerned that even though it is proposed in the Bill that a number of penalties be increased in order to enhance the deterrent effect, if the employer violating the legislation is a body corporate, it cannot be sentenced to imprisonment. Members notice that according to section 44(1) of the MPFSO, when an offence committed by a company is proven to be committed with the consent or connivance of, or to be attributable to any neglect of, any officer or other person concerned in the management of the company, such officer or person is also liable to be proceeded against and punished accordingly. Some Bills Committee members think that the present onus of proof may make it more difficult for the authorities to bring prosecution against employers violating the legislation. The Bills Committee has made reference to the criminal liability that company directors have to assume in other legislation. To facilitate prosecution and achieve a greater deterrent effect, some members have suggested that consideration can be given to reversing the onus of proof or imposing an evidential burden on the defendant director as to his not having consented to or connived in the offence committed by the company. Some other members however have reservation on such an approach and they are concerned about its implications on the common law principle of presumption of innocence.

After discussion by the Bills Committee, it has been endorsed that an amendment should be made to section 44(1) of the MPFSO in the name of the Bills Committee. Since the Chairman of the Bills Committee, Mr James TIEN, has made it known that he would oppose this amendment, I have been asked to

propose this amendment on behalf of the Bills Committee in my capacity as its Deputy Chairman. Chairman, since I have expressed the position of the DAB on this amendment in the Second Reading debate, I am not going to reiterate it here.

I so submit. Thank you.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 12A be read the Second time.

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

MR SIN CHUNG-KAI (in Cantonese): Chairman, I said just now that I would speak again when the amendment legislation is to be examined clause by clause because this piece of legislation is not …… first, I do not agree entirely that the onus of proof should be imposed on directors.

First, at present, this concept is adopted in two pieces of legislation, so it can already be found in our existing legislation. The Secretary is not here now. Put simply, this concept has already been included in the Copyright Ordinance and the Unsolicited Electronic Messages Ordinance. Therefore, it is not true that the onus of proof is imposed on directors. In fact, the prosecution still has to prove that the company concerned does not enrol its employees in a scheme and make contributions. This is essential. The point is, just as provided for in this amendment, which says, "Where an offence under this Ordinance is committed by a company and — (a) unless there is evidence showing that the following person has not consented to or connived in the offence", it is stated very clearly here that the person concerned has to prove that he has not consented to or connived in the offence.

In fact, to be honest, it is not difficult to decide on this point. Members can think about this: This piece of legislation has been in force since 2000 for about eight years so far. Both employees and employers know that if an employee has been in employment for more than 59 days, it is necessary to make contributions and enrol the employee in a scheme. For this reason, introducing this offence is, firstly, not a new concept and secondly, this will have a greater

deterrent effect. Moreover, its effectiveness will be greatly diminished compared with the original section 44(1), that is, the effectiveness of prosecution will be much smaller. Similar offences already exist, only that some approaches have been changed in this case. Of course, generally speaking, although such a concept is introduced and as Mr LEE Cheuk-yan has pointed out just now, this will impose a heavier responsibility on directors to give explanations, defences are also available. For example, in the Copyright Ordinance, if a company director has fulfilled certain responsibilities in his company, such as providing funds to purchase copyright software and instructing employees to use copyright software and refrain from using pirated software, this is a defence for the employees if he has fulfilled such responsibilities.

In fact, in view of this, a similar concept already exists. Put simply, if a director has instructed his employees or the management to ensure that contributions must be made and there is evidence to show that a budget has been set aside in the company's account books to make contributions, this can be regarded as a defence. Therefore, it is not true that the evidential burden has been completely laid on the directors. Simply put, if all steps have been taken in respect of the company's budget and instructions, this can already be regarded as a defence.

Chairman, I think that clause 12A is an effective new amendment. Compared with the existing legislation, this amendment will be more effective in deterring employers from defaulting on contributions. I think that in fact, the Government should take on board the amendment. Chairman, I support this amendment.

MR LEE CHEUK-YAN (in Cantonese): If this amendment is not passed today and we go back to the original state as a result, it will be very difficult to prosecute any director and make him assume liability. If it is difficult to prosecute a director and make him assume liability and as a result, he does not have to assume criminal liability, when he is to fulfil his responsibilities relating to the MPF, he can take a totally careless attitude because the law will never make him assume criminal liability. If a director is in charge of a limited company, are we supposed to find the chops of the limited company and put them in jail? Or should we find a salaried employee and put him to jail? This is unfair to other salaried employees because in contrast, the person-in-charge may get away in the end.

Of course, some people may say that according to existing legislation, if there is evidence, it will be possible to identify the person-in-charge and bring prosecution against him. However, the problem is that it is very difficult to prove this point. But if we pass this amendment, the onus of proof will be placed on directors. When a case is subsequently referred to the Court and the prosecution has to offer evidence according to procedure, then the onus of proof still lies in the prosecution.

Therefore, this is the best arrangement and if we do not do so, just as in the past, it will be difficult to identify the director who should be held responsible. Would this not again condone employers, in particular, those directors and persons-in-charge, in their continuing to default on MPF contributions? If we review the records of the MPFA, we will find that only very few directors — they numbered no more than my fingers and there were only a dozen or so of them — who had to assume criminal liability. Therefore, I hope Members can support this amendment. However, it seems that its passage is also hanging in the balance.

Sometimes, I really cannot understand. The Copyright Ordinance and the Unsolicited Electronic Messages Ordinance mentioned by Mr SIN Chung-kai just now are also like this. At that time, the Liberal Party did not voice any disagreement and the DAB also said they were OK. Is it that when issues relating to workers are involved, they will just forget them? Or are they particularly unconcerned about the rights of workers in Hong Kong? Or is it because of something else? Let them explain to the wage-earners in Hong Kong themselves. One of them has said they will oppose and the other has said that they will abstain. However, if it were an amendment proposed by the Government, they would agree to everything. Do they do this simply because they are royalists or because they want to target workers and disregard their welfare?

For this reason, I really consider this unjustified. Precedents can be found in other pieces of legislation. Moreover, Members also expressed their agreement at that time. However, when the same amendment is made to a piece of legislation relating to workers' rights or their rights relating to the MPF, they just express their disagreement. I cannot help but ask, do Members have a blatant and fundamental disregard of the inherent rights of workers?

Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, when I spoke in the first round, I already made clear that I supported the amendment made by the Bills Committee to clause 12A.

In fact, this amendment was debated over and over again when it was scrutinized by the Bills Committee. Since this amendment has won the support of a majority of Bills Committee members, I hope those who supported this amendment at that time, be it individual Members or groups, will continue to support it today. They should never have supported the Bills Committee in proposing the amendment on that day but change their position today. This is the first point I wish to make.

This amendment is proposed because we often receive complaints about outstanding contributions and queries about why it was so difficult to institute prosecution. The MPFA and the Government are fully aware of this situation. Why does the Government not accept it? I also find this very strange. This piece of legislation is intended to assist the Government in stepping up law enforcement. However, the Government knows full well that law enforcement is difficult but it is nevertheless letting off unscrupulous employers. I find what the Government is doing very strange.

This piece of legislation does not target employers with scruples but only those unscrupulous employers. Why do you display a split personality and refuse to support this piece of legislation? This is a law that helps you preserve the good reputation of the business sector. This is because often, among many cases of default on contribution, the wage-earners who are owed contributions are forced to come out and testify, but after testifying, they will lose their jobs. For this reason, they are all afraid of coming forward to be a witness. In fact, the party who possesses the most information is the trustee and he is entirely in a position to provide all the relevant information to enable the MPFA to initiate prosecution. However, the Government has not given this point any consideration.

As I said in my first speech, employers and the management possess all the data and information. If they believe that they have not broken the law, they should produce the relevant evidence and this is justified and reasonable. However, the Government does not require them to do so. It requires employees to provide evidence. It is practically impossible for wage-earners to

provide such information. They are being threatened, yet the Government requires them to do such a thing. This is really a move to "empower the capitalists and weaken the workers" and it is very unfair to bully wage-earners like this.

To unscrupulous employers like those of the *Sing Pao Daily News*, in fact, doing so gives them a free rein. To take the *Sing Pao Daily News* as an example, those people were really clever. They established a number of companies under the *Sing Pao Daily News*. One company was responsible for paying wages, another was responsible for accounting, yet another was responsible for other matters, and so on. In other words, they assumed the guise of many different companies. Since they possessed all the information and evidence, how could wage-earners provide any evidence? Meanwhile, the Government condoned them and they did not have to prove that they did not have any intention to commit the offence. Is this not in effect letting them off?

Moreover, just now, some Members also pointed out that in the existing Copyright Ordinance and the Unsolicited Electronic Messages Ordinance in Hong Kong, a concept had been incorporated into them, namely, the defendant had to adduce evidence to prove whether or not he had been negligent. Why can the same concept not be applied to protect the rights of wage-earners in respect of the MPF? Why should this be opposed? In fact, I very much hope that Members who have voiced their opposition and disagreement can give their reasons. Otherwise, how can the three million-plus wage-earners throughout Hong Kong be completely won over? On the one hand, the Government encourages them to make contributions to the MPF in order to have some savings; on the other, the Government does not ensure that they will not be owed their MPF contributions. Moreover, it wants to be a "toothless tiger". May I ask how possibly can the Government be like this?

Therefore, I hope Honourable colleagues who do not support clause 12A can give their reasons to convince wage-earners like us. If the Government is unwilling to do so, I also call on it to give reasons to convince us. If the Government does not agree with this provision, what provision or method is there to plug this loophole? Can the Government give us a reply?

I hope very much that the explanations given by the Secretary can convince us. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, I am not a wage-earner but I believe it is not necessary for one to be a wage-earner to appreciate that workers in Hong Kong are finding themselves in a very unfair situation. I believe all Members have the responsibility to rectify an unfair situation when they see one.

Chairman, the Secretary said when speaking earlier on that he would comment on the amendment later. I find this course of action taken by the Secretary highly regrettable because had the Secretary voiced his views earlier on, we could have a debate on his views openly at this stage and perhaps I could have the chance to convince him. However, if he keeps his views to himself and voice them only later, Chairman, I understand that procedurally, we will not be able to respond to the views of the Government in this regard. Therefore, I find this highly regrettable.

Chairman, in the course of scrutiny by the Bills Committee, this amendment has the approval of a majority of Honourable colleagues attending the meetings of the Bills Committee. In fact, if some Honourable colleagues oppose this amendment, there can only be two reasons for their opposition. One may be on the ground of policy and the other may be on the ground of law.

Chairman, if the opposition is for policy reasons, the opposition from the Liberal Party is perfectly understandable because the Liberal Party has made it clear from the outset that it represents the interests of employers. They have their stance and I absolutely respect it.

However, if the opposition is for legal reasons, I hope the Honourable colleagues who have such views can think twice. First, there are quite a lot of lawyers in this legislature and I myself am also a lawyer. I dare not say that I have a deeper or more insightful understanding of the law than other lawyers but the lawyers in the Civic Party and the Democratic Party, as well as our Legal Adviser all believe that legally, there is nothing wrong with this amendment. In the past, this legislature also passed other pieces of legislation in which the same criteria was adopted in dealing with such issues and so far, no problem has arisen.

Chairman, if we pass this amendment now and in future, the Court holds that there is some problem, it can give a judgment. However, if this amendment cannot be passed today due to an insufficient number of votes, in that case, the Court will not have an opportunity to make amends to the problems.

In other words, for the wage-earners, they will totally lose an opportunity to rectify an unfair situation.

Chairman, here, I hope that the DAB, which has reservation about this amendment, can think carefully about the arguments in this regard because as far as I understand, judging from Mr CHAN Kam-lam's remarks just now, he is looking at this issue from a legal viewpoint. If they agree that as a matter of policy, we should help the wage-earners, and if they really abstain from voting, I hope they will consider if they should continue to abstain while sitting in the Chamber because as we all know, under such a system, abstaining from voting like this is in fact tantamount to voting against this amendment. I think it will be highly regrettable if this amendment cannot be passed for this reason.

Chairman, I call on the DAB to think twice and hope they can think about the situation of the wage-earners.

MS LI FUNG-YING (in Cantonese): Chairman, I believe the amendment of clause 12A is not intended to make shareholders get into trouble or to arrest and shackle them regardless of what the circumstances are. Rather, it is intended to impose another constraint on unscrupulous and deliberate offenders who flout the law. Why cannot the Honourable colleagues in our legislature even support this?

Chairman, on various occasions, some Honourable colleagues representing the business sector told me that they also felt antipathy towards people who deliberately shunned their responsibilities and they did not approve of their behaviour. They also felt that these people had brought shame on them. Precisely for this reason, I hope representatives of various sectors can vote for the amendment of clause 12A. Just think about this: If these people deliberately flout the law and since we say that Hong Kong is a place where the rule of law is practised, that everyone has to abide by the law and we are also here to enact laws, yet we allow some people to disregard the law, can this be considered just? Therefore, Chairman, I also stressed when speaking earlier that this amendment was only intended to impose another constraint on those unscrupulous and deliberate offenders who flouted the law. Therefore, it is precisely for this simple reason that I hope this amendment can receive the support of other Honourable colleagues. I am not going to repeat the arguments I have presented earlier. Thank you, Chairman.

MR JAMES TIEN (in Cantonese): Madam Chairman, in the course of amending this piece of legislation, as the Chairman of the Bills Committee, a directly-elected Member of the New Territories East geographical constituency and a representative of the business sector, I think we have to make clear what this matter is all about.

Concerning the claim that some employers do not make MPF contributions for their employees, we believe that this is absolutely incorrect. First, let us now analyze what kind of employers these are. According to government information, last year, there were 5 000 cases of non-payment of MPF contributions and apart from the *Sing Pao Daily News*, which is a company of a larger scale mentioned by a number of Members from the FTU many times, the rest were not SMEs but all of them were small-scale enterprises, so it can be seen that the Liberal Party is not defending the interests of the business sector or major employers. Ms LI Fung-ying was right in saying that all those major employers probably did not pose any problem.

Given the present actual situation, why does the Liberal Party oppose this amendment? If the majority of these minor employers have indeed delays in making contributions or default on contribution from time to time, the Liberal Party does not approve of their behaviour. However, is it necessary to make the shareholders of these small companies adduce evidence on their own to prove their innocence? I think doing so will be very difficult for these minor employers.

I stress again that our intention is not to defend the minor employers because I myself am not a minor employer. Fortunately for them, in this legislature, the several Members from the Civic Party are barristers and Members from the FTU have never been employers either, nor have Members of the Democratic Party. Even Members from the Liberal Party are not minor employers. However, I think only minor employers themselves will understand their own difficulties. I do not quite understand them either. If I operate a cafeteria in New Territories East these days, it is possible that I will have delays in making contributions to the MPF for the several employees for various reasons. I may also have delays in paying the rent and may even fail to pay the electricity bill.

I do not mean that I think what they are doing is correct, it is only that the actual situation was that in 2006-2007, some 5 000 had delays in making

contributions and according to the information from the Government and the MPFA, after recovery actions, 91% of the companies resumed making contributions last year, that is, among the 5 000 companies, some 4 500 resumed making contributions and only 500 defaulted on contributions. When scrutinizing the Bill, we did not ask specifically about whether those 500 companies defaulting on contributions were all SMEs. Did all of them hire only two to five employees? Were the defaults due to their very poor business? In that case, they probably did not just default on MPF contributions. They probably also failed to pay wages and rent and might have even gone bankrupt. If these companies have gone bankrupt, these employers have probably become wage-earners themselves.

I absolutely disagree with the claim of some Members that we in the Liberal Party do not defend the interests of the wage-earners. These employers that we are now talking about are likely "marginal" employers. I think it is likely that their monthly income is even less than we Members. The income of Members is a lot less than the principal officials but I believe those minor employers do not even make $50,000 each month. These employers at the margin may easily become employees. Such is the situation that they are in.

For this reason, I think that since the Government has decided to propose amendments to raise the penalty to a fine of $350,000 and three years of imprisonment, the deterrent effect would be enhanced. Of course, if these measures are found to be ineffective and a few years later, there are still 5 000 cases of default on contributions, I believe the Government will also conduct a review at that time and we will also lend our support.

Finally, Miss CHAN Yuen-han has once again called on the Liberal Party to lend its support but I think she should first make an appeal to the Honourable colleagues of the DAB.

Thank you, Madam Chairman.

MISS CHAN YUEN-HAN (in Cantonese): In fact, I have appealed to all Honourable colleagues because frankly speaking, be it the Honourable colleagues of the Liberal Party or the DAB, I hope you can all support this group of Honourable colleagues, or should I say, this group of friends from the labour sector on this ground. We have all along hoped that the Government would

make amendments to the legislation on the MPFSO. Earlier on, I also said that the amendment was intended to increase the penalty and I did not oppose it. However, can this problem be dealt with by increasing the penalty? It can now be seen that it cannot.

Our overall attitude is that if the Government is unable to deal with this matter, it should target areas that it cannot deal with by means of legislation. Madam Chairman, when I went to Beijing to attend the meetings of the Chinese People's Political Consultative Conference (CPPCC), I chatted with several friends of the legal sector and they said that we should target the existing problems and spell them out clearly and specifically. As we all know, the laws on the Mainland are somewhat different from ours. They said that we had to set them down specifically and clearly. They also explained the difference between the common law and their laws. When I talked with people on the Mainland about such matters, I could see that they knew this matter well. They believed that on labour issues, one should not deceive workers or subject wage-earners to improper treatment. If they did not feel all right, this would cause social problems. Therefore, I wish very much to elaborate on this point.

Concerning the liability of officers, managers and partners stipulated in clause 12A, I think that not only do companies with large capital, medium capital or small capital have such a liability, people who are employers should all have the responsibility to comply with the legislation. This is just like when I jay-walk, I will be fined and even though I am a small potato, I still have to be punished. Do Members see what I mean? I mean if penalties should be imposed, they should be imposed and as offenders have broken the law, they have to be penalized. That means we have to treat everyone the same. No matter who you are, if the Government requires that you abide by local laws, you have to do so.

Now, in fact, our legislation is in fact not clearly written and I wonder if the Government is deliberate in letting the people concerned get away. I believe when the Government drafted the legislation — if I go to the extreme, I would say that the Government deliberately drafted it in such a way, if I do not take such an extremist view, I would say that this is because in the course of implementing the plan, the Government did not see the problems. As several of my colleagues, for example, Mr WONG Kwok-hing, said, when problems with the Copyright Ordinance arose, the Government also had to deal with it. I hope very much that the Government can examine how the same behaviour in different

areas can be treated in the same way in law. As I said just now, if you broke the law when crossing the road, no matter who you are, you still have to be penalized and the rationale behind this is the same.

I have a good understanding of the situation that small and medium enterprises are in. In fact, employers in very small enterprises would not do such things because they rely heavily on employees. Shops of a very small scale have only two or three employees and they are heavily dependent on one another. Sometimes, when employees are subjected to unfair treatment, they may not necessarily take their employers to Court. Only the behaviour of those larger enterprises which are neither particularly large enterprises nor medium enterprises will make their employees feel very aggrieved.

Madam Chairman, I have dealt with this kind of cases before. Usually, those people would come to me in anger and they had a lot of opinion. For example, workers in industries such as the construction and the catering industries who approached me were very angry. I think employers should have a sense of responsibility and they should not bully workers. As Mr WONG Kwok-hing said just now, under a situation of "empowering the capitalists and weakening workers", when employers break the law and we find that they are breaking the law, I do not care what kind of capital they have. Mr TIEN of the Liberal Party said that basically, their party members did not possess capitals of this kind. Well, that does not matter and perhaps you should make an appeal to them. All of us have to be law-abiding and major employers, medium employers and small employers are also included. I think the prosecution brought by the Government against a company recently is an example. That was a Japanese restaurant …… I like Japanese food very much …… The Government did not care if it was a big, medium or small company and the Food and Environmental Hygiene Department just took action in accordance with the law.

I wish to stress that we have no intention to target employers with capital of a certain size but I think all employers should be fairer to workers. Earlier on, I gave many examples and those cases have dragged on for several years. In some cases, the contributions have been in arrears since 2002 and in some cases, the employees have been making complaints to me since their employers owed them contributions several years ago. However, they dare not testify against them. Subsequently, we informed the MPFA of these cases but it did not take any action. In the end, the employers concerned even disappeared. I do not want to specify the number of such cases and these cases in fact reflect an

objective situation. Members can ask grassroots workers and we can ask them together. There are over 1 million workers who find themselves in a situation where "capitalists are empowered and workers are weakened" and usually, they will just endure quietly. If Members say they want justice to prevail, we have to ensure that fairness, equity and justice are upheld, as symbolized by the statute at the top of the Legislative Council building. No matter who that person may be, we must use the same scale to weigh him. I think that since such a major loophole has arisen in law, the Government should do something.

I wish to stress again what we have to do. We say that "where an offence under this Ordinance is committed by a company and — unless there is evidence showing that the following person has not consented to or connived in the offence ……". This is very important. WONG Kwok-hing said that we did not have the onus of proof, rather, they had to adduce evidence to prove that they had not committed an offence. I think it is very reasonable for us to amend the legislation in this way, Madam Chairman. This is really reasonable. What sort of people are they? "…… any officer of the company; or any other person concerned in the management of the company, or any person who was purporting to act in that capacity is presumed to have consented to or connived in the offence; or the offence is proved to be attributable to the negligence on the part of any officer or other person described above". Madam Chairman, this is as simple as that, is it not? We say that everyone is equal before the law. I think in law enforcement, everyone is also equal. Offenders will not, on account of …… I do not want to be too specific. I hope that — just as embodied in that statute at the top of the Legislative Council Building — fairness, equity and justice can be defended. I hope Members can lend their support. Thank you, Madam Chairman.

MR FREDERICK FUNG (in Cantonese): Chairman, after spending hours listening to Members' speeches, I would support my Honourable colleagues' views on clause 12A of the Bill.

However, I would still like to give some additional information regarding what MPF is. In brief, I would say that MPF is part of employees' wages. At present, 5% of the employees' income would already be factored in by employers as MPF contributions and seen as part of the income when employees are recruited. Therefore, insofar as workers are concerned, MPF benefits represent the income and reward they should receive for their efforts. I would say therefore that MPF benefits are actually wages.

However, MPF is even more important than wage because MPF benefits are not considered to be disposable income, and MPF benefits can only be obtained by employees after they have retired. In other words, in addition to their function as income, MPF benefits also play the role as living expenses for workers after their retirement. Upon retirement, a worker will see his earning power hitting the bottom in his life, which means that he will become the least capable in terms of being able to make money. This is why MPF benefits will be made available to him only after he has retired. We can thus see that MPF is important in the sense that it is more meaningful than whether employers can afford to pay wages. This is the social significance of MPF. Over the past decades, that is, since the '70s or the '80s, we have been fighting for universal retirement protection and pension, thus resulting in the change from a form of income into pension. Hence, I would say that defaulting on MPF contributions should be taken even more seriously than defaulting on wages.

There are at present a total of 5 000-odd irrecoverable cases. I really consider that one case is already too much for me, Mr James TIEN. We cannot say that we would support amending the law if the number of cases remains as high several years later. What should we do to these people at the moment? We cannot wait for several years later before expressing our support. If this has already become a fact, why can we not tackle the problem now? This is the second point I wish to raise.

As for the third point, I will not categorize the problems for the sake of studying whether small and medium enterprises (SMEs) are involved. Of course, Members may say that the majority of the 5 000-odd cases now involve employers of SMEs, and these employers will probably be targeted and these employers might earn even less than Members of the Legislative Council. But the point is, the crux of the problem hinges on the workers, not the employers. The workers have made their efforts, completed their tasks, and fulfilled their duty according to their employers' requirements. However, they have not received the rewards they deserve, even though the rewards are to be given to them after their retirement, not today. I find this problem quite serious. Furthermore, if the employers of SMEs really earn less than Members of the Legislative Council, I believe their workers should earn even less than those working in medium and large enterprises operating on a larger scale. Based on this analogy, the conditions of these workers should be even worse compared to

workers not employed by SMEs. If Members believe the conditions of employers of SMEs are bad, then the conditions of these workers should be equally bad, or even worse.

It is very difficult to draw an analogy between a banana and an apple. I do not wish to do so either. I would only give consideration in accordance with the most fundamental principle. Regardless of whether Hong Kong is an international financial city or a commercial city, it is, generally speaking, an affluent society. Chairman, the per capita Gross Domestic Product (GDP) in Hong Kong last year was US$25,000, or HK$180,000. If we calculate in terms of a four-member household, the income of the household should be $180,000 x 4, or $720,000. How many wage-earners employed by SMEs can earn this average sum of money? This is virtually impossible.

Under the existing system, the rich are becoming increasingly rich, and find it easier to make money. I am not jealous of them. I only wish to ask: Why is labour so cheap? What are the most fundamental things of human beings? The answer is the four limbs and the five sense organs. They have done all they can possibly do and spend their lives, strength and time working in exchange for a sum of money to support themselves and their family members. But in such an affluent society as Hong Kong, they cannot even earn as much as workers employed by SMEs. What I am talking about is just a monthly income of $5,000. As I mentioned earlier, the per capita GDP in Hong Kong was $180,000. Upon comparison, is it reasonable and fair for these workers? Are we going to allow this situation to continue? Do we really believe that labour is so cheap, or even worse than rubbish? This is unacceptable to me.

Furthermore, there is another problem relating to the onus of proof. Though I am not a lawyer, and I believe Ronny TONG understands it better than I do, even as an ordinary person I do not find it very hard to adduce evidence. When my company is in heavy debts and has no more funds, and I have not received any income as an SME employer, how can I have the intention of defaulting on MPF contributions? Are all these facts excellent evidence? The company is short of money and in heavy debts. The employer himself has not received any income. Furthermore, his income is even less than that received by Members of the Legislative Council. Are all these not excellent evidence preventing him from being sent to jail?

The most important principle in this piece of legislation is that the lives of wage-earners are sustained by the productivity created by their four limbs and five sense organs after being fed. It is grossly unreasonable if they cannot exchange their productivity for the income they deserve and the money reserved for use after their retirement (even though it might not be sufficient for use by then). In particular, if wage-earners are still being oppressed in such an affluent place as Hong Kong, where is the conscience of Members who are present here? Do we still have kindness, conscience, benevolence, compassion and justice in our hearts?

The data are very clear. The most important thing is only that employers are allowed to adduce evidence. I believe they are absolutely qualified and able to convince others and the Judge that they have not deliberately cheated in order to avoid making MPF contributions. Therefore, I hope Members can render their support. Thank you, Chairman.

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

MR WONG KWOK-HING (in Cantonese): Chairman, I am greatly dissatisfied with the earlier remarks made earlier by Mr James TIEN, Chairman of the Liberal Party. I will respond to his remarks by describing him as "distorting what is right and wrong and instigating conflicts". Clause 12A is meant to resolve the problems with justice and the onus of proof. It has nothing to do with amounts of capital or bosses of small businesses. Mr TIEN is absolutely wrong. It is a shame that he is a directly elected Member of the New Territories East Constituency. How can he explain to the wage-earners in New Territories East? I hope he can explain in future.

This is not the case. How can the evidential burden be determined in the light of the scale of a firm or the amount of capital? We can talk about anything while scrutinizing the Bill here. However, this is not what things really are. Am I right? Second, it is not because there were 5 000 cases last year. According to a report in the *Sing Pao Daily News*, employers in 91% of these cases have made contributions already. Only employers in 500 cases have failed to act accordingly. But this is not the reason. Furthermore, it is not true that some "marginal" employers must be required explain to the Government and the MPFA because they have failed to make contributions. It is obviously the

employers' responsibility to make contributions, but why should the evidential burden be imposed on the wage-earners? Why would wage-earners find it so hard to speak out? This is because they will be dismissed once they come out and testify.

We have marched to the MPFA on a number of occasions and handed petitions, saying that we have no problem bearing the evidential burden. However, can the Government guarantee that wage-earners bearing the evidential burden would not be dismissed? We have been told that the Government cannot give such a guarantee at the moment. We will not be satisfied unless the Secretary gives a guarantee to the employees today that they will not be dismissed unreasonably, even if they are willing to bear the evidential burden. However, the Secretary has not said so.

Honourable colleagues, I would like to cite three actual cases so that Members can consider whether it is reasonable for the onus of proof to be imposed on employers and the management. Let me cite three cases for Members' fair comments. First, are Members aware who is responsible for selecting the trustee at the moment? The answer is the employers. Right from the beginning when a company decides to participate in an MPF scheme, the employees have been given no choice. Instead, the employer would do the job. Employers are allowed to choose the trustees under the existing legislation. They may even opt for those financial institutions or banks having business transactions with them, that is, institutions sharing interests with them. If the Secretary is sensible, why does he not require employers to adduce evidence to prove that they do not really have the intention of breaking the law when defaults in contributions occur, given that such legislation is already in place? This is unreasonable. Given that trustees are picked by employers, wage-earners simply do not the right to do so. This is the first case.

In the second case, all wage-earners have no freedom to choose in making MPF contributions at present, because provisions on this freedom to choose are not yet available. The fact that the employees must make contributions to the institutions designated by the employers means that the former have absolutely no choice, and they are not free to choose.

In the third case, we do not have any sufficient right to know. Despite our repeated calls for the issuance of "passbooks", the MPFA has been putting the blame on inadequate resources. It has even claimed that it has no money to

purchase computers, and it has no idea when the computers can be bought. However, it has set up a hotline for enquires. Yet it might take several months for the investigation outcome to be known. Under such circumstances, the guidelines must be enhanced to compel the employers to do what they are supposed to do by contributing 5% to the trustees every month. So long as contributions are made within the timeframe, they are considered to have fulfilled their responsibility. Should they fail to do so, they must give their reasons. It would be another matter if they resort to bankruptcy because they really cannot carry on their business.

Earlier on, Mr TIEN said that employers would be required, under whatever circumstances, to testify immediately as a result of the amendment. As an employer himself, Mr TIEN should have fully understood that it would take a long time before this step could be taken. When a wage-earner affected by defaulted payment of contributions makes a report to the MPFA after such legislation is enacted, the MPFA will take action to recover contributions from the employer by letter and notification. I have pointed out during the first round of speeches that this process would take several weeks, or 34 days actually, and the MPFA would then collect evidence on defaulted contributions before filing a writ in the Court for setting down of hearing to be held some six months or a year later. Furthermore, the employer will not be required to testify to prove that he has not broken the law until the case is heard in the Court. This is how the entire process goes. How will the employer be required to testify immediately, as alleged by Mr TIEN? This is simply untrue.

All Honourable colleagues who have not described black as white or white as black must agree with the process described by me just now because things like this are happening every day. Actually, Chairman, I appeal to all Members here, that regardless of their political backgrounds or what businesses or trades they are engaging in, they should not refuse safeguarding social justice. If there are unscrupulous employees defying the law and their obligations of making MPF contributions for their employees in this society, will a society like this be good?

I find it very strange and do not understand why we allow such things to happen. Therefore, I very much hope that Members supporting the views of the Bills Committee back then will not have schizophrenia today.

Thank you, Chairman.

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

(Mr James TIEN raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr James TIEN, do you wish to clarify that part of your earlier speech which has been misunderstood?

MR JAMES TIEN (in Cantonese): Chairman, I simply do not find it necessary to respond to Mr WONG Kwok-hing because I do not want to raise his popularity.

CHAIRMAN (in Cantonese): You can only clarify the part of your earlier speech which has been misunderstood. What you have done is not consistent with the Rules of Procedure.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, Secretary for Financial Services and the Treasury, do you wish to speak?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government is opposed to this amendment.

I wish to point out that the existing MPFSO already empowers the MPFA to institute prosecution against a company's officers, managers and partners for an offence committed by their company, and they have to bear criminal liabilities for an offence committed by a company if such offence is proved to have been committed with their consent or connivance, or to be attributable to any neglect on their part. This arrangement is in line with the practice adopted in the hearing of general offences when the prosecution is required to produce evidence

to prove the guilt of the accused. I wish to point out that law enforcement by the MPFA has been effective. Over the past two years, the MPFA has successfully prosecuted 25 directors and managers under the relevant provisions.

Many Members mentioned the *Sing Pao Daily News* incident earlier and made a lot of comments on the handling of the *Sing Pao Daily News* incident by the MPFA. I wish to point out that the MPFA has taken actions against *Sing Pao Daily News* in accordance with the established procedures and ultimately recovered the outstanding MPF contributions owed by *Sing Pao Daily News* successfully without costing its employees one single cent. This is proof that law enforcement by the MPFA has been effective.

Certainly, in respect of law enforcement, we have all along considered that we have in place sound procedures for law enforcement and the enforcement actions taken have been appropriate. The Mandatory Provident Fund Schemes (Amendment) Ordinance 2007 just enacted in January this year already confers on the MPFA greater powers to collect evidence in order to strengthen its enforcement actions. Under the relevant amendments, the MPFA can, for the purpose of enforcing the MPFSO, require the relevant persons such as employers, company directors or employees to provide information, which includes documents such as all records of contributions, accounting records and bank statements of the company, in order to ascertain whether or not an offence was committed with the consent or connivance of the company directors or managers, or whether the offence was attributable to any neglect on their part. Moreover, the MPFA can also require company directors and mangers to provide updated information on the address to facilitate the serving of summons on them when taking prosecution actions.

Members, these amendments, which have come into operation since January this year, have greatly facilitated the work of the MPFA in law enforcement and prosecution. The MPFA has also provided additional resources and increased manpower from a team of about 100 staff in 2005-2006 to the current team of 200, in order to expedite the handling of cases of non-payment. We do not agree to this amendment which stipulates that unless there is evidence to the contrary provided by company directors or managers, an offence committed by a company is presumed to have been committed with their consent or connivance. I think many Members would agree that it is unreasonable to presume that all directors and managers of a company will know clearly all the internal operations of the company. Such presumption may not

be fair to directors and managers who do not take part in the personnel management or MPF arrangements of the company.

Therefore, I urge Members to oppose this amendment.

Thank you, Madam Chairman.

MISS CHAN YUEN-HAN (in Cantonese): Chairman, may I ask if we can speak again?

CHAIRMAN (in Cantonese): Yes. I have just written a note to apologize to Mr James TIEN because he has the right to speak again. Do you wish to speak again now?

MISS CHAN YUEN-HAN (in Cantonese): Yes.

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han, you may speak now.

MISS CHAN YUEN-HAN (in Cantonese): I just could not control my anger after listening to the Secretary's speech. He said, "Have the defaulted payments not been recovered from *Sing Pao Daily News* in the end?" But the fact is, Secretary, do you know how much time has been spent in recovering the payments? Does he know how many telephone calls I have made to Mr Henry FAN, Chairman of the MPFA, each day? Does the Secretary know I could not help "thumping on the table" and "pulling out the knife", so to speak? Does he know how much manpower we have used on this? Is he aware of the complaints we lodged to the Commercial Crime Bureau and the Securities and Futures Commission, as well as the complaints we made to countless government departments? Does he know how much police effort have been spent and how much money wasted by government departments? In the course of recovering defaulted MPF contributions from *Sing Pao Daily News*, Henry FAN finally adopted the proposal raised by me when I was making a tremendous row because of my remarks that the premises should be closed down should *Sing Pao Daily News* refuse to make contributions. In response, Henry FAN said, "Miss CHAN, do not do that. There are still some people working for *Sing Pao Daily*

News. They will be affected if we do that." I then said to him, "Why do we not exercise our power to deal with such a company which has owed so many people MPF contributions?"

Secretary, do not ever mention again that the contributions have been recovered from *Sing Pao Daily News*. Do not attribute this to the Government's efforts. Without the efforts made by the people — I believe it is the perseverance of the employees of *Sing Pao Daily News* which has played the most important role — can the contributions be recovered without their efforts? Would this sum of several million dollars be recovered? Does the Secretary know that the directors of *Sing Pao Daily News* …… this reminds me of a veteran media worker and he had been owed by *Sing Pao Daily News* hundreds of thousands of dollars. Had we not held the press conference, the repayment would not have been made to him. He was once a veteran media worker employed by the Television Broadcasts Limited. They approached me …… what is his name? Please speak louder. No, he worked in *Sing Pao Daily News* as …… he passed away. What? PAO Wan-lung, right — Chairman, I am sorry — after he had passed away, his family members were desperate in recovering hundreds of thousands of dollars in defaulted MPF contributions for their elder brother. When I first followed up the case, they wished to proceed with the recovery, but then they decided to give up. Later, they changed their mind when their confidence was boosted after learning that other employees had successfully recovered defaulted contributions from *Sing Pao Daily News*. I then advised them to proceed by first finding out who would inherit the estate according to legal procedures. Even though they had acted accordingly, there was still no action from *Sing Pao Daily News*. It was only until we held a press conference and stepped forward with some veteran media workers that repayments were finally made.

I have cited this example just to let the Secretary know what sort of a boss *Sing Pao Daily News* is. The Secretary should not have made such a causal remark, "Have the defaulted payments not been recovered?" Does the Secretary know the amount of social resources which have been used before the management level or bosses would give in …… or was he playing with us and making use of our discussions to induce others to "pump water" (inject funds)? Is the Secretary aware of all this? I hope the Secretary can have a chat with us if he has the opportunity to do so — it seems that since he has taken office as the new Secretary, he has not yet had a chat with the Hong Kong Federation of Trade Unions (FTU) — so that we can relay to him the plight of the workers with respect to the MPF.

Furthermore, I also find the Secretary's remark that prosecutions have been instituted against 20-odd cases greatly annoying. Does he know the total number of such cases? Actually, many of the cases dealt with by the MPFA have not been made public. Two years ago, when I told an MPFA officer responsible for this matter that we had received more than 100 000 cases, the officer responded, "Miss CHAN, the number should be much lower. There were only some tens of thousand such cases." I said in reply that tens of thousand of cases were already very high.

I would like to tell the Secretary that he should not claim credit by virtue of the 20-odd successful cases because that is absolutely not convincing. Has he ever succeeded in convincing us, as well as the wage-earners in Hong Kong, to express support for the existing legislation enforced by the Hong Kong Government? No. I told WONG Kwok-hing that they are — Chairman, sometimes I speak too fast, and I would suddenly forget what I am going to quote — "all powerful in words …… but powerless in action" — Chairman, I am quite upset at the moment. Please do not get angry. Thank you for your tolerance.

If the matter has been dealt with by the authorities properly, would it be necessary for so much effort to be made in the course of handling the problems? I would like to tell the Chairman that I am burning with rage. Originally I did not want to — Chairman, I wonder if I could speak again. I was very upset at that time, and so I rose to speak to you. What was the Secretary talking about? He thought the number of the cases was not as high as hundreds of thousands as frequently mentioned by the FTU. Fine. Let us assume that there are tens of thousand such cases. However, that figure is quite high, am I right? Why does the Secretary not give any attention to it? According to James TIEN, those businesses are all small and medium enterprises (SMEs). Actually, SMEs represents a large ratio of Hong Kong's major modes of commercial operation. If this is really the case, he should all the more pay attention to SMEs. Hence, even if the Secretary does not accept the amendment proposed by the Bills Committee today, I still hope he can give more consideration to this matter. I will be more than willing to help if the Secretary is still not clear about the real situation. I will let him know all the cases we have on hand. Should he say that only CHAN Yuen-han will mention such things again, I will invite all of my colleagues who are responsible for following-up labour cases to talk to him. They are all front-line staff, and they are very upset too.

Frankly speaking, the Secretary will definitely be booed should he mention today's amendment to a worker in a poverty-stricken region. Chairman, I hope

you can show more tolerance to me and my colleagues today because we are really very upset. Had we not been following up these cases at the front line, we could not have known so many things. We still have a bunch of colleagues working at the front line following cases up. Given that things have gone to this state, there is nothing I can do but refute the Secretary. Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): The Secretary was actually refuting himself by shamelessly revealing that 25 directors had been prosecuted. Actually, I did not remember it correctly when I said that the number of the directors was around 10. He said there were 25. This is fine as we are not hiding anything from each other. With as many as thousands of offences recorded annually, why have only 25 directors been prosecuted? Is there any problem with the legislation? Why is there such a small number of directors who have been prosecuted?

Actually, it is easy to explain. As with the case of defaulted wages, the number of prosecutions instituted by the Labour Department is very small too, mainly because it is simply impossible to adduce evidence. Hence, the major objective of the amendment is to bring people in charge to face prosecution. If a person in charge, that is, an employer, steps forward to testify that he has no knowledge of the defaulted payment — Mr James TIEN has left the Chamber — then that employer should not be in trouble because he can prove that he has no knowledge of it. If the director can prove that he has no knowledge of it, he should not be hold liable. All he has to do is to adduce evidence. If the director has knowledge of that and he consents to it, then he should be prosecuted and he should prove that he has no knowledge of the matter. This is fair enough.

Furthermore, I can absolutely not understand why, given that such amendments and such provisions are allowed under the Unsolicited Electronic Messages Ordinance and also in the Copyright Ordinance, the same cannot be applied to this piece of legislation. So far, Secretary Prof K C CHAN has not offered any explanation. Furthermore, I feel that the Secretary made a very ridiculous remark just now by saying that "not a cent has been wasted in recovering payments from *Sing Pao Daily News*", because the employees were so frustrated, annoyed and mentally stressed. On the other hand, just imagine, how much money have been spent by the MPFA? You also agree, right? One of the reasons why the MPFA has spent so much money is that the authorities

concerned can never get hold of the directors and bring them to face prosecution. If the authorities concerned are allowed to do so in the future, much less money will be spent by the MPFA.

Hence, Chairman, the entirely amendment is meant to make it easier for the MPFA to bring the persons in charge to face prosecution and facilitate law enforcement in the future. In the future, the cost of civil recovery will be much lower. What is more, the full cost of civil recovery might even be saved because the only thing that needs to be done is to single out the director to defend himself and face criminal penalty. In that case, he might even be required to make full payment of the amount claimed by civil action at any time. Hence, Chairman, judging from the whole incident, I would say that the Government has simply disregarded its obligation. In other words, it has failed to protect employees' rights to MPF benefits.

Nevertheless, I believe it is very difficult to convince the Liberal Party. After all, it is impossible for James TIEN to rid himself of his identity as a representative of the business sector, reverse back to his identity as a directly-elected Member, and genuinely listen to the voices of employees. So I believe it is very likely for this amendment to be negatived. However, our fight will definitely continue. Should the authorities insist that no amendments can be made, such incidents like the one involving *Sing Pao Daily News* will only continue to occur. The authority of the Government and the MPFA and their prestige and credibility will also collapse as a result.

Lastly, Chairman, I believe it will be very difficult to lobby the Liberal Party again. As for the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I have no idea. Just now, CHAN Yuen-han said that she had to "pull out the knife" before the matter can be sorted out. Actually, I do not know what it means by "pulling out the knife". However, the expression sounds awesome. If we can convince the DAB by "pulling out the knife", I hope we can do it together.

Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, it is a pity that Mr James TIEN is not present at the moment. He has merely left with the remark that he would not refute me because he did not wish to raise my popularity. This is really laughable. Am I right? They should step forward to put forth

their arguments if they think these are sensible. How can they gloss over their shortcomings with such a remark? At present, not a single Member of the Liberal Party is present here. Even if James TIEN chooses not to speak, some other Members should have spoken on his behalf. Actually, what is right and what is wrong are easily distinguishable. About my comments on the Liberal Party, I think I should stop here.

Secretary, you have not answered the question I raised earlier regarding what legislation and measures would be put in place to protect employees affected by defaulted payments from being dismissed after making reports and testifying. The Secretary has not answered this question, which is the focus of the issue. It does not matter provided there are guarantees that their rice bowls will not be smashed. We can even do without clause 12A. However, the Secretary has not given us a reply. Secretary, you cannot pretend that you did not hear the question. You are obliged to give this Council an explanation today. This is the first question I hope the Secretary can answer today.

Second, I asked the Secretary earlier why this concept is applicable to the Copyright Ordinance and the Unsolicited Electronic Messages Ordinance but not to this piece of legislation? Is the Government having a double standard? Where are the justifications? Why can this concept not be applied to this piece of legislation? The Secretary must answer this question from me. I would say that the Government's position is problematic if the Secretary merely calls on Members here to oppose this amendment without answering the question. Where does the problem lie? The problem is unfairness and partiality. The authorities have merely tolerated unscrupulous employers defaulting on workers' wages without protecting employees' rights.

Chairman, I hope the Secretary can answer these two questions of mine.

MR RONNY TONG (in Cantonese): Chairman, I must apologize to the Secretary. Chairman, just now I …… Chairman, you know I am a newcomer. Although I have been a Member of this Council for four years, I consider myself still a newcomer. I thought I would not be allowed to speak when I read my script just now. This is why I said I found it regrettable that the Secretary had previously failed to speak on the amendment. Nevertheless, even the Chairman had apparently made a minor mistake too. At least I am in good company, and my mistake is not too serious. I would like to apologize to the Secretary here.

I am still not satisfied after listening to the Secretary's comments. As I have explained earlier, there are two probable reasons for opposing this amendment. The first one concerns the principle of law, and the second one is a policy issue. The Secretary has not mentioned anything about the principle of law. Therefore, I hope Honourable colleagues from the DAB can hear that. Since even the Government does not think that there are problems in law, they must not abstain from voting for legal reasons because abstaining from voting is tantamount to casting opposition votes. Since we hope that this amendment can be passed today, I hope Honourable colleagues from the DAB will not persist in using this reason to justify their decision to abstain from voting while sitting here in this Chamber.

Policy-wise, the Secretary has also failed to explain why we can do without this amendment. Actually, the most important reason is that all MPF contributions, MPF accounts, and information on the operation of business are in the hands of employers. Should employers fail to assume the legal liabilities I mentioned earlier, it is simply very difficult for employees to make employers face legal sanctions.

Regarding the liabilities of company directors, as I mentioned earlier, the liabilities of directors and the liabilities of companies are actually separated in many laws and, as a result, directors can be held personally liable. Such precedents can indeed be found in the Companies Ordinance, the Copyright Ordinance and the Bankruptcy Ordinance I have cited earlier.

As for the onus of proof, a number of Honourable colleagues have also pointed out earlier that examples can be found in the Copyright Ordinance and the Unsolicited Electronic Messages Ordinance. Therefore, this method is absolutely applicable. The problem we are trying to tackle is how to make employers assume legal liabilities or face legal sanctions, as well as protecting employees from being treated unfairly.

In this respect, I believe the Government should agree to this major goal. Such being the case, why did the Secretary call on members to raise objection? I hope he can explain his position in detail later.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I really agree with Ronny TONG that we do not quite understand why the Secretary should raise objection. Actually, the law itself should not have existed in the first place. Why? This is because it is simply unnecessary for the law to be enacted should every employer lawfully fulfil their obligations by making contributions on time. Am I right? The problem really lies in the employers' willingness to co-operate by making contributions on time to fulfil their obligations.

Secretary, you also agree that some employers have failed to make contributions, and you agree that such situation does exist. Who actually suffers the most? Naturally, employees will suffer when employers fail to make contributions. Am I right? But what should be done to protect the employees? The only way is to legislate to achieve a deterrent effect on employers or directors to ensure that their obligations will be fulfilled. Therefore, I think the most this piece of legislation can do is to achieve a deterrent effect to ensure that employers will meet their obligations of making contributions. This is the most important thing to be done. But why should the Secretary stop us? I really do not quite understand the reasons why. Since we do not wish to see employees being aggrieved or treated unreasonably as a result of their employers' refusal to make contributions, this amendment is therefore required in order to achieve a deterrent effect. We would not want to have such legislation enacted if employers would really fulfil their obligations of making contributions.

Furthermore, as everybody knows, employees are in a passive position as far as the onus of proof is concerned. What can they do? Given their passive position, they know nothing at all. Since they have no knowledge of the operation of their companies, how can they testify? It is utterly ridiculous to request employees to testify. Who else can testify if the persons concerned, employers and directors are not supposed to testify? We really do not hope to see the repeated occurrence of cases like the one involving *Sing Pao Daily News*. We do not want to see that this is just one of the many similar incidents. Had it not been exposed and covered by the media and taken to the Court, we would have no knowledge of it. Nevertheless, it is not strange that many incidents have actually happened unnoticed and unheard. The legal intent of this amendment is to combat unscrupulous employers. Right?

We think that it is better for the Secretary to put forth deterrent measures. Why do we not act in this manner? Secretary, you have given consent to other

amendments introduced prior to this one. Why do you not give consent to this particular amendment? I hope the Secretary can think twice about this amendment because I believe it is effective. If possible, I hope he can think twice again. It is very important to achieve a deterrent effect first. We do not want to see people breaking the law. Can you do this? This is the most important point. At the same time, we hope that protection can be given to ensure that employees will be protected. This is the second point.

I hope the Secretary can change his point of view and urge Honourable Members to support this amendment when he speaks again later.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, Secretary, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Yes, thank you, Chairman.

Miss CHAN Yuen-han has just left the Chamber. Miss CHAN Yuen-han and various other Members have all along been very concerned about the effectiveness of the operation of the MPF system and the related law enforcement actions. In this connection, I can assure Members that the Government, like Members, is also very concerned about law enforcement relating to the MPF, because like Members, we are very keen on taking actions against unscrupulous employers and identify solutions to the problem of defaulted contributions. It is for this reason that many amendments have indeed been introduced to the MPFSO in a short time. It shows that we can fully and practically respond to the demands of Members and the public in this respect, and improvement has also been made to law enforcement. So, we fully appreciate the efforts made by Miss CHAN Yuen-han and other Members.

When I cited the *Sing Pao Daily News* as an example earlier on, I did not intend to be disrespectful or frivolous in giving my comment. I only wished to point out that when Members put forward their views to the Government and the

MPFA, they did take actions to deal with the incident. When I spoke earlier, I mentioned the procedures for liquidation, and this is also summed up from the experience of the *Sing Pao Daily News* incident, which in turn provides us with more options to enforce the law. I do not wish to repeat what I said in my earlier speech but I wish to point out that we are not saying that directors should bear no liability at all, and under the existing legislation, they do have criminal liability to bear. The point that I wish to make is whether or not law enforcement has been effective and adequate under the existing mechanism. We consider that given the series of actions taken, coupled with the ordinance enacted in January this year, under the present circumstances, the MPFA actually has more options for law enforcement and its ability to enforce the law has also been strengthened for it to do its job better.

On the question raised by Mr WONG Kwok-hing about whether protection is provided to employees who give evidence, I certainly appreciate his concern. When I attended meetings of the Bills Committee, I often mentioned how we could protect the rights of employees who give evidence. I understand that the MPFA has actually done a lot in this regard. As to how the rights of the employees who give evidence will be protected to ensure that they will not be dismissed as a result of giving evidence, the MPFA has submitted some documents to us. So, we are actively responding to Members' concern in this respect. But as I said in my main speech earlier on, in view of the powers conferred on us by the ordinance as a whole, I hold that we have been enforcing the law effectively and so, it is unnecessary to achieve the objective by this amendment of clause 12A, as we have many reservations in respect of the onus of proof. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, speaking for the third time.

MR WONG KWOK-HING (in Cantonese): Chairman, the Secretary has not yet given me a reply as to why the Government would adopt a double standard and why the party being prosecuted would be allowed to assume the onus of proof only in such laws as the Copyright Ordinance and the Unsolicited Electronic Messages Ordinance. The Government has not given me a reply. I hope I can ask the Secretary through the Chairman to answer this question and I hope he will not evade it. This is one of the points I wish to make.

Second, in his reply to my question just now, the Secretary said that efforts had been made for witnesses or employees adducing evidence and, in this connection, the MPFA had submitted papers sought to protect these persons from dismissal. I believe Members have heard the Secretary's comment very clearly. If I do not refute the Secretary, Members would believe that such a paper really exists. Chairman, such a paper does not actually exist. May I ask the Secretary to inform this Council which paper can protect employees from dismissal after making reports on non-payment of contributions and serving as witnesses? If such a paper really exists, please take it out and explain what the proposal is all about. The Secretary must not cheat us. There is no such paper. It is necessary to add clause 12A because the Government has been unable to answer our question. If I do not refute the Secretary at this meeting today, I will be made a scapegoat. The public will surely ask: "Why does WONG Kwok-hing not tell us that the Government has a paper sought to protect wage-earners like us?"

To set the record straight, I would like to ask the Secretary to immediately give me a response here by stating which paper he was referring to, the date on which the paper was prepared, the contents of the paper, and the measures proposed therein for ensuring employees making reports on non-payment of MPF contributions or appearing in the Court to adduce evidence will not be dismissed. I hope to ask the Secretary through the President to give me a clear and concrete reply.

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

MR ABRAHAM SHEK (in Cantonese): Chairman, although I have not joined the Bills Committee in scrutinizing the Bill, I have listened very clearly and attentively to the speeches delivered by a number of Honourable Members on clause 12A. I understand that clause 12A is vitally important to the FTU and many workers' representatives. However, I have listened clearly to the Government's explanation that it does not mean that workers would have no protection without clause 12A. Furthermore, in spite of the criticism that the Liberal Party does not support clause 12A, it does not mean that the Liberal Party or James TIEN does not support the workers. This is because, for every representative of the business sector here — I am also a representative of the

business sector — we cannot do business without workers. As far as doing business is concerned, workers are very important. We have great support for workers. It does not mean that workers would have no protection without clause 12A.

I think that we must have a thorough understanding of the whole matter. Can the problem be resolved only by prosecuting company directors and sending them to jail? We must look at the matter dispassionately. In his speech delivered earlier, Mr TIEN explained very clearly the overall reasons for the Liberal Party to oppose clause 12A. He is not against workers. Instead, he has put forth his overall arguments. The point is not to state the right and wrong things done by various parties. It is most important to examine the motive of the people opposing clause 12A. Are they really against workers? I do not think that the Liberal Party is against workers. We have all along believed that workers are very important. We also believe that we should support protecting their rights and interests.

Why is it that the hostile relationship between workers and employers, as found in certain countries, is not found in Hong Kong today? I hope Members can understand this matter dispassionately. The arguments of both parties are very strong. However, it does not mean that opposing clause 12A today is the same as not supporting workers. Even though I will cast a vote against it, but that does not mean I will not support workers.

In the case of Mr TIEN, he was returned by the New Territories East Constituency, and he himself is very supportive of workers. I know that he himself has a strong commitment to the workers in his own company. Chairman, many of my colleagues in the Liberal Party do have a strong commitment to the workers in their own companies too. I think Members should not take this opportunity to politicize the matter. Instead, they should examine how the rights and interests of workers can be protected.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak for the time being, Secretary, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Let me say a few words to respond to Mr WONG Kwok-hing. The documents that I mentioned are the initial legislative proposals submitted to us by the MPFA, and we are now asking the Department of Justice to look into them.

(Mr WONG Kwok-hing raised his hand)

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, do you know for how many times you have spoken?

MR WONG KWOK-HING (in Cantonese): Yes, Chairman, I am aware of that. But if Members have the right to ask questions, then, do I not also have the right to ask a question?

CHAIRMAN (in Cantonese): We are having a debate now, and it is not a time for you to ask questions. But if you wish to ask an official to elucidate whether or not something is the case when expressing your own views in the course of a debate, you are absolutely allowed to do so. As the Chairman, I do not have the right to stop you from speaking, but in order to avoid spending too much time on the discussion in the Committee stage, the only thing I can do is to make sure that you know for how many times you have already spoken.

Mr WONG Kwok-hing, you may speak now.

MR WONG KWOK-HING (in Cantonese): Thank you for your reminder, Chairman.

Originally I did not wish to speak for so many times, but as the Secretary who is supposed to be an accountable official has time and again evaded my question, I have no alternative but to ask my question again and explain my

reasons or arguments while I am pursuing my question. For example, Chairman, I have asked the Government twice why a double standard is used for this Bill. The Copyright Ordinance and the Unsolicited Electronic Messages Ordinance have imposed the onus of proof on the accused, but this concept is not adopted for this Bill. I have asked this question again and again but the accountable Director of Bureau has kept on evading my question, and this is so incomprehensible. He has not responded to this question at all. If he has, I would certainly have heard it. I do not think that the Secretary is deaf or has other problems, so why should he evade my question? I can only guess that the Secretary evaded my question because the Government knows that it is wrong and that it cannot justify what it has done and so, the Secretary must evade the question without giving an answer.

Let us see if the Secretary will respond to my question later. The Government said that the documents on legislation were submitted to the law drafting authorities for them to study how to ensure that employees who give evidence will not be dismissed, but these documents have not been provided for our discussion. Furthermore, I made it very clear just now when I asked my question that if the Government has a document which consists of very good proposals to protect the wage-earners, I would urge the Government to tell us the relevant proposals, measures and options, and if the Government can tell us these details right now, the Secretary may be able to convince me to support the Government and oppose clause 12A. Secretary Prof K C CHAN, I would very much like to give you my support now, just that you cannot explain the details to us, and you insisted that you had told us the details and provided the document to us.

Chairman, I do feel aggrieved. So, since the Secretary has such a good document with him and since he said that it had been discussed before, could he please ask his assistant to make copies of this document and distribute it to us? Then I can make a decision to support the Government and oppose clause 12A after reading it. I can do this, provided that there is really a way to — what we wish to do now is to identify a solution to the problem, rather than beating about the bush and wasting time. So, Chairman, I have stated my reasons and if the Government cannot provide us with the document — it does not matter even if we are not provided with the document — if the Government cannot tell us the reasons, options and measures but still says that it has told us everything, then I would think this is really infuriating and utterly unreasonable.

So, through you, Chairman, I wish to urge the Secretary once again to answer this question. However, clause 12A will most likely be voted down today, and I will not fancy that it will be passed. But today, in this Chamber of the Legislative Council, this must be explained clearly, so that in future, all wage-earners in Hong Kong will know why they cannot sue their employers, and after reading the written records and audio recordings of this part of the meeting today, they will know the attitude displayed by the Government and they will know what those Members in support of the Government have said, and they will, therefore, know the cause of death.

Thank you, Chairman.

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

(No other Members indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, Secretary, do you wish to speak again?

(The Secretary for Financial Services and the Treasury shook his head to indicate that he did not wish to speak)

CHAIRMAN (in Cantonese): Mr CHAN Kam-lam, do you wish to speak again?

MR CHAN KAM–LAM (in Cantonese): No, Chairman, I do not wish to speak again.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 12A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for three minutes, after which the division will start.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung and Prof Patrick LAU voted against the motion.

Mr WONG Yung-kan and Mr WONG Ting-kwong abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU,

Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Mr James TIEN and Mrs Selina CHOW voted against the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, eight were in favour of the motion, 16 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 16 were in favour of the motion, two against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CLERK (in Cantonese): New clause 12B Section added.

MR CHAN KAM-LAM (in Cantonese): Chairman, I move that new clause 12B be read the Second time. As Deputy Chairman of the Bills Committee, I will propose this motion on behalf of the Bills Committee.

The Bills Committee has noted that, in some cases, the MPFA has failed to recover outstanding MPF contributions from employers even if the Court has ruled in their favour. The Bills Committee has also expressed great concern about the situation in which some employers may use different tactics to transfer assets of their companies to other companies in order to evade their responsibility of making contributions.

Some members of the Bills Committee were of the view that both the existing legislation and the Bill have failed to plug the loopholes and strengthen the deterrent effect. It has also been pointed out that should a company persist in defaulting on MPF contributions, the directors and shareholders of the company should be held personally liable for those payments.

After discussion, the Bills Committee decided to propose this amendment in its name. As Mr James TIEN, Chairman of the Bills Committee, opposes this amendment, I will propose this amendment on behalf of the Bills Committee in my capacity as its Deputy Chairman to add section 44A to the existing Ordinance to provide for the civil liabilities of company directors and shareholders under specific circumstances. This amendment seeks to provide a more effective channel to recover outstanding MPF contributions and strengthen the deterrent effect against employers who have repeatedly failed to comply with the law. Members of the Bills Committee have also noted that the abovementioned proposal is similar to the one provided for in section 275 of the Companies Ordinance.

Chairman, some members have also expressed concern about whether the proposed amendment is fair to individual company directors, especially non-executive directors. Actually, this proposal entails an inherent protection, namely, the Court will have the full authority to exercise discretion in making decisions. The Court will only make an order to directors (whether they are executive or non-executive directors) or shareholders after being satisfied that it is just and equitable to do so.

Chairman, as I have stated our views on the amendment earlier, I will not repeat the DAB's position on the amendment here.

I so submit. Thank you.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 12B be read the Second time.

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

MR WONG KWOK-HING (in Cantonese): Chairman, the proposed clause 12B is actually similar to the last amendment for they were both supported by the majority of members present in the discussion held by the Bills Committee on that day. The proposal of this amendment is the result of a prolonged debate conducted by Members having regard for the present-day conditions in society and past cases. It was considered that it was absolutely necessary and timely to incorporate these contents into this Amendment Bill.

This is not something redundant because this amendment is sought to pinpoint the so-called shadow directors. They could often evade their responsibility by hiding behind a nominal company. In the latter part of the amendment, it is already made clear that the Court, if it is satisfied, may make an order requiring the management or relevant stakeholders of the employer to assume responsibility. Actually, this amendment is not a bit complicated or difficult. I hope Honourable Members can support it.

Here I would cite several cases to illustrate my point. In one of these cases, the employer has defaulted payments repeatedly. Why should he be treated leniently? The employer may say that his debts are far more than the capital. Actually, in many of the cases handled by us, we find that employers have often transferred their assets unlawfully. I have once personally handled a case concerning a milk company. Even though an employee of the company was willing to testify in the Court, his unscrupulous employer had even resorted to changing the registered address of the company into an accountant firm. As a result, there was nothing we could do. That unscrupulous employer had transferred all his valuable assets through changing names to evade his responsibility. Actually, he was taking advantage of the lengthy recovery process to transfer his assets or capital. Hence, we cannot disregard this situation when revising the legislation.

Furthermore, it is a common phenomenon with the catering industry that a new batch of directors will be used to register for a new restaurant the next day to carry on the business operated by a restaurant which is closed today while continuing to default on the contributions supposedly to be made by the previous restaurant.

This amendment is sought to introduce amendments and take complementary measures by pinpointing these three types of circumstances. Actually, these proposals are made as a result of the collective wisdom gained from learning from the loopholes arising from the MPF over recent years.

Unfortunately, our Government does not render its support. What is more, it has even called on Members to raise objection. This is absolutely unreasonable and irrational. Therefore, Chairman, I will not raise my question repeatedly this time around because I have asked many times during the previous session. However, the Government has responded by either evading my question or refusing to reply. Hence, I would like to express my indignation to the Secretary and the Government with these words in concluding my speech: "disregarding social justice and failing to distinguish between what is right and what is wrong; favouring employers at the expense of workers".

Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Actually, Mr WONG will always get it right by using these words to describe the Government. However, I would like to come back to this amendment today in the hope of making a last-ditch effort to lobby Members.

Actually, this amendment seeks to make the process of recovering MPF contributions in arrears easier or it can be said that the amendment provides an additional channel for recovering the contributions. If recovery through other channels has proved to be unsuccessful (this is particularly so as the MPFA will definitely take civil actions to recover the contributions), this channel will be used as the last resort. In other words, should an employer persist in carrying on his business even if he has been convicted of a criminal offence, the authorities can only employ the lethal weapon by demanding him to face liquidation.

However, this amendment will be instrumental in providing an additional channel before resorting to liquidation or the lethal weapon without requiring the employer to face liquidation. This is because he still has the intention of carrying on his business as he has continued to do so even though he has been criminally convicted. Now according to this new channel, other company directors will have to bear civil liabilities.

Should company directors be made to bear civil liabilities, the Court may make an order that the directors shall make the relevant payments. Actually, there is an easy way for directors to dodge their liabilities. To a certain extent, I am worried that even if the amendment is passed, the directors can still dodge their liabilities through other means, such as by winding up their business.

However, this method will be used on the presumption that the directors do not wish to face liquidation because, if they do, they could have resorted to liquidation a long time ago. Therefore, this amendment is meant to provide a new channel as well as a fair method such that the highest responsible persons, that is, the directors themselves, have to assume civil liabilities as well. Should such persons be convicted of a criminal office and the recovery process by the Court has been unsuccessful, then this amendment will provide an additional channel for recovery.

Hence, the amendment is reasonable and sensible. But the reality is that the Government might have provided the royalists with a lot of benefits by, for instance, appointing them to such posts as under secretaries, political assistants, and so on. Given the pork barrel politics already carried out, these Members will definitely support the Government, especially when the sectors to which they belong and functional constituencies are not involved. However, workers will very often be sacrificed.

Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, I have clearly pointed out in my earlier speech that under the existing legislation and the fundamental legal principles, employers should assume both legal and administrative liabilities. Therefore, it is absolutely reasonable and sensible, from the viewpoint of theory and justice, for employers to bear the legal consequences of breaking the law. I really find it hard to understand why some people should have repeatedly felt that employers should not bear additional liabilities.

Chairman, when these two amendments were proposed, I had slight reservations about clause 12B. In my opinion, should clause 12A be passed, it could already achieve a far better deterrent effect than clause 12B, and so clause 12B might not be required anymore. I have slight reservations about clause 12B because there are simply too many hurdles in this amendment today. I believe it will be very difficult to truly achieve a deterrent effect or do some justice to workers. However, in view of the fact that clause 12A has already been negatived, I hope the DAB, which abstained from voting earlier, would change its stance and support clause 12B instead, because this is the least this Council can do for our workers.

MISS CHAN YUEN-HAN (in Cantonese): With respect to this Bill, in the beginning, I thought Mr Ronny TONG did not support the Bill when I heard him mention my name in his speech. Fortunately, I learned from the remarks he made later that he would support the Bill. I would like to express my sincere thanks to him because I very much share his point of view. In other words, we would feel more at ease if clause 12A were passed. Now that the provision has been negatived, I am pessimistic about the passage of this provision too.

Just now, a heated debate was conducted among Members as well as between the Government and some of our Honourable colleagues because we wished to once again expound the plight of the wage-earners. Actually, we are currently discussing with some other government departments — the departments dealing with welfare and labour matters — as well as Matthew CHEUNG about their responsibility towards the non-payment of wages. The Secretary is prepared to work out solutions to the problem. In this respect, a deadline has been imposed on him by the Panel on Manpower of the Legislative Council. While the Government has spelt out seven different aspects, Matthew CHEUNG has also appeared before this Council a number of times. So far, he has not made it clear that he can definitely achieve his target within this legislative session. Anyhow, I find him very sincere. Chairman of the Panel on Manpower, am I right? The Chairman of the Panel on Manpower is sitting in front of me — Chairman, I am looking at Mr LAU Chin-shek while I am speaking — this is because the two of us told him at that time that if he did not do ……

Secretary Prof K C CHAN must understand us. In my personal opinion, the workers in question do not have much power to fight for anything in the local labour market. In other words, they are completely powerless. When they complain about being defaulted payment of wages or MPF contributions, they have high hopes for the Government to protect them.

Earlier on, the Government still insisted that it would not support clause 12A. However, after repeated questioning by Mr WONG Kwok-hing, the Government finally indicated that some areas would need to be revised. For instance, the authorities will consider the impact on worker' jobs when requiring workers to testify. So far, this Council has not seen any actions being taken by the authorities. Neither have any documents been submitted to Mr WONG Kwok-hing and this Council. I hope the Secretary can submit documents concerning the points discussed in the first part of the debate today to this

Council, even though he might say that he cannot do so because the relevant documents are strictly for internal use and cannot be submitted to this Council. After all, he must demonstrate sincerity. I very much hope that the authorities concerned can demonstrate sincerity when workers are faced with the probable hardship of losing their jobs when testifying. I hope the authorities can show their sincerity and work out some solutions for the workers.

As we have already come to this state, I very much hope to join Mr TONG in appealing to Members to support this provision. Actually, the wording of the provision is very loose. In spite of this, we have no intention to tighten the provision, as it still has a lot of hurdles. I hope these hurdles can be presented in a more balanced manner. For instance, regarding the issue of an employer being convicted more than once, let me read out the provision: Under "Civil liabilities of company directors and shareholders", it reads: "(1) Where — (a) any employer, which is a company, has been convicted more than once under section 43B;" this is the first point, and the second point is, "(b) recovery of mandatory contribution that is in arrears by the Authority against the employer is unsuccessful because it has insufficient assets;". This is what the transfer of assets as I have pointed out earlier means.

We find the case of the *Sing Pao Daily News*, which has been frequently mentioned by us today, full of doubts. However, similar cases can also be frequently found in cases I am handling, such as the ones relating to the catering or construction industry. In some of these cases, the restaurant operators might have opened restaurant A, then failed to pay wages to their employees, pay back the loans owed to seafood stalls, or pay wages to decoration workers. And then, they would declare that they had no money and, as a result, had to wind up their business and apply for bankruptcy. Later, however, they would operate a new restaurant B or even restaurant C. Even the Commercial Crime Bureau has found them suspicious. Apparently, they had transferred some of their assets before winding up their business. Some ill-behaved operators would even start up business during the year-end peak period and wind up the business later when the peak period is over. In other words, these operators will start their business during the year-end period and wind up business after the New Year. Why does the Government not take any action when faced with the behaviour of these people? It would be very difficult for actions to be taken to plug these loopholes under the existing legislation.

Furthermore, I would also like to say a few words on paragraph (c). It reads, "the employer continues to carry on business and persists in failing to pay

any contribution due". Secretary, the employers have already "stepped on your head". In addition to the Mandatory Provident Fund Ordinance (MPFO), they have stepped on the Employment Ordinance too. According to the SAR Government (as what I have been told by Mr WONG Kwok-hing), this amendment should not be taken too seriously as similar circumstances can be found with the Copyright Ordinance too. However, I do not understand why it cannot be enforced. We have already requested the Legal Advisor of the Legislative Council to identify similar provisions and put them together so that we can examine them jointly. Of course, in spite of my comments, the Secretary could still adopt a tough stance and insist that there is no room for discussion. However, I believe he also wishes to introduce some amendments to the provision concerning the onus of proof, and so he has started giving consideration to this matter.

Concerning the part being discussed at the moment, those operators have repeatedly contravened the law. Even though they have obviously stepped on the law, there is nothing we can do. After closing down the business of the shop they operate currently, they may operate a new shop and even a third one. Will the authorities do anything? Or they will be allowed to transfer their assets so that they …… let me cite the familiar case of *Sing Pao Daily News* again as an example. There is something Members might not know. This was what *Sing Pao Daily News* had been doing — after defaulting on wages, the company was found to have no assets. As a result, its workers could not get anything from it. These operators are precisely stepping on the grey areas of the legislation and manipulating the Government through the so-called contemporary financial ploys — closing down their business soon after it was started, and workers made to recover money from the Government and seek payments from Protection of Wages on Insolvency Fund (PWIF); closing down their business soon after it was started, and workers made to recover money from the Government and seek payments from the PWIF; closing down their business soon after it was started, and workers made to recover money from the Government and seek payments from the PWIF …… I think the Secretary might have heard of this recently. With the bursting of the dot com industry, I have once led a group of professionals from the industry to discuss this issue with several Policy Bureaux.

Recently, a Singaporean company has obviously sought to attack us by taking advantage of the loopholes of the MPFO and other relevant legislation. Around six months before its closure, the company advised its employees not to worry for wages would then be advanced by the PWIF should the relevant

applications be made. The situation was less serious when the MPFO was first passed, that is, around 2000, because wages could still be advanced by the PWIF.

Secretary, some multinational companies are eyeing the loopholes of our legislation and waiting for the right moment to eat into the advancing mechanism of the PWIF. We have once pointed out the seven probable sins committed by employers — we pointed out to Matthew CHEUNG that he refused to admit that the Government made those comments in the beginning, though he changed his mind and agreed later — the seven sins have to be tackled through employers. I feel that the Secretary will not pay attention to us no matter what else we will say today. He might probably need to go back and discuss the matter further, particularly as some people in this Council have given him so much support. At the moment, I cannot see what changes can be brought. However, I recall the two questions posed by Mr WONG Kwok-hing to the Secretary, and he has answered one of them concerning the task currently performed by the Government with respect to workers' onus of proof. We were told that the workers would be protected by the Government. I consider this good news. However, can the Secretary announce here that, given the Copyright Ordinance and other legislation which are being dealt with in the same manner, will the same consideration be given to this Ordinance as well?

Madam Chairman, this is only a humble request. Mr WONG Kwok-hing has not received the reply even though he has raised his question twice. This is the first time I raise this question. I hope the Secretary can tell me what action he will take now that someone is stepping on the grey areas of the laws of the SAR Government by seeking payments from the PWIF?

Madam Chairman, I am merely hoping that the Secretary will answer my question. I also earnestly hope that the Secretary, when answering the question, will not make me stand up several times to ask him questions like what Mr WONG Kwok-hing has done earlier. Thank you, Madam Chairman.

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

MR SIN CHUNG-KAI (in Cantonese): Chairman, with regard to this amendment of clause 12B concerning rights in civil action, as some Honourable

colleagues said earlier, it is good to include this provision but it is still very difficult for wage-earners to take their employers to Court. The Secretary will certainly agree to this, but if the Government wishes to do this, it can actually consider doing it by way of legislative mandate in that the MPFA can be empowered to file proceedings against the employer on behalf of an employee in the name of "class action" after obtaining the employee's consent. This would be an effective way to do it.

As LEE Cheuk-yan said earlier on, it is very difficult for wage-earners to take their employers to Court at their own expense. If the employee can sign an agreement with the MPFA to give an authorization to the MPFA, the MPFA can institute proceedings on behalf of the employee. Certainly, the proceedings will be financed by the MPF funds. But let us look at the ordinance now. Employees cannot even recover their MPF contributions, can they? I know that this amendment will certainly be negatived but I think the Secretary still have to consider how to …… I think one of the reasons why the Bills Committee has agreed to this amendment is that it leaves no stone unturned to assist the public. The Government may not accept this amendment, but can the Government give as much consideration as possible to the view that I have just put forward or the other opinions expressed?

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

(No other Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, in this debate, Members have expressed a lot of views on how to step up law enforcement actions relating to the MPF. This has been discussed not just today, but there have also been many discussions on this subject before. Disregarding from which angle we look at it and what opinions we hold, we have all been working for the objective of conferring more powers on the MPFA for it to enforce the law. In this connection, I can promise Members that the Administration, as Mr SIN Chung-kai has said, will certainly leave no stone unturned to achieve the objective, and we will listen to the views of Members. The amendments previously made to ordinances in various aspects, including the Bill under our discussion today and the one enacted early this year, are the fruits of all past debates and consultation held.

Why do we oppose the proposed clause 12A under this amendment? Because this amendment has many problems conceptually and in practical implementation. Firstly, under section 275 of the Companies Ordinance, it is only when any business of the company has been carried on with intent to defraud creditors of the company in the course of the winding up of a company that the Court may direct that any person who has taken part in the aforesaid business shall be personally responsible for the debts of the company. However, the amendment now proposes to provide in the legislation that all directors and shareholders of a company may be personally responsible for paying any MPF contributions owed by the company even if they do not take part in managing the MPF arrangements of the company or in carrying on business for fraudulent purposes. We consider the amendment unacceptable because it requires all company directors and shareholders to pay the contributions in arrears for the company without any sufficient justifications.

Furthermore, company shareholders generally do not take part in the daily operation of a company. Nor do they have the information on the internal management of the company. It is unreasonable for company shareholders to be held liable for paying the MPF contributions in arrears.

To those directors and shareholders who neither take part in the internal management of the company nor gain any benefit as a result of the company defaulting on the payment of MPF contributions, it is indeed difficult to predict how the amendment will apply to them as well as the impact of the amendment on them. The question is: Will this amendment result in the imposition of seemingly unlimited personal liabilities in effect? Or will it deter people with competence, experience and qualifications from taking up the role of a company director? Will it affect Hong Kong's advantage as a major commercial city and destination for investment in Asia? We must think twice about these.

On the contrary, the Government and the MPFA have consistently taken a pragmatic attitude in this amendment exercise and drawn up focused measures which we believe can more effectively combat these illegal practices. The proposals in the Bill have been put forward after a detailed review by the MPFA of the existing mechanism and past experience in enforcement, while having regard to the views of various sectors across the community. We believe the proposals in the Bill of imposing heavier penalties and increasing criminal liability can effectively enhance the deterrent effect and further improve the effectiveness of the MPFA in law enforcement.

Mr SIN Chung-kai mentioned earlier the question of who should institute proceedings against the employer. Under the existing arrangement, the MPFA will file proceedings on behalf of an employee against his employer who has defaulted on the payment of MPF contributions. Such proceedings will be filed using the resources of the MPFA. I think more can be done in the future to find ways to strengthen law enforcement actions while adopting a pragmatic approach, and we will certainly listen to the views of Members and also adopt a pragmatic attitude to improve law enforcement. I therefore call on Members to oppose this amendment of clause 12A.

Thank you, Madam Chairman.

MR RONNY TONG (in Cantonese): Chairman, why did the Secretary say clause 12A? We are discussing clause 12B. Did he get it wrong?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Sorry, it should be clause 12B. I am sorry.

MR RONNY TONG (in Cantonese): It is because the Secretary had kept on saying clause 12A throughout his speech.

Chairman, from the Secretary's speech, I found that the Secretary may have completely misunderstood the purpose of this Bill. The Secretary cited a section of the Companies Ordinance just now. That section only provides for the way to deal with a particular situation in law. As for this amendment, according to my understanding, and I think this is also the understanding of all Honourable colleagues, it does not serve to hold all directors or shareholders legally responsible for an act without providing any chance of defence for them. The original intent of this clause, according to the meaning as expressed by its wording, is that through the making of legislation by us, the Court will be empowered to decide on which director or directors shall bear civil liabilities under the principle of fairness and impartiality. This way of conferring powers by legislation is fully in line with the general practices of civil proceedings. It is also fully in keeping with the respective functions of the legislature and the judiciary in enforcing law in a common law jurisdiction.

Chairman, it is absolutely not our wish to enact a piece of legislation to the effect that all directors are required to share certain legal liabilities, disregarding whether they have the knowledge or not. This is not our intention. Nor is this the intention of the drafting of this clause. So, I think the Secretary may perhaps change his mind when he understands the true meaning of the clause.

MISS CHAN YUEN-HAN (in Cantonese): Chairman, an Honourable colleague told me that the Secretary still has not answered the question asked by WONG Kwok-hing in the last part of our discussion. So, in this part of our discussion here, I must still ask the Secretary why the same provision can exist in the Copyright Ordinance but not in this Bill?

Moreover, as I told him earlier, Matthew CHEUNG already gave us an undertaking that he would address the grey area in the Employment Ordinance which is open to abuse, and he also raised seven key points.

Perhaps my power of expression is not good and so, the Secretary did not quite catch my point when I spoke. I said: When he responded to WONG Kwok-hing's question in our previous discussion, the Secretary said that the Government is willing to look into the problem that workers who give evidence may put their job at risk. I welcome this remark. But in this part of our discussion, my question is: Is it possible to draft a provision similar to that in the Copyright Ordinance relating to directors' liabilities for incorporation into the MPFSO? The Secretary still has not answered this question. I hope that he can give us an answer, can he? Thank you.

MR WONG KWOK-HING (in Cantonese): Chairman, we have been discussing the amendment concerning clause 12B but regrettably, the Secretary's response was completely irrelevant to the questions that we asked, for he was not talking about clause 12B at all.

Chairman, anyone who looks at clause 12B closely will see that the provision is, in fact, very simple. It aims to provide an additional channel for the MPFA to uphold justice. It mainly targets three types of employers, which are set out under subclauses (a), (b) and (c), and I am not going to read them out. But some restrictive criteria are specified: For the first type of employers, they

have been convicted before; for the second type of employers, they have transferred their assets; for the third type of employers, they continue to carry on business and persist in failing to pay the contributions due. So, the clause targets specific types of employers, not all the employers in general. Why does the Government still refuse to give any consideration to such a reasonable provision?

The Secretary said earlier that they have explored a host of measures and left no stone unturned, vowing to provide protection for the rights and interests of the wager-earners in respect of their MPF schemes. But all is just empty talk. This amendment proposed by us now is the result of the collective wisdom and discussion of the Bills Committee, and it is very clear and prescriptive. We have come up with a solution but the authorities have simply rejected it and even if they reject it, they should give reasons why they reject it. But they have not given any explanation at all. How can this be acceptable?

Furthermore, Chairman, a number of tests are built into this amendment. First, a Court of competent jurisdiction must be empowered to deal with these cases and it means a Court under the jurisdiction of Hong Kong. I will discuss this separately later on to show Honourable colleagues how grave the problem is.

Second, the Court must be satisfied that it is just and equitable to issue the order. In other words, the case shall be heard by a Court which will hear evidence given by the prosecution and the defendant, and the Court must be satisfied that it is just and equitable to issue the order. This is the second test.

Third, there must be an application from the MPFA, which means that the Court will not issue an order without an application made by the MPFA.

Chairman, these three tests must be satisfied before powers can be exercised to require the three types of employers as specified in paragraphs (a), (b) and (c), or unscrupulous employers as I would call them, to pay the outstanding contributions. This is what the clause is all about. What reasons does the Government have to oppose it? The Government can oppose it, but please state the reasons. However, it has not given any explanation, and after knowing that it has already secured enough votes to get the Bill passed, it simply said that the clause is not practicable. I think the Government owes the public an explanation, and it owes the wage-earners an explanation too.

If we can provide an additional channel and a direction for protecting employees in cases of defaulted MPF contributions, and since this amendment is the fruit of collective wisdom, there is no reason for the Secretary to reject it. Nor is there any reason for the Government to oppose it. Many Members in this Chamber have a business background, and they also have no reason to oppose this amendment. If they oppose it, please state their reasons to convince us.

Chairman, I would like to turn to the second part of the question. Why is it written "a court of competent jurisdiction" in the clause? Chairman, it is because we pointed out in our discussion that there would be a pitfall and that is, many companies may not be registered in Hong Kong but in mainland China, and given the absence of mutual legal assistance between Hong Kong and the Mainland, the provision will not have any effect on such companies. It is precisely from the *Sing Pao Daily News* incident that we have noticed this pitfall and so we urged the Government to consider this. As the MPF funds keep on snowballing and participants keep on increasing but if these loopholes still remain unplugged, what should we do? The Government has completely evaded this pitfall pointed out by us. It is written "a court of competent jurisdiction" in the clause. Why should this be written specifically? Because Hong Kong Courts have only limited powers, and their powers cannot be exercised if the company concerned is registered in mainland China. In that case, Secretary, what should we do? To show that you are a responsible person, I hope that you can answer my question: How can this pitfall be resolved? The Secretary has not in the least responded to this point. It does not matter even if he does not respond to us, for we have come up with a solution now. But while the Secretary said that he could not come up with a solution after racking his brain, he still refused to take on board our proposal. The Secretary must indeed tell us his reasons.

Chairman, this term of the Legislative Council will come to an end soon. As one of the Members representing the labour sector, I do believe that I am duty-bound to state expressly my duties and discharge them, and I must spare no effort to strive for our goals. I must strongly oppose these unreasonable administrative measures of the Government, and I hope that when wage-earners get their MPF contributions defaulted by their employers in future, they will know the true "cause of death" and that is, it is all because this ordinance is not amended properly and comprehensively that these loopholes are left. These in turn provide backing for unscrupulous employers to take advantage of the loopholes in law to default on the contributions. This is the true cause.

Finally, Chairman, I call on Members once again to act according to the dictates of their conscience and support this amendment of clause 12B. Thank you, Chairman.

Chairman, I still hope that the Secretary can respond to the questions that I have put to him earlier.

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

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have heard the views of Members, but I do not have any new information for further elaboration. Thank you.

CHAIRMAN (in Cantonese): Mr CHAN Kam-lam, do you wish to speak again?

MR CHAN KAM-LAM (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 12B be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew LEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew LEUNG has claimed a division. The division bell will ring for three minutes, after which the division will start.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the motion.

Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Prof Patrick LAU voted against the motion.

Mr WONG Yung-kan and Mr WONG Ting-kwong abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Mr James TIEN and Mrs Selina CHOW voted against the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the motion, 14 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 15 were in favour of the motion, two against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CLERK (in Cantonese): New clause 18A — Participating employer to calculate relevant income and pay mandatory contributions

New clause 24A — Interpretation.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clauses 18A and 24A be read the Second time, as set out in the papers circularized to Members.

New clause 18A seeks to amend the definition of "contribution day" in section 122 of the Mandatory Provident Fund Schemes (General) Regulation. Similar to the amendment to clause 5 as endorsed by Members earlier, clause 18A seeks to exclude Saturday from the meaning of contribution day.

New clause 24A seeks to amend the definitions of "associate" and "controller" in section 2 of the Mandatory Provident Fund Schemes Ordinance. Similar to the amendment to clause 31 as endorsed by Members earlier, this amendment seeks to provide that any person who controls 15% or more of the voting shares of a MPF approved trustee together with his associate will be regarded as a controller of the trustee.

These two new clauses are proposed in response to the views of the Bills Committee and with the support of the Bills Committee. I hope that Members will support this motion.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 18A and 24A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 18A and 24A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move that new clauses 18A and 24A be added to the Bill.

Proposed additions

New clause 18A (see Annex I)

New clause 24A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 18A and 24A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2007

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

Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Trade Descriptions (Amendment) Bill 2007.

TRADE DESCRIPTIONS (AMENDMENT) BILL 2007

Resumption of debate on Second Reading which was moved on 9 January 2008

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

MR FRED LI (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Trade Descriptions (Amendment) Bill 2007 (the Bill), I now report on the deliberations of the Bills Committee.

The objectives of the Bill include amending section 2(1) of the Trade Descriptions Ordinance (TDO) to expand the definition of "trade description" to include certain matters relating to warranty and after-sale repair and maintenance services for goods; adding three new provisions to provide for new offences prohibiting retailers from giving misleading price indications and making false or misleading representations to deceive consumers; requiring retailers to inform customers before they make payment if the price of five types of electronic products does not include basic accessories; and prohibiting persons from making false or misleading representations regarding a retailer's connection with or endorsement by individuals or bodies of good standing and reputation.

The Bills Committee supports the Bill with the objective of enhancing the protection of consumers. Members have expressed concern about the narrow scope of the legislative amendments; the Bill regulates the supply of only goods but not services, failing to tackle the recent trade malpractices or regulate the supply of services. According to the Administration, while the TDO prohibits false trade descriptions, false marks and misstatements in trade or commerce, it only applies to goods but not services. Broader issues relating to enhancement of the existing regulatory regime to protect consumers, and regulation of unfair sales practices in the services sectors are covered in the comprehensive review conducted by the Consumer Council (CC). The CC's report entitled "Fairness in the Marketplace for Consumers and Business" was published in February 2008. The Bills Committee urges the Administration to expedite the introduction of legislative amendments covered by the comprehensive review to protect local consumers and tourists, and to uphold Hong Kong's reputation as a shoppers' paradise.

In connection with the expansion of the definition of "trade description", the Bills Committee considers that the after-sale inspection and repair services for the goods should include the availability of spare parts for goods. Members supported the Committee Stage Amendments (CSAs) to be moved by the Administration to make this point clear.

Concerning the regulation on price signs for goods, the Bills Committee notes that, the proposed section only seeks to regulate price signs set by reference to weight unit, and unscrupulous retailers may circumvent the section by using other units of measurement in displaying the price of the goods. The Administration is urged to consider expanding the scope to cover other units of measurement. The Administration will move CSAs to expand the scope of the proposed section 13A to cover all units of quantity including length, width, height, area volume, capacity, weight and number. The Bills Committee has also examined the need to set out clear requirements in the law such as the size and colour of price signs, the font size of the letters, words, characters and numerals, the distance between them, and so on, on the sign, in order to facilitate compliance by retailers and enforcement by the Administration in future.

The Administration is of the view that given the very diverse practice in the retail trade, it would be impractical to set rigid requirements regarding price signs, which may adversely affect retailers' creativity. Nevertheless, the Administration has taken on board members' views and will move CSAs to the section to refine the drafting to better reflect the Administration's policy intent that price signs must indicate the price of goods in a readily comprehensible manner. Furthermore, to avoid the malpractices of retailers, members support the Administration's making amendments such that if a seller displays different signs to provide information on price and unit of quantity of the goods, the signs will be regarded as a single sign and subject to regulation under section 13A.

Under the proposed section 13B, the sellers are required to inform buyers accordingly if the prices of the five types of electronic products do not include any basic accessories of the product. The Administration explains that the provision would be applicable to parallel imported goods and there would be no difficulty for retailers to comply with the requirement. Retailers who have clearly indicated on a price sign that the price of the product does not include basic accessories would be regarded as having complied with the requirement. The Administration further explains the definition of "basic accessories" and the

section sets out clearly the criteria for determining whether any basic accessories of the goods are included in the price of the goods. The Administration will amend the proposed section 13B(3) and Schedule 2 to give the Court more flexibility in considering the above matters.

The Bills Committee has raised concern about the extensive scope and strict requirements of the proposed section 13C. The proposed section 13C(1) makes it an offence if a person, who in the course of trade, business, or profession, makes a false representation on a seller's connection with or endorsement by any individual or body. It is also possible that the name of a person represented to be connected with the seller is identical with or very similar to the name of another person who is reputable (the reputable party). To avoid misunderstanding by the customers, section 13C(2) requires the maker of the representation to take steps to prevent the customers from misbelieving that the seller is connected with or has been endorsed by the reputable party, and the maker of representation will commit an offence if he fails to do so. Some deputations are concerned about the appropriateness of criminalizing false or misleading representations as mentioned above. The civil law of passing-off already provides that celebrities may dispute false or misleading representations regarding their connections with other parties.

The Administration emphasizes that an objective of the Bill is to protect consumers from deceptive acts of sellers, and it further advises that the proposed section 13C(1) deals with false representations, while section 13C(2) deals with representations that are capable of misleading the customers. The latter is essentially an anti-avoidance provision to prevent circumvention of section 13C(1). Besides, the Administration clarifies that if a seller does not make any representations to the customers on his connection with any parties in the sale of the goods, the proposed section 13C(2) will not apply to the seller.

The Bills Committee notes that a defence is already available under section 26 of TDO to persons charged with offences under the Ordinance, and an additional defence is proposed under the new section 13C(4) for persons charged with the offence under the new section 13C(1). To address the concern about the proposed section 13C(2), the Administration has agreed to move a CSA to limit the application of the section to representations made in connection with the supply or promotion of the supply of goods, and to add a new section 13C(5) to provide a defence to the person charged with the offence.

These are my remarks as Chairman of the Bills Committee. The Bills Committee supports the resumption of Second Reading debate on the Bill and the CSAs to be moved by the Government.

President, now I would like to express my views.

I would like to tell the Secretary that we fully support the amendments for the regulation of goods and protection of consumers. However, the Secretary may have noticed that I have repeatedly remarked in this Council and on other Panels that there are increasingly serious problems related to the supply of services. There are a lot of complaints against such services as beauty care, slimming and weight loss and the CC has received more and more complaints from the public. Nevertheless, there is a grey area in monitoring such services. Therefore, after the TDO has been amended, I hope the Secretary would expeditiously proceed to regulate the supply of services when the new session commences to give consumers better protection.

I so submit.

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

MS AUDREY EU (in Cantonese): President, the Trade Descriptions (Amendment) Bill 2007 (the Bill) has a serious inherent shortcoming. As Mr Fred LI has just said, it covers or targets four undesirable sales practices: first, misleading price indications; second, misleading representations on availability and information of essential accessories; third, misleading representations on after-sale maintenance services for goods; and fourth, misleading representations regarding retailers' connection with or endorsement by celebrities or prestigious organizations. As Mr Fred LI has pointed out, the Bill regulates the sale of goods but not services.

President, in respect of the supply of services, apart from such services as beauty or slimming that Mr Fred LI has referred to, Members' offices frequently receive a large number of complaints. President, as you are nodding, I know you are aware of such a situation. Undesirable sales practices are commonly found in Hong Kong, for instance, there is the sale of membership for time-share packages for overseas resorts. Those concerned tend to employ tactics that

borderline on criminal intimidation when selling such services. In fact, there are more complaints on that than the Consumer Council (CC) can attend to.

It usually takes the Government too long to make amendments to existing ordinances. The incidents of false representation we highlighted took place five to six years ago in dried seafood shops. The price indications showed the price per tael but the word "tael" is so small that it was mistaken by customers for the price per catty. Customers thought they had bought the goods at very low prices but they only knew that the prices were unreasonably high after the goods had been sliced. The shopkeepers told the customers that they had to buy the goods that had already been sliced. All Bills we have discussed only manage to catch up with trends many years after painstaking efforts were made.

As far as I remember, the CC started discussing the matter years ago when I was not yet a Member of this Council. The CC said that our reputation as a "shoppers' paradise" was undermined and a lot of problems appeared but there was no channels of complaint. The complainants were very often tourists who left Hong Kong after lodging their complaints. As it was not easy to follow up these cases and there was no organization responsible for instituting prosecutions or taking follow-up actions to protect consumers, thus undesirable sales practices became rampant and unchecked.

President, the CC has published a report entitled "Fairness in the Marketplace for Consumers and Business". Besides setting out some of the areas that have aroused public concern, there are a few paragraphs related to this Bill, and I am going to read them out:

"A major concern is that despite the efforts of Government, the current framework not only fails to address longstanding unfair trade practices but also fails to keep up with rapid changes taking place in the market. As a result, consumers continue to suffer loss resulting from unfair trade practices. Moreover, the damage is not confined to Hong Kong's consumers. Allegations of retailing scams targeting Mainland tourists have resulted in significant public outcry against unfair sales tactics perpetrated on Hong Kong's visitors. The Council believes that urgent action needs to be taken so as not to exacerbate an emerging problem that can be harmful to Hong Kong's reputation as a tourist destination."

"The Council's primary recommendation to address the majority of issues is to create a comprehensive consumer protection law (Trade Practices Statute)

administered by a public enforcement agency. This basic framework will provide general consumer safeguards against unfair marketplace conduct in the form of a basic 'safety net' that can adapt to the many situations that arise in a vibrant and creative economy. Industry self-regulation and common law rights currently available to consumers would also continue to exist within the recommended framework."

"The current legislative framework available to consumers for counteracting unfair trade practices is sector-specific and formulated in what could be described as a 'piecemeal' and 'uncoordinated' fashion. It therefore leaves gaps for unscrupulous practices to slip through the net. In particular, the uncoordinated nature of the various laws poses difficulties for consumers to understand the extent of their legal rights and for traders to comprehend the extent of their obligations to consumers."

"Moreover, enforcement of the existing laws by public agencies is typically through criminal sanctions, which are difficult to achieve. As a result, they are not often used, and in any event can be inappropriate as a mechanism for effecting overall change in marketplace behaviour. As far as aggrieved consumers are concerned, they are faced with the daunting task of taking civil action on their own as the only redress option; apart from seeking the assistance of the Council for mediation."

President, as you may know, it is very often extremely hard in civil proceedings for consumers who have got a claim to go to the Small Claims Tribunal. The CC started discussing the matter years ago before I joined this Council. At that time, the CC already advocated authorizing an organization like the CC to institute proceedings on behalf of consumers, monitor undesirable advertisements and prevent the occurrence of problems. A lot of such monitoring or enforcement actions should not be taken under criminal legislation and they should be taken by a public agency focused on consumer interests. Despite years of discussions, the Government has not listened and consumer complaints keep increasing throughout the years. Moreover, the CC does not have sufficient funding.

President, for this reason, the Bill has an inherent shortcoming as I have just said. However, this is after all a way out when no solution is available, for Members can only handle relevant matters after the executive-led Government has introduced a Bill.

President, we can see that the scope of the legislation is a bit narrow in some areas. For example, when the Bill was initially introduced, it only targeted problems with weight units such as catty and tael. That did not make sense and we were not sure how the problems of dimensions and sizes would be tackled. The Government subsequently accepted our suggestions and changed to include all units of measurement.

On the other hand, the provisions are too broad in some other areas. For example, one of the sales practices the Government targeted is selling products by using the names or reputation of certain celebrities. The provisions as initially drafted were really broad. If the name of the boss of a company happens to be Andy LAU, calling his name would create trouble because some may mistake him for the famous artiste Andy LAU. Thus, the company has a legal obligation to explain to the public that the name refers to the boss of the company but not the artiste Andy LAU. This is a heavy but unnecessary burden for businessmen. Hence, we asked the Government to make the scope of the provisions narrower. The Government listened to our views and narrowed down the scope of the provisions. Hence, in selling and publicity, if the seller has mentioned names identical with or similar to the names of certain celebrities, the seller is required to clarify to consumers the actual situation and that a defence is available. We have expressed many views in this connection and the representatives of the Civic Party have expressed our views at the hearing and pointed out that the drafting of the provisions can be improved.

In all these areas, I am pleased that the Government has taken on board the views expressed by Members and deputations at the hearing, and has really made improvements to a limited extent. Nonetheless, President, I still want to repeat that the age-old problem that has been discussed over the years remains unsolved. Regarding consumer interests, Hong Kong is considered a shoppers' paradise or a tourist spot but the protection it gives to consumers is very inadequate. I hope the Government would expeditiously review the existing ordinance and take forward the CC's relevant proposals.

Thank you, President.

MR HOWARD YOUNG (in Cantonese): Madam President, I believe all of us still remember that, around this time last year, "zero-fee" mainland tour groups created top news for the media day after day. It was reported that a mainland tourist bought a watch more or less the same as a watch of a world-famous brand

for more than $100,000 but he discovered when he was back on the Mainland that the brand was never heard of and the watch did not worth the money. It was also reported that some tourists had bought the so-called latest models of audio-visual products which turned out to be old models. All of a sudden, the tourism and retail industries were severely criticized and our reputation as a Shoppers' Paradise was almost ruined.

Under such circumstances, the Government has introduced the Trade Descriptions (Amendment) Bill 2007 (the Bill) to tackle the trade malpractices of some retailers and to strengthen the current regulatory regime to protect the interests of consumers and tourists. On this ground, retail industry players would naturally have no objections and the related industries have actively responded and expressed their views throughout the consultation and deliberation processes of the Bill and they all showed their support for the Bill.

As a common saying goes, "Laws provide against gentlemen but not villains", and law-abiding people are often sacrificed when laws are tightened up. But as another saying goes: "A prairie fire cannot destroy the grass; it grows again when the spring breeze blows". This best describes the speculators to be regulated through tightening up the laws. However, if the Government keeps tightening up laws on business operation for a few speculators and for the purpose of consumer interests, then retailers' operation would become harder and harder, and the shopping atmosphere and our reputation as a shoppers' paradise would naturally be affected. When there is already unlimited increase in the rights of the consumer, we hope that the Government would strike a balance between the interests of various parties when it considers making relevant laws in future.

I have said so because a major objective of the Bill is to prohibit retailers' making false or misleading representations. Nevertheless, accurate information has sometimes been abused by speculators. For instance, the Chinese herbal medicine industry often uses the adjectives "wild (野生)" and "hill farmed (野山)". The former term "wild" describes herbs grown outdoors naturally in the wild and the latter term "hill farmed" describes herbs planted and cultivated in the hills. For sure, the former is more valuable than the latter. Nevertheless, there are reports of some tourists buying hill farmed herbs for the prices of wild herbs because the two appear very similar when written and spoken. Even if the Bill is passed today, I believe there would still be speculators making misleading representations.

There is a requirement in the Bill "to show clearly and conspicuously the weight unit of goods" or to set out detailed information on five types of electronic products (that is, digital camcorder, digital camera, mobile phone, digital audio player and portable multimedia player) such as whether or not essential accessories are included and the availability of after-sale services, and so on. The retail industry is ready for co-operation even though in future the price tags of the products in shop windows may be larger than mobile phones in the future. But can this stop all practices of intentionally cheating customers? We all know that it cannot and the relevant government departments cannot carry out daily inspections on electrical appliances merchants when enforcing the law. Also, this may also be abused by some consumers. If consumers choose mainland warranty, warranty services would not be provided by Hong Kong agents. In case complaints have been lodged by consumers and tourists, and when these complaints have made the headlines, is the Government going to tighten up the Trade Descriptions Ordinance further?

Certainly, we do not want individual cases of dishonest shops to deal a blow to the status of the retail industry. The recent avian flu case is an obvious example. The faeces of a few chickens (or the rumoured "smuggled chickens") has caused the suspension of operation for the whole industry for three weeks, and they may also lead to the early demise of the whole industry. We would not have fresh chickens anymore and our fame as a gourmet's paradise may be cast into the shade.

What should we do to maintain a satisfactory environment for business operation while dealing a blow to unlawful merchants? I hope the Government would publicize both faults and merits besides legislating. It should adopt positive measures to announce the names and addresses of unscrupulous shops, and step up promoting goodwill accreditation schemes, including the "Quality Tourism Services" scheme of the Hong Kong Tourism Board (HKTB), the "No Fakes" scheme jointly launched by business associations, and the "Quality Gold Mark" and "Quality Jade" accreditation schemes launched by the relevant industry at its own initiative.

After the disastrous heavy rain last week, Mr Vincent FANG visited the dried seafood shops in Sheung Wan to find out more about their losses. An industry veteran told him that there were few vacant shop spaces on the dried seafood street in recent years for they were instantly occupied by people in the trade. In particular, honest business operators in the vicinity of the dried seafood shops that have cheated tourists prefer moving to the more reputable

dried seafood street because tourists avoided patronizing that area after the incidents were widely reported, which adversely affected their business.

All this shows that industry players would like to prove that they are upright though the industry is affected by negative news. In tackling unlawful retailers, besides enhancing regulation by enacting the Bill today, I hope the Government will make public the information on unlawful business operators and upload information on all dishonest shops onto the Internet as what HKTB has done.

Yet, it would be best for the Government to put resources into promoting various quality shopping accreditation schemes and reliable shopping areas with special features. Each and every business association in the wholesale and retail industry has a long history and attaches great importance to reputation. These business associations will be very careful and prudent in giving accreditation. Some shopping streets have only become well known after a long time, so we hope that the Urban Renewal Authority will retain the sneaker street in Mong Kok because reputable places can create promising turnovers.

All of us would have seen Quality Tourism Service labels from the HKTB affixed on shop doors. The number of such shops has increased in recent years; it increased by 15% in 2005 and there was a growth rate of between 4% and 6% in the past two years. The number of merchants participating in the "No Fakes" accreditation schemes jointly launched by the business associations and the Intellectual Property Department also is constantly on the rise.

Madam President, the retail and tourism industries are our pillar industries, and the efforts they have made over the decades helped earn Hong Kong the world-renowned reputation of a shoppers' paradise. We should cherish this signboard plated in gold and none of us would like it to be smashed. However, there are inevitably withered branches on tall trees, and some people in various trades and industries would like to make easy money. If the Government tightens up the laws for the sake of the minority, it will only impact on the law-abiding majority. The Government gives the business sector the least support, unlike some industries which are given tax exemptions from time to time or supported by rent freezes, the business sector has to put up with the pressure of soaring rents and business costs. Yet, a shoppers' paradise is not only a signboard plated in gold for the industry, it also generates enormous profits for our economy as a whole, including the retail and tourism industries.

An Honourable colleague has just asked if the future scope of regulation will be expanded to cover other service industries. I think the Government should handle the matter prudently. We are now talking about hardware such as audio-visual equipment and electrical appliances, and they are measurable in amounts and weights because there are units of measurement. Nonetheless, when it comes to the service industries, some qualities such as service are not measurable. How is the Government going to regulate these industries? Such things cannot be measured easily. If the Government wants to tighten up the laws further in the future, it may consider tightening up the laws on hardware which can be measured. But if it wants to expand the scope of regulation to cover all service industries, I am afraid there would be obscurity and the law cannot be enforced so easily.

I hope the Government would think hard and provide more resources on publicity and to promote development rather than merely pondering over means of regulation.

With these remarks, I support the Bill on behalf of the Liberal Party and Mr Vincent FANG who is a member of the Bills Committee.

Thank you, Madam President.

MR WONG TING-KWONG (in Cantonese): Madam President, some unscrupulous retailers employed improper trade practices to cheat consumers not long ago. In particular, there was a spate of incidents early last year in which unlawful businessmen employed false trade practices to deceive mainland tourists. There were extensive media reports on the Mainland and the incident aroused public concern. To avoid tarnishing our reputation as a shoppers' paradise, I urge the SAR Government to target improper sales practices and make proposals pinpointing relevant areas of the Trade Descriptions Ordinance (TDO).

The ordinance mainly targets the sales practices of unscrupulous shops and the protection of consumer interests. There are amendments such as expanding the definition of "trade description" to include matters such as the availability of warranty and after-sale services and related matters; adding three new provisions such as prohibiting the display, in the course of any trade or business, of signs that fail to give clear information as to the price of the goods set by reference to weight unit; requiring retailers to inform customers before they make payment if

the retail price of five types of electronic products does not include basic accessories; and prohibiting persons from making false or misleading representations regarding a retailer's connection with or endorsement by individuals or bodies of good standing and reputation.

The amendments are not extensive but quite particular. For instance, they cover the requirements concerning the display of price signs, the units of measurement and that price signs must indicate the price of goods in a readily comprehensible manner. A relevant provision makes it an offence if a person, who in the course of trade, business, or profession, makes a false representation on a seller's connection with or endorsement by any individual or body. A defence is also provided to the person charged with the offence, if he can prove that he believes on reasonable grounds that the information recipient does not mistake the individual or body as represented to be connected with the seller for the reputable individual or body. It is necessary for the persons in charge and shopkeepers of retail shops to get a detailed understanding of these matters.

I was particularly concerned when we discussed the six pieces of subsidiary legislation related to the TDO about the requirement for a retailer to issue an invoice or receipt containing eight items of transaction information during the sale of five types of electronic products, namely digital camera, digital camcorder, mobile phone, digital audio player, and portable multimedia player. Such information include product types, origins and major features, as well as the availability of after-sale services and information on such services. To my understanding, the requirement is also applicable to stalls selling second-hand electrical appliances, which puts a heavy burden on these retail stalls selling second-hand electrical appliances. For instance, there are quite a few small stalls on Apliu Street in Sham Shui Po selling second-hand electrical appliances at low prices, but most of the operators do not have the professional knowledge and relevant information. I hope the Administration would grant them exemption. In this connection, the Government has readily accepted good advice and made relevant amendments. It now specifies that the requirement concerning sales invoices or receipts is only applicable to retailers operating in tenements included in the Valuation List under the Rating Ordinance or selling regulated electronic products, thus exempting retailers operating small street stalls.

It may not be very difficult for large retail shops operating as a business group to comply with the principal Trade Descriptions (Amendment) Bill 2007 (the Bill) to be passed today. But some small retailers may have to put in

additional resources such as purchase additional computers in order to comply with the requirement of providing more product information. Besides giving the retail industry a six-month grace period to prepare for the new requirements, the Administration should also set up channels to provide consultation and other assistance when the retailers encounter difficulties in complying with the ordinance.

Furthermore, after the enactment of the Bill, I hope the Government would expeditiously organize publicity and education programmes for the relevant business associations, persons in charge and staff of shops such as publishing pamphlets and organizing talks to give industry players a deeper understanding of the ordinance so that retailers may not unwittingly fall foul of the law. In addition, the HKTB and relevant government departments should launch extensive publicity programmes targeting the public and tourists. These important steps would enhance their awareness of local laws protecting consumer interests and boost their confidence in shopping here. This will ensure that shoppers will feel at ease and our reputation as a shoppers' paradise will not be undermined, as well as serve as a driving force of our economic development.

Madam President, with these remarks, I support the Bill and the relevant amendments on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong. Thank you.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Madam President, first of all, I would like to express my heart-felt thanks to Mr Fred LI, Chairman of the Bills Committee on the Trade Descriptions (Amendment) Bill 2007 and members of the Bills Committee for the detailed scrutiny of the Trade Descriptions (Amendment) Bill 2007 (the Bill) within the past few months, and for giving valuable views on the contents and drafting of the Bill. I will move the relevant Committee Stage Amendments

(CSAs) later on. The Administration has accepted the suggestions of the Bills Committee in most of the CSAs, and the rest of our CSAs are intended to improve the drafting of the Bill and perfect the mechanism for the protection of consumer interest.

The major objectives of the Bill are to expand the scope of the Trade Descriptions Ordinance (TDO) to prohibit retailers from giving misleading price indications or making false or misleading representations about the warranty and after-sale repair and maintenance services for goods; whether the price of electronic products include basic accessories; and a retailer's connection with or endorsement by individuals or bodies of good standing and reputation.

The Bill comprises three main parts:

Part I is related to clause 4 of the Bill. We suggest amending section 2(1) of the TDO to expand the definition of "trade description" to include representations on "warranty and after-sale repair services for goods". After the TDO has been amended, false representation in respect of "after-sale services" will be regulated under the provisions on "false trade descriptions".

Part II is on the proposed addition of sections 13A to 13C, which provide for new offences. The objectives of the three new sections are:

(i) prohibiting the display by retailers of misleading signs or signs that fail to give clear information as to the price of the goods;

(ii) requiring retailers to inform customers before they make payment if the price of five types of electronic products, namely digital camera, digital camcorder, mobile phone, digital audio player, and portable multimedia player, does not include basic accessories; and

(iii) prohibiting persons from making false or misleading representations regarding a retailer's connection with or endorsement by other individuals or bodies.

Part III is related to clause 8 of the Bill. We propose aligning the penalties for the above new offences with the existing provisions. A person who commits a new offence is liable to a fine of $500,000 and to imprisonment for five years.

The Bills Committee has held a total of five meetings, including one meeting with deputations. It has thoroughly examined the contents of the Bill and discussed in depth issues such as the scope of application of the Bill, the clarity of the new provision for regulating retailers, and the effectiveness of the Bill in enhancing consumer protection. The Bills Committee also proposes technical amendments to certain provisions of the Bill such that they will read smoothly and be easily comprehensible. I will go into the details of the relevant amendments at the Committee Stage in a short while.

Putting it in a nutshell, we deeply believe various proposals of the Bill and the amendments can effectively enhance consumer protection. In the long run, they can boost the confidence of consumers and tourists in shopping in Hong Kong, help promote the development of the retail and tourism industries, and consolidate our status as a shoppers' paradise.

Concerning the views that Ms Audrey EU and Mr Fred LI have just expressed, — I hope they could hear my response because they are now absent from the meeting — we are considering in detail the recent Consumer Council (CC) report on fairness in the marketplace and we plan to consult the public by the end of this year. The public will also be consulted on the regulation of the service industries. We agree totally to Mr Howard YOUNG's appeal to the Administration to strike a balance between improving the business environment and protecting consumers. In fact, we consulted 132 business associations on the Bill in last August and September, and we proposed these amendments after gaining their support. Thus, Mr Howard YOUNG can rest assured that we will try to improve our business environment while protecting consumers. Mr WONG Ting-kwong is very right in saying that we ought to step up publicity. The CC has actually done a lot in this regard, for instance, it launched a website last year and mainland tourists can now visit this website to find out how to be a smart consumer before visiting Hong Kong. The CC has made great efforts in educating consumers, hoping that all inbound visitors and even local consumers will be smart consumers.

Madam President, I express again my gratitude to the Bills Committee for supporting the resumption of Second Reading debate of the Bill, and I implore Members to support the amendments I am going to move later on.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):Trade Descriptions (Amendment) Bill 2007.

Council went into Committee.

Committee Stage

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

TRADE DESCRIPTIONS (AMENDMENT) BILL 2007

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

CLERK (in Cantonese): Clauses 1, 2, 5, 6, 8 and 9.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 7 and 10.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move that clauses 3, 4(2), 7 and 10 of the Trade Descriptions (Amendment) Bill 2007 (the Bill) be amended as set out in the paper circularized to Members. The Bills Committee has scrutinized these amendments in detail and I will only expound on the contents of the major amendments.

Clause 3 amends the long title to the Trade Descriptions Ordinance (TDO) to expand its scope to cover prohibiting the use of misleading or incomplete information by the suppliers of products apart from prohibiting false trade descriptions, false markings and misrepresentations such that the long title would better reflect our legislative intent. The long title as amended will cover undesirable trade practices that are set out under the new sections from 13A to 13C. We propose adding "false," before "misleading and incomplete information" to state clearly that the Bill also seeks to regulate undesirable trade practices using "false information" to deceive consumers.

Clause 4(2) proposed amending the TDO by expanding the definition of "trade description" to include representations relating to "warranty and after-sale services for goods". We propose adding "spare parts" in subsections (k) to (p) of section 2(1) of the TDO, to state clearly that the amended definition of "trade description" will cover information on the availability of spare parts.

Clause 7 adds sections 13A to 13C to the TDO to prohibit retailers from deceiving consumers by giving misleading price indications or making false or misleading representations. We propose amending these three provisions to make the Bill clearer and better reflect our policy intent. The major amendments are as follows:

(a) Section 13A only seeks to regulate price signs set by reference to "weight unit"; the Administration proposes changing "weight unit" in section 13A to "units of quantity" and to expand the scope of the provision to cover length, width, height, area volume, capacity, weight and number.

(b) Section 13A may not tackle the malpractices where a seller displays a sign which only indicates the price of goods, and another sign indicating that the price shown on the first sign is set by reference to a specific unit of quantity. The Administration proposes adding a new section 13A(3) to provide that if a seller displays different signs to provide information on price and unit of quantity of the goods, the signs will be regarded as a single sign and subject to regulation under section 13A.

(c) Section 13B(3) sets out five criteria for determining whether the prices of electronic products should reasonably be expected to include basic accessories. These include the prevailing trade practices, the representations made by sellers, the packaging of the goods and the accessories, and so on. To allow the Court to consider other factors which may be relevant in determining the principal function, the Administration proposes adding section 13B(3)(f) to include an additional criterion of "any other relevant considerations".

(d) The Bills Committee has raised concern about the wide scope of the proposed section 13C(2) applicable to all false representations made in the course of trade, business or profession. To better reflect our legislative intent, the Administration proposes to limit the application of the section to representations made "in connection with the supply or possible supply of any goods" or "the promotion of the supply of any goods". We also propose adding a new section 13C(5) to provide a defence to the person charged with the

offence, if he can prove that he believes on reasonable grounds that the information recipient does not mistake the individual or body as represented to be connected with the seller for the reputable individual or body.

Clause 10 proposes adding a new Schedule 2 to the TDO, setting out the five types of electronic products specified under section 13B. As these five types of electronic products are categorized by their "principal functions", the Administration has listed in section 2 of Part 2 of Schedule 2 the factors for determining the principal function of an electronic product, which include the description applied to the product on its package; the description applied to the product in any promotional material and advertisement concerning the product; and so on. We propose an additional criterion of "any other relevant information" to allow the Court to consider other factors in determining the principal function.

The above proposed amendments seek to better reflect our legislative intent and strike a balance between the interests of consumers and the retail sector, to facilitate retailers' complying with the provisions of the Bill and ensure effective enforcement by the Government. The Administration has taken on board member's views and proposes technical amendments to certain provisions of the Bill so that they will read smoothly and be easily comprehensible. The details of the relevant amendments have been set out in the Agenda.

With these remarks, I implore Members to support the Committee Stage Amendments I moved.

Thank you, Chairman.

Proposed amendments

Clause 3 (see Annex II)

Clause 4 (see Annex II)

Clause 7 (see Annex II)

Clause 10 (see Annex II)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 7 and 10 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

TRADE DESCRIPTIONS (AMENDMENT) BILL 2007

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the

Trade Descriptions (Amendment) Bill 2007

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Trade Descriptions (Amendment) Bill 2007.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Domestic Violence (Amendment) Bill 2007.

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

Resumption of debate on Second Reading which was moved on 27 June 2007

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

DR FERNANDO CHEUNG (in Cantonese): President, in my capacity as the Chairman of the Bills Committee on Domestic Violence (Amendment) Bill 2007, I now report on the main deliberations of the Bills Committee.

The Bill seeks to amend the Domestic Violence Ordinance (DVO) (Cap. 189) to enhance protection for victims of domestic violence. The main provisions of the Bill include extending the coverage of the DVO to include molestation by former spouses or former partners in cohabitation relationships between persons of opposite sex or specified "relatives"; empowering the Court to also attach a power of arrest to an injunction order if it reasonably believes that the respondent will likely cause bodily harm to the applicant or the child concerned; extending the maximum period of an injunction order to 24 months; enabling the Court to vary or suspend a custody or access order when granting an injunction order; and requiring the party being served with an injunction order to attend a programme aimed at changing the attitude and behaviour of the abuser as approved by the Director of Social Welfare.

Some members are of the view that providing protection to victims of domestic violence should be applied to all persons regardless of their gender so long as the relationship is cohabitual. They are of the view that extending the protection under the DVO to persons in same sex cohabitation merely seeks to

protect such persons from being molested by their partners, and should not be regarded as equivalent to giving legal recognition to same sex relationships or providing legal entitlements to persons in such relationships.

Having regard to Members' views, the Administration has agreed that the protection under the DVO should be extended to cover cohabitation between persons of the same sex. However, as the proposed amendment to the DVO to include cohabitation between persons of the same sex in its coverage will fall outside the scope of the Bill, the proposed amendment will have to be effected by way of a separate amendment bill. Accordingly, the Secretary for Labour and Welfare will, when moving the resumption of Second Reading debate on the Bill later on, undertake that the Administration will introduce amendments to the DVO to include cohabitation between persons of the same sex at the earliest possible time in the next legislative session.

Members are of the view that the term "molest" should be defined in the DVO to put beyond doubt that the term includes physical abuse, sexual abuse and psychological abuse.

The Administration has explained that although the term "molest" is not defined in the DVO, decided cases have revealed that in the context of family, the concept of "molest" is wide, extending to abuses beyond the more typical instances of physical assaults to include any form of physical, sexual or psychological molestation or harassment which has a serious detrimental effect upon the health and well-being of the victim, and the threat of any form of such molestation or harassment. Besides, to introduce a definition of "molest" in the DVO when there are abundant cases decided by the Courts in Hong Kong and in the United Kingdom may inadvertently restrict the scope of coverage of the legislation and lead to borderline disputes, hence undermining the protection for victims of domestic violence. Furthermore, introduction of a new definition will render the thousands of previous decided cases irrelevant, and it may be detrimental to the interests of the domestic violence victims.

Under the Bill, any child, including natural, adoptive or step child, of the applicant or the respondent would be covered by the injunction order. Members are concerned that a minor molested by a person living with him/her will not be covered by the Bill if they are not in a familial relationship as defined under the Bill.

Having considered members' views, the Administration will move amendments to reinstate protection of the DVO for any minor living with the applicant concerned from being molested by the applicant's spouse or cohabitant, and extend protection for any minor living with the applicant concerned from being molested by the applicant's former spouse or cohabitant.

The Bills Committee supports the resumption of the Second Reading debate on the Bill today and the commencement of the Amendment Ordinance, if passed by this Council, on 1 August 2008.

Now I will express my personal views on the Bill.

President, domestic violence has become a very serious problem in Hong Kong. Recently, according to the Commissioner of Police, there were 7 509 cases of domestic violence last year, representing an increase of 60% or 3 000 cases over 2006. The Children's Rights Association has recently interviewed 300 children in poverty who were asked to state the top 10 problems of their utmost concern in 2008. They responded that their first and foremost concern was child neglect and domestic violence. So, domestic violence is no longer just a problem of individuals in Hong Kong.

It is more astonishing to learn of the results of a study commissioned by the Government earlier on. That study was undertaken by an academic, CHAN Ko-ling of The University of Hong Kong. It was a very extensive study in which over 1 000 people were interviewed, including adults and children. The study was conducted using scientific methodologies and benchmarks and he found that the ratio of reported and identified domestic violence cases to actual domestic violence cases is 1:99, which is utterly shocking. In other words, the several thousand cases of domestic violence that we have now seen are indeed just the tip of the iceberg. If we do not take actions early to enact effective legislation on domestic violence — well, this would certainly require the support of many other services — I am worried that the problem of domestic violence will immensely affect families in Hong Kong.

We very much welcome the proposed amendments to the DVO. In fact, the DVO, which was enacted in 1986, has basically remained unchanged over the past two decades. It was primarily modeled on the relevant legislation enacted in 1976 in the United Kingdom. So, the wordings of the DVO are

rather obsolete. Under the existing legal framework, there are actually not many ordinances providing for protection against domestic violence. In respect of criminal liabilities, there are only the Offences Against the Person Ordinance (Cap. 212) and the Crimes Ordinance (Cap. 200) which are criminal laws on offences inflicting bodily harm to persons of a general nature. There is no criminal legislation on domestic violence in Hong Kong to clearly provide for the criminality of domestic violence. In respect of civil liabilities, certainly there are the Protection of Juveniles and Children Ordinance (Cap. 213) and Mental Health Ordinance (Cap. 136). These ordinances mainly serve to grant emergency guardianship orders and appoint statutory guardians. In addition to these ordinances, there is the DVO (Cap. 189). The protection provided under the DVO is mainly to allow an applicant to apply for a non-molestation order, an exclusion order and an entry order. This is a civil law framework but the protection provided is still limited.

This amendment exercise is actually indicative of some progress made in a number of areas. First, the coverage of the ordinance has indeed been extended by quite a large margin compared with the idea first proposed by the Government a year or so ago. I remember that another point at issue at that time was elder abuse and that is, whether abuse of the elderly should fall within the scope of domestic violence. We are glad to see that the Government has introduced broad amendments in this respect today by extending protection to the elderly, separated spouses and former cohabitants, as well as relatives living in the same household and also brothers and sisters. When there is a case of domestic violence, civil laws can be invoked to extend basic protection to them.

Children can also seek protection on their own by suing their guardian. A power of arrest can be attached to an injunction order, and the validity of the injunction order will be extended from six months to 24 months, which is more in line with the length of divorce proceedings and can better protect the applicant concerned from molestation in the course of the divorce proceedings. I very much welcome this. Besides, the Court can also vary or suspend a custody or access order during the divorce proceedings and this will, comparatively speaking, allow flexibility for the Court to make modifications and hence producing a deterrent effect on abusers.

Moreover, the Family Court can also require abusers to attend mandatory counselling programme, or anti-violence programme as referred to in the Bill.

These are changes that we very much welcome, and we hope that these changes can be more user-friendly, so that victims of domestic violence can be protected under the legislation.

In fact, in the beginning of last year, a number of organizations which are concerned about the proposed amendments to the coverage and contents of the DVO conducted very detailed analyses of the DVO, drawing comparisons between the existing legislation and overseas legislation and subsequently concrete proposals were put forward on the amendment of the DVO. I am pleased to see that quite many of these proposals have been accepted by the Government. So, this Bill tabled before us now has, in fact, incorporated some voices of the community. There is partnership in the process as seen in so many concerned organizations and individuals in a civic society which have put their heads together to transform their concern into legally justified proposals of a high standard. These proposals are then submitted to and finally accepted by the Government. This is a very good example. I hope that in future, public policies can further respond to the needs of the community through this kind of partnership and process of making legislative amendments. I also hope to see more of these examples in the future.

After the passage of the Bill — I hope that it will be passed later — many more support measures will be required. It is not the case that we will fulfil our mission when the Bill is passed and protection enhanced. In fact, this will have profound implications. First, this amendment exercise has given the Court a tool, namely, the "anti-violence programme", requiring abusers to attend mandatory programmes. In fact, this measure has been implemented in Hong Kong for years, and some pilot programmes have also been launched for two years with some results achieved initially. Many documents and experiences in overseas countries have also confirmed the effectiveness of this type of programme. But after the amendment of the ordinance, will the Government provide more pertinent resources accordingly to expand this kind of service and enhance its effectiveness in implementation? All that we know now is that the Government has earmarked $1 million as a provision to meet the new needs. According to the Government's estimate, this programme may have about 100 participants a year. In other words, the unit cost is about $10,000. I am worried that this estimate may be rather conservative. In fact, according to the statistics on previous pilot programmes, the programme run by the Social Welfare Department already had over 200 participants; and a pilot programme operated by a NGO also had about 200 participants, and other NGOs have also

organized similar programmes. So, without sufficient funding, we are worried that while legislation is in place, its actual implementation will still be difficult.

Moreover, we consider it necessary to streamline the entire procedure. Although there are injunction orders, protection orders, access orders and entry orders to protect the victims from further molestation by abusers and enable the victims to recover or enter their family home in order to lead a normal life, it is not easy to file these applications. As far as we can see, the number was very low in the past as there were only some 10 to 20 cases, or not more than 30 cases on average a year, and in practice, often the applicants can apply for these injunction orders only through a lawyer. I think co-ordination between the Government and the Judiciary is required in the process to reduce the complexity of the application procedure. In overseas countries, for example, application forms are provided in police stations and the forms are very user-friendly even to ordinary citizens, and it does not require the assistance of a lawyer or the use of legal language in order to apply for an injunction order. If the application for an injunction order can be made through the police, the SWD or social worker units with most frequent contacts with these domestic violence cases, domestic violence can be prevented at an early stage. If the legislation is just put aside after it is enacted, I am afraid that it could not be fully put into use. A lot of details may have to be worked out to give effect to this arrangement, but they still need to be further discussed. For example, the injunction order is often issued in English but the respondent may not understand the injunction order and even the power of arrest. So, these are the arrangements that need to be considered in detail.

Furthermore, as far as we can see, as far as judicial proceedings are concerned, the Family Court may not be able to work in tandem with the entire proceedings of a domestic violence case. In this connection, there are views in the community calling on the Government or the Judiciary to consider setting up a specialized court for family violence cases, so that these cases can be handled expeditiously and also in a more effective and systematic manner.

Lastly, I wish to point out that to address the concern about domestic violence, the Panel on Welfare Services has been discussing this issue and a Subcommittee on matters relating to domestic violence has been formed under the Panel. During its work over the last three to four years, the Subcommittee has been given a lot of input by many organizations and colleagues of this Council and it has looked into many different areas of work, including housing

arrangement, law enforcement by the police and the support of follow-up social services, such as the provision of counselling service or temporary shelters, living arrangements, financial assistance and so on. The arrangements and support for all these services cannot be neglected. So, the enactment of this Bill today is absolutely not a reason for complacency. Therefore, after the Bill is enacted today, I hope that the Government can make greater commitment to providing the necessary support whether in respect of service arrangements or resources.

Finally, I wish to say a few words about same sex relationships. That the Government is willing to make the relevant amendment is very much appreciated. Regrettably, the Government said that the amendment falls outside the scope of this Bill. We consider this amendment necessary, because if the definition of domestic violence does not cover same sex partners and when they are really molested in a close relationship, I would think that the legislation is inadequate and leaves a lot to be desired.

With these remarks, President, I hope that Honourable colleagues will support this amendment.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I would say that I "very much" support the Domestic Violence (Amendment) Bill 2007 proposed by the Government and I stress, I "very much support" it, and I have a lot of feelings about it.

As the Chairman of the Bills Committee, Fernando CHEUNG, said earlier, we have seen that the Government — I am older than you, Fernando CHEUNG, and I have served on this Council for two terms — has established a working group to tackle domestic violence. We have seen that the Government had in the beginning refused to accept that there is this problem and later, after witnessing case after case of tragic incidents, it gradually took steps to address the problem squarely. Then from an approach of "patching things up" in the beginning by organizing just some concern groups for men — that is, by injecting a small amount of resources, but it can never address the core problem of domestic violence — we have seen that the Government has taken some actions at the end of last term and the start of this term. So, I wish to report to you, Madam President, that the subcommittees formed under the Panels of the Legislative Council are useful and effective. Dozens of organizations have

never ceased to support us in the Legislative Council. So have some psychologists and various front-line professionals, as well as many, many concern groups.

Over the past eight years, we would approach them for assistance whenever our Subcommittee faced problems. After all, they are professionals and experts in many sectors. Fernando CHEUNG and I took turns to be the Chairman of the Subcommittee on domestic violence and this year, it is my turn again. I very much thank some Members of the Subcommittee because they are really exceptional. I also thank a number of officials tasked to look into this issue, including Hinny LAM. They worked with an open mind and adopted an interactive, instead of confrontational attitude whether in the current term or at the end of the last term. Besides, I wish to particularly express my appreciation to the performance of the police. Since the occurrence of the tragedy of Madam JIN in Tin Shui Wai, the police have already been working in the front line. I seldom praise other people but this team of the police is worthy of commendation. Friends who are waiting for the voting result on the Bill outside have also given their commendations to the Police. This purple floral pin I am wearing today is given to me by them. They are very pleased to see the passage of this amended Bill proposed by the Government to the Domestic Violence Ordinance (DVO) today and the implementation of the relevant proposals.

I said so in order to reflect the aspiration of the community and to this end, it is necessary for the Government to be interactive. When we discussed the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 just before this Bill, Madam President, you could see that we were very agitated at that time. It was because we could see that the problem was not in the least addressed. Secretary, when that previous Bill was enacted earlier, I said that I must give you my compliments. I commended the efforts that you made for the workers in respect of the Employment Ordinance, as you are willing to target actions at the seven problems concerning employers defaulting on payment of wages to their workers. However, Secretary Prof K C CHAN, who is in charge of financial services matters, is still unwilling to address the problem squarely. That said, he has finally done something after being pressurized by us.

I always hold that the entire SAR Government should understand one point and that is, we are not here to "kick up a fuss". It is all because we look at a social problem from a different angle. If the Government can take the same attitude as ours towards the amendments to the DVO, I think that would provide

a basis for social harmony. I am not asking everyone to be obedient to the Government and be a "yesman". Can that be considered a way to achieve harmony? Nonsense! So, I personally hope that the SAR Government can keep a cool head and I hope that the Government, when facing the business sector (or employers) in the labour market, can strike a better, fairer balance. The Government must target actions at social problems before the many contentions that exist now can be resolved, and this will also apply to the question of minimum wages that we will be discussing soon. The Chief Secretary for Administration outrageously said that legislation was not an option, and I can only have a chance to ask him today if this is really the case.

I hope that the Government can take on board the views of the community as well as those of us here who have been following up the discussion on this Bill. I said that I "very much" support this Bill. I seldom said so in the Legislative Council. I said the same when examining the previous Bill and I commended the efforts made by the Secretary too. I also appreciate the efforts made by officials who are scrutinizing the Bill with us today, particularly in respect of the discussion on same sex cohabitation. Madam President, most Hong Kong people have had a lot of problems with their family in recent years, especially after 1997. Everyone has been very busy in order to earn a living; their working hours are often very long; the burden of living is heavy, and so is the working pressure. Many people do not have the time or way to give vent to their psychological and emotional distress. Over time, their pent-up frustrations can only erupt in families and in some cases, domestic violence incidents are caused.

In fact, Madam President, from the statistics relating to domestic violence cases in recent years, we can see that the number has increased year after year. For example, the police recorded over 7 509 cases of domestic violence last year, an increase of more than 5 000 cases or nearly 60% over the year before last. Cases of domestic violence tragedies have been frequently reported in the press and news reports. In the past, most domestic violence cases occurred between husbands and wives, or between parents and children, but given the ageing of population in recent years, there have been conflicts between the youth and the elderly in families which has led to the problem of elder abuse.

There is an organization which is very concerned about cases of elder abuse and has displayed unremitting devotion and commitment in this area of work. I have recently assisted an association against domestic violence in

organizing an activity and that organization had also participated in it. As that organization has continuously brought to light cases of elder abuse in society, it is considered very disobedient in the eyes of the Government, and as Fernando CHEUNG said earlier on, the Government did not accept the view put forth by this organization a year ago of extending the coverage of the DVO to the elderly. Given an ageing population in family, crowded living environment and the fact that the grassroots can only make a meagre income, these problems have become all the more acute. The Government was unwilling to address these problems at first, but this organization has continuously aroused public attention on this problem and called on the Government to incorporate this aspect into the legislation. The organization has recently published some figures and it points out that attention should be paid to the statistics obtained by The Against Elderly Abuse of Hong Kong this year. They have received 1 830 cases this year and this shows that the problem of elder abuse has become more and more serious.

In fact, domestic violence mostly occurs in low-income families and new arrival families among the grassroots. As these families live under greater pressure than the ordinary families, conflicts can easily arise among family members. They normally do not have the time for communication; nor do they have the time to deal with problems. As for the new arrivals, given a difference in the way of living and culture between Hong Kong and the Mainland, and sometimes there are cases in which the husbands are old and the wives are many years younger, domestic violence would occur easily. I have handled many cases of this type, and I always feel very unhappy after handling them. The Family Crisis Support Centre operated by Caritas pointed out earlier that 40% of the new arrivals were involved in domestic violence cases, and this percentage is double that of local families. This figure is provided by the Family Crisis Support Centre which has all along been handling this type of cases.

Faced with the gravity of domestic violence in Hong Kong, the Government has introduced amendments to the DVO, and this can be said as the first step taken to address the problem. Under the amendments proposed by the Government, the coverage of the DVO will be extended to include former spouses, former cohabitants, immediate family members and other extended familial relationships. I think this is a correct decision which has at the same time responded to the increasingly complex situation of domestic violence. Therefore, in view of the Government's attitude of seriously identifying a solution to the problem, I "very much support" this amendment.

Moreover, as I said earlier on, with regard to the amendments further proposed by the Government in the second half of the year to the DVO of including in the coverage of DVO persons and cohabitants of the same sex, I personally consider that the proposed amendments warrant our support, for we cannot neglect the fact that there are people having same sex relationships in society, and these people cannot be excluded from the protection of the DVO. In Britain, amendment was made to the relevant legislation only last year and as a matter of fact, the Government should take a leading role in this respect. Therefore, I support this proposal of the Government because this is the way to enable these people to be given the same protection when they face domestic violence. Since the Government said that the immediate incorporation of that into the DVO would be difficult, and as the Secretary has undertaken to introduce the relevant amendments as soon as possible in the next session, I am willing to allow the Government more time to work on this. In fact, when it comes to extending the ordinance to cover same sex cohabitants, I think the Government should start from a human rights angle or human rights position, because the objective of the ordinance is to protect all persons living in the same place against domestic violence. So, I hope that the Government will introduce the relevant amendments as soon as possible. Whether or not I will return to this Council is not important, but I will certainly keep a close watch on and follow up this undertaking of the Government.

Moreover, the Government proposed in its amendment to remove the "living-with" requirement from the ordinance, so that children can be protected by the ordinance as long as their relationships fall into the specified categories of relatives. But during the scrutiny of the Bill, we did not see eye to eye with the Government on this point as we considered that while the coverage of the ordinance should be extended, the "living-with" requirement should be retained at the same time, so as to provide protection to children who have no familial relationship with the abuser but who have to live with the abuser in the same place for various reasons. The authorities (I really must give them my compliments) finally agreed to our proposal. They took on board our view and introduced amendments to this effect. This deserves our commendation, because this requirement was not included when the Government first drafted the Bill and later, after I telephoned them to express my view, they revised their amendments and took on board this view. So, I will support this amendment.

Madam President, I seldom praise the Government but on this occasion, I have been giving it so many praises that even I myself start to feel that it is now time for criticisms. *(Laughter)*

(A Member said: "And you have praised Matthew CHEUNG as well.")

MISS CHAN YUEN-HAN (in Cantonese): He is indeed very competent. He has the courage to face up to difficulties and he tries his best to identify solutions. Having said that, we still have to see how he is going to handle the minimum wage issue, so as to know if he really has competence and vigour. *(Laughter)*

However, I think there are still inadequacies on the part of the Government and particularly, we are very concerned about the resources and support measures to be provided by the Government for protection against domestic violence after the passage of the amendments. For instance, it is expressly proposed in an amendment that the abuser is required to attend an anti-violence programme of the Social Welfare Department (SWD) when a non-molestation order is granted. This is certainly a good proposal and anti-violence programmes are also provided for in this Bill. But in the last meeting of the Subcommittee on domestic violence, the Government said that only $2 million would be allocated for these anti-violence programmes. As Fernando CHEUNG said earlier on, this is impossible. How can $2 million be enough to hold these programmes? What if more funding is required? We can imagine how hard it will be for law enforcement officers and non-profit making organizations and people who are concerned about domestic violence cases in carrying out their work, because without intensive counselling and persistent follow-up, it would be very difficult to make improvement to these cases under the anti-violence programmes.

The Secretary must understand that these counselling programmes provide an additional line of defence in the prevention of the recurrence of domestic violence. If this line of defence is not set up properly, it would be useless even if many pieces of legislation are enacted for the purpose. I firmly believe that in order for the Secretary to solve problems concerning the people's living, he must have some understanding of the people's living and so, let me tell you what is happening now.

In fact, we have all along been paying attention to the problem of domestic violence and stressing family values and harmony in a family, but we have found that the Government has not provided the slightest bit of resources for our social workers who are working in the front-line. Madam President, in this term of the Legislative Council, a social worker organization has often come to us to raise this issue with us, and this organization is having a hard time too. Even if the Government is willing to address the problem squarely and has instructed the SWD to do something, we can see that the staff and social workers of the SWD have encountered great difficulties in their work. I am not going to go into the details here. All I wish to say is that they have been most dedicated in their work and no matter what problems they are dealing with, they can only tell Fernando CHEUNG, asking him to raise them in this Council, because everything they do will need resources. In respect of places at shelter homes, what can social workers do? As for the victims, even if they really have the courage to come forward, their road ahead is still rough. So, I hope that the authorities can give more thoughts to the relevant measures. Secretary, you have some very good assistants who will be very willing to help you with these measures and who will give you advice. The point is that you must first provide them with resources. Otherwise, how possibly can they carry out their work?

On the other hand, the Government's view on the definition of "molest" in the Bill is rather disappointing to us. Since the last term of this Council we have called for the extension of the definition of "molest". If its definition is not extended, there would be great difficulties in future implementation, and the relevant organizations and Members, including myself, all consider that the definition of "molest" should include psychological abuse and physical abuse. However, the authorities told us that extending the definition would restrict the scope of coverage of the legislation, resulting in a very rigid interpretation of the provisions. I absolutely disagree to that. I have also explained that this view is unacceptable, because we must understand that whether or not the interpretation of a provision will be rigid or the coverage of legislation will be restricted has to do with and can be tackled by the choice of words in the provisions.

Madam President, this comment from the Government has evoked deep feelings in me. Recently, I have proposed a legislative amendment concerning the tendering of the West Kowloon Cultural District project. My amendment was said to have too wide a coverage at one time but at another time, its coverage was said to be too narrow. Is the coverage too wide or too narrow? Then, I

was said to be not using the proper wording for the legal provisions. Fine! I found some legal professionals to draft the amendment. I went out for some time just this afternoon to ask them to redraft it for the Government, because that amendment relating to the West Kowloon Cultural District project was said to be not using the proper legal language.

Madam President, from the Government's comment about my amendment being too wide or too narrow in scope, I realize that it really depends on whether or not the Government is willing to do it. If the Government is willing to do it, it would not have argued with me as to whether my amendment is too narrow or too wide. Why did it not give me advice on the proper wording to be used? But in any case, with respect to this Bill, the Government has generally listened to the views of the community, and it has listened to the views of Members, who are representatives of public opinions here in the Legislative Council. Also, the Government has truly moved one big step forward on some issues and so we will fully support it. We only hope that the Government will introduce amendments in respect of same sex cohabitation as soon as possible in the future.

Madam President, I wish to stress once again that when we are asked why we give so many praises to this Bill but make so many criticisms about the amendments to the Bill on the Mandatory Provident Fund Schemes introduced in 2007, I hope that the SAR Government can really understand the meaning of such a difference. Would the "spin doctors" or "advisors" of the SAR Government please draw a conclusion on why the two amendment exercises, both involved amendments to an ordinance, would be treated in two different ways.

Madam President, these are my remarks.

MS MIRIAM LAU (in Cantonese): Madam President, domestic violence is a social problem that exists in different social strata in all countries in the world. Hong Kong is no exception. In recent years, as society changes rapidly, coupled with crowded living conditions, financial pressure, and the problem of cultural divergence in cross-boundary marriage, the ferocity of the abusers in the use of force has been more and more serious as they often tend to kill. We have also seen an increasing trend of domestic violence cases in which the abuser kills himself after killing all members of the family. Examples of innocent family members and young children being victimized can be readily found. Disputes between husband and wife which used to be considered as trivial fights that can

be resolved in no time are no longer just a family matter but a serious social problem.

If we analyse the situation in detail, it is not difficult to find that there are actually symptoms before the occurrence of many domestic violence cases. For example, a father who is addicted to gambling often gives vent to his emotions on his wife and children after losing money by beating up his wife and children; or a separated husband who wishes to make up with his wife will molest his wife and children unreasonably; or a divorced husband hurls insults on and even assaults his ex-wife because of arguments over alimony or the rights of access concerning their children. These acts, if not stopped in time, may lead to serious bodily harm or even murder. If early precaution can be taken, we can prevent these unnecessary tragedies from happening over and over again.

However, the existing legislation in Hong Kong obviously fails to provide comprehensive protection to victims of domestic violence. As I have said earlier, given the unique social environment and structure as well as a crowded living environment in Hong Kong, in the same household there live not only one's spouse and children, but one's parents, grandparents and other relatives may also live there. Besides, many domestic violence cases involved former spouses and former cohabitants, but the existing ordinance applies only to persons in current marital or cohabitation relationships, and the scope of protection covers only the victims or children living with them. As a result, many victims of domestic violence are deprived of effective legal protection under the existing ordinance.

Besides, the Court will attach a power of arrest to an injunction order only if it is satisfied that actual bodily harm has been caused to the applicant or the child concerned. We must ask: Why is it a pre-requisite that the victim must be assaulted? What if the victim was assaulted to death? Should we do better in respect of prevention or vigilance?

The Liberal Party welcomes the introduction of the Domestic Violence (Amendment) Bill 2007 by the Administration to plug the existing loopholes in law. Apart from addressing the above problems, many improvement proposals have also been put forward to extend the scope of the protected parties and enable the Court to enjoy more powers and greater flexibility in handling domestic violence cases. We hope that the passage of the Bill will not only provide greater protection to victims of domestic violence, but also reduce the number of domestic violence cases.

In the Bills Committee, we had discussed the proposal of following the practices adopted in overseas countries, such as Britain, by setting up a specialized Court for handling domestic violence cases. The Liberal Party considers that as domestic violence cases have become increasingly complicated and they are different from general criminal cases, it will certainly be more desirable if these cases are heard by experienced or trained Judges. Indeed, there are examples of specialized Courts set up in Hong Kong for, say, architectural and marine cases. The High Court will make other arrangements for these cases in respect of the Judge and progress of proceedings, so that these cases will be heard separately from the general civil cases. Setting up a specialized Court for handling domestic violence cases will enable these cases to be handled speedily and more effectively.

The Administration said in the Bills Committee that the Judiciary is studying the feasibility of this proposal. The Liberal Party supports this idea and urges the Administration to speed up work in this respect, so as to give effect to this proposal early.

During the scrutiny of the Bill in the Bills Committee, some colleagues proposed that the ordinance should be amended to cover same sex cohabitants. The Liberal Party considers that all persons in society should be treated equally regardless of their gender, colour and sexual orientation. The objective of the Domestic Violence Ordinance (DVO) is to protect people in domestic relationships from being molested or abused by violence. In this connection, the existing ordinance covers married couples and also cohabitants of opposite sex, for they are also parties to a domestic relationship. While we appreciate that same sex marriage is not recognized in the laws of Hong Kong, we cannot deny that when same sex partners decide on cohabitation, they have, in fact, built a domestic relationship between them. For this reason, they should not be excluded from the protection of the DVO because they are engaged in same sex cohabitation. Giving protection to same sex cohabitants against violence or molestation does not mean giving recognition or statutory status to same sex relationships. The Administration has pointed out that it is difficult to incorporate same sex cohabitants into the Bill given the restriction of the Long Title, but it has undertaken to adopt a two-stage approach by passing the existing Bill first and then introducing legislative amendments in the new legislative session to propose the inclusion of same sex cohabitants into the coverage of the DVO.

Given that the existing Bill is a great leap forward when compared to the existing ordinance and provides targeted solutions to the problems faced by those people affected by domestic violence or are victims of domestic violence over the years, many such victims of domestic violence will stand to benefit. Therefore, there is indeed no reason for us to put off the enactment of this Bill. The Liberal Party considers that this Bill should be passed first for it to come into operation early but at the same time, we urge the Government to introduce a bill to provide protection to same sex cohabitants as soon as possible, in order to further improve the DVO.

The Liberal Party considers that to combat domestic violence, the most effective way is to make the public truly understand the evils of domestic violence. We find that there is a phenomenon in society that due to traditional family values, some victims, even though they have suffered bodily harm, are nevertheless worried that the abuser has to bear criminal liability and so, they would choose not to report their case to the police or file proceedings against the abuser. The enforcement authorities may often hold that family disputes are difficult to be judged by outsiders, thinking that they can solve the problem by just playing the role of a peace-maker and hence failing to provide the victim with assistance or institute prosecution against the abuser in a timely manner. As a result, the effectiveness of law enforcement has been greatly jeopardized. To solve this problem, it is indeed important to step up education and publicity, so that all family members can develop an awareness that domestic violence is absolutely not to be tolerated. Then they will know how their rights can be protected, thereby preventing these cases of abuse from happening over and over again. We therefore hope that the Administration can enhance public education and launch more extensive promotional campaigns through various media and by organizing talks. The Government may follow the practices of other countries, such as the United States and Britain, and designate a particular month or day every year as the anti-domestic violence month or anti-domestic violence day to unite the community to say no to domestic violence. We believe that legislating can step up actions against domestic violence, but if we take a two-pronged approach by doing more in public education, we can get double the result with just half the effort.

Madam President, I so submit.

MISS CHOY SO-YUK (in Cantonese): President, the drastic increase of domestic violence cases has been astonishing. According to the crime statistics of the police, domestic violence cases totaled 7 509 last year, representing a substantial increase of 60% than the year before last. In other words, almost one domestic violence case took place every hour. It is even more unfortunate that this rapidly increasing trend has already persisted for some time. For example, cases of spousal abuse last year were six times of those that happened a decade ago, while cases of child abuse last year were about three times of the figure a decade ago. Added to this is a study conducted by the University of Hong Kong on child and spousal abuse which reflected that the reporting rate of domestic violence cases was only 1% to 2%. In other words, the actual number of these cases may be 50 to 100 times more than the figures published. The situation is indeed horrifying.

Given the prominence of the problem and the severity of the situation, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the implementation of all measures and legislation that would help reduce domestic violence expeditiously, including this Domestic Violence (Amendment) Bill 2007 under our discussion in this Council today, with a view to preventing this unhealthy trend from spreading and intensifying.

Meanwhile, the DAB understands that the scope of the Bill is very limited, for it focuses only on improving the civil remedies currently provided for victims of domestic violence such as the non-molestation order, exclusion order and entry order. In fact, Chief Executive Donald TSANG also stressed in the 2006 Policy Address the need to tackle the domestic violence problem but so far, apart from extending the coverage of this legislation on domestic violence today and establishing the Family Commission, nothing has been done to get to the root of the problem and cut the Gordian knot that has long existed, such being the Social Welfare Department (SWD) and the police working on their own, the serious shortage of front-line social workers and so on.

President, let us go back to the Bill itself. On the proposal made by some Bills Committee members to extend the coverage of the Bill to same sex cohabitants, the DAB agrees that the protection provided to victims of domestic violence should apply to all members of a family as far as possible, and we also appreciate that the incorporation of same sex cohabitants into the scope of protection does not mean giving legal recognition to same sex relationships or

providing legal entitlements to people in such relationships. However, considering that same sex marriage, civil partnership or any same sex relationship are not recognized as a position in government policies, and that this is a controversial issue concerning ethics and morality of society, any change to this policy stance would have substantial implications on society and so, it is necessary to handle this issue with care and allow thorough discussion in society in order to forge a consensus or obtain majority support in the community. The DAB supports the Government's proposal of introducing legislative amendments in two stages, so as to ensure that the additional protection provided by the Bill to victims of domestic violence can be implemented as soon as possible and that the latest proposal will not result in any undue delay.

Moreover, the DAB supports the proposal of setting up a specialized Court for handling cases of domestic violence, because victims of domestic violence are often unfamiliar with and afraid of judicial proceedings. To many victims, judicial proceedings are often a major difficulty. Setting up a specialized Court will enable domestic violence cases to be handled speedily. This can prevent victims who are already physically and mentally tormented by their traumatic experiences from having to suffer another blow and being condemned to a more distressful state as a result of prolonged hearings. To put it more specifically, the specialized Court should handle domestic violence cases from the perspective of a family, and this Court should also be empowered to handle criminal and civil proceedings arising from domestic violence, in order to provide better support to the victims.

President, this Council passed a motion amended by me in March 2006. As I pointed out in my speech when moving my amendment at that time, the DAB believes that the solution will not be a simple one, and the effect cannot be instantly felt. It is because the causes of domestic violence incidents are wide-ranging and complicated, and they cannot be tackled by one or two formulae. To prescribe the right remedy, a comprehensive package of improvement initiatives must be proposed targeting the Government, the police, the SWD, service providers and the public in the light of different circumstances from different angles.

In this connection, the DAB pointed out at the time that the Review Panel on Family Services in Tin Shui Wai and the Coroner's Court had made a series of recommendations which include how to implement the concept of "zero tolerance" towards domestic violence in Hong Kong, reviewing legislative

provisions on domestic violence, enhancing public education and training of public officers in tackling domestic violence, clearly defining the Government's role in community building, establishing a comprehensive social welfare planning mechanism, reviewing District Co-ordinating Committees, flexibly deploying district resources, promoting co-operation across Policy Bureaux and sectors, and so on. The recommendations are quite comprehensive and have basically covered the actual needs in various aspects. The Government must seize the time by formulating specific plans and relevant indicators.

Moreover, we urge the Government to expeditiously take forward the "one social worker for each police station" scheme whereby a professional social worker is provided for each district police station to offer immediate professional assistance when necessary. As domestic violence cases often involve family disputes of a complex nature, it is inappropriate for front-line police officers to intervene for mediation.

Furthermore, the Administration must plough in more resources to support and enhance family functions and solve family crises. That being said, the DAB considers that in order to truly prevent the recurrence of unfortunate incidents, apart from relying on effective social support services, it is, in the final analysis, most crucial to build a community milieu of mutual support, care and love. In addition, prevention is better than cure. Efforts must be made to rebuild family values, strengthen family support, build a community support network and provide early assistance to families in great need of assistance. In this connection, we urge the Government to provide additional resources and utilize community resources effectively to enhance family education and implement supportive programmes to proactively get in touch with families that have not sought assistance, in order to facilitate early intervention into these families to tackle their problems and provide them with support services.

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

Enhancing community ties is equally important. The DAB urges the Government to comprehensively assist residents to set up self-help groups, such as mutual aid committees and co-operatives, to capitalize on the inherent strength of the residents in promoting ties among neighbours for the purpose of resolving disputes and conflicts more directly and speedily. Community acceptance and a

sense of belonging might appear to be quite abstract, however, it is often these intangible but crucial features that form a safety net for members of the community. If a troubled family can receive assistance from other families, it will be easier for emotions to be relieved even if one faces adversity. Besides, through fostering mutual care among neighbours, families with problems can be detected more easily. This will enable professionals to intervene and provide assistance as early as possible to prevent the occurrence of tragedies.

In fact, Deputy President, we have proposed to the Government that additional resources be provided to mutual aid committees or owners' incorporations for recruiting part-time volunteers in the building to station at places where they hold meetings. These volunteers can be provided with a pager, so that residents in the building who encounter problems in their families can seek assistance by paging these full-time or part-time volunteers in the neighbourhood. Certainly, the Government must provide appropriate training to these neighbourhood volunteers to equip them with the knowledge of how to deal with problems. Where resources are sufficient, it would be best to recruit people with social work experience as these volunteers.

Meanwhile, the Government must note that social capital can be established and accumulated gradually but it can be destroyed easily too. For instance, when old districts undergo replanning and redevelopment, the personal relations support network previously built up by the residents will inevitably be destroyed. Furthermore, there is a lack of understanding and liaison among residents of some newly developed districts. To enhance trust among the residents and their sense of security, it is imperative for the Government to commence work through service providers as early as possible in order to set up an effective support network for residents.

With these remarks, Deputy President, I support the Third reading of the Bill.

MR FREDERICK FUNG (in Cantonese): Deputy President, domestic violence is a serious social problem. The Association for Democracy and the People's Livelihood (ADPL) and I consider that the Government must address squarely the far-reaching impact of domestic violence on society and that it is duty-bound to make utmost effort to curb the spread of any form of violence. The ADPL supports the amendments proposed in the Bill today.

To scrutinize the Bill, the Bills Committee held a total of nine meetings during the past year and received representation from 20 organizations and 12 written submissions. I am not a Member of the Bills Committee. I wish to thank the 21 Honourable colleagues in particular for their efforts made for the amendment of the Domestic Violence Ordinance (DVO).

As other Members said in their speeches earlier, the amendment of the DVO is something that must be done. Although the Government has implemented some measures against domestic violence in recent years, cases of domestic violence have still increased year after year, and it is not uncommon to see cases resulting in serious casualties.

Deputy President, I have on hand some statistics and information on cases of abuse. For the abuse of the elderly alone, there were 612 cases last year, an increase of 17.2% over 2006. Close to 60% of them were cases of physical abuse and 25% were of psychological abuse. Who are the abusers of the elderly? According to the information, over 60% were cases of spousal abuse, and over 10% were cases in which the children abused their elderly parents.

In respect of child abuse, there were 944 cases last year. Over half were cases of physical abuse, but sexual abuse also accounted for almost 30% of the caseload. Close to 70% of the child abusers were the parents of the children.

In respect of spousal abuse, there were 6 404 cases last year, which means an average of 18 cases of spousal abuse take place every day. Similarly, close to 70% were cases of physical abuse, whereas 30% were of psychological abuse; 65% of these cases involved the abuse of wife by husband.

All of these are the reported cases, and I am sure that many more cases have not been reported at all. This especially applies to cases of elder abuse, as many people do not understand the definition of elder abuse. In my constituency, many friends come to me for assistance. People may not know that apart from physical and psychological abuse, abuse can also include neglect, misappropriating properties and abandoning the elderly. Therefore, I am sure that these statistics are just the tip of the iceberg. The actual number of domestic violence cases is certainly far more serious.

Deputy President, while we unanimously support the amendment of the DVO today, some domestic violence cases could be avoided or mitigated in the first place. While the law itself may not be able to stamp out all these crimes, it can at least send an important message to society that we are determined to combat domestic violence and abusers will also be required to attend counselling programme to reduce their chance of repeating the offence.

Regrettably, the Government had for a long time been unwilling to introduce legislative amendments in the past. It knows only too well that the existing ordinance was enacted in 1986 and modeled on the legislation enacted 32 years ago, that is, in 1976 in Britain. Over the past three decades, other advanced countries have made various amendments to their laws on domestic violence, particularly from the angle of the victims and to provide greater support to the victims and the abusers, with a view to stopping the problem of domestic violence from deteriorating.

The Law Reform Commission advocated eight years ago a revamp of the ordinance, but the Government's belated response has resulted in a number of domestic violence tragedies. The one which caught most public attention was the tragedy that happened in Tin Hang Estate, Tin Shui Wai, in April 2004. Even though the Coroner's Court started the death inquest in August 2005, the Government had dragged its feet and came to the Legislative Council to table the proposed amendments of this Bill only in January last year.

Over the past few years, while Members who are concerned about domestic violence and some relevant non-government organizations have been getting the jitters as they sensed the urgency of the problem, the Government nevertheless reacted sluggishly and so, they could only burn with impatience. The SAR Government, which often claims to be "people-oriented", has consistently neglected the catastrophic nature of domestic violence and persistently maintained an indifferent attitude, despite its vows on "zero tolerance".

In any case, this amendment exercise concerning the DVO can only improve the follow-up work based on some general principles and it cannot suppress the occurrence of domestic violence effectively. Despite the establishment of a referral mechanism between the SWD and the police, a number of surveys conducted in the wake of the tragedies have shown that even though the victims had lodged reports to the police, their cases were not followed

up by social workers, thus making this so-called mechanism virtually useless. Besides, the serious shortage of manpower of front-line social workers and the lack of support for them are also causes of the continued occurrence of domestic violence tragedies. In this connection, to curb domestic violence effectively, the Government must inject more resources into community support services, with a view to preventing domestic violence.

According to the results of a survey published by the Family Crisis Support Centre of Caritas early this month, 40% of new arrivals have been subject to domestic violence, which is double the percentage of some 20% among Hong Kong people. Financial problem is another major cause of conflicts in marriage, second only to communication problems in the couple.

So, let me remind the Secretary that although domestic violence is a problem that stretches all classes in society, low-income households remain to be most vulnerable to domestic violence. To thoroughly eliminate domestic violence at root, the Government must cease to take an ostrich approach of implementing only stop-gap measures. It should expeditiously forge a consensus in the community, formulate effective strategies on poverty alleviation to provide the grassroots with adequate social and financial protection and implement the relevant support measures, including measures to fight inflation, enact legislation on minimum wage, enhance child care services, and so on, with a view to easing the pressure of living on the grassroots. I call on Members in support of the amendment of the DVO and to lend their support to these policies which aim at providing support to low-income workers. Otherwise, even if a new legislation on domestic violence is enacted, it would only build a higher dam in law but cannot fundamentally reduce or even eliminate the threats of that dam from being shattered by the flood of domestic violence.

With these remarks, Deputy President, I support the amendments of the Bill.

MS MARGARET NG (in Cantonese): Deputy President, I certainly support the passage of the Domestic Violence (Amendment) Bill 2007 (the Bill) today.

Many Members have sung high praises for the Government today, but what I am going to say may perhaps be pouring cold water over their compliments. However, it does not mean that I do not appreciate the efforts made by the Government and its sincerity to improve the existing ordinance.

Deputy President, let us not forget what we are doing now. We are just making some amendments to the Domestic Violence Ordinance (DVO). The DVO was enacted a few decades ago. What does it cover? It only provides assistance in respect of civil actions for families in which violence has occurred. In other words, when violence occurs in a family and in order to prevent the continued occurrence of violence, the persons involved may make use of a summary procedure to apply for an injunction order from a District Court, and that is all. That is all that the DVO can do. So, even if we endorse this Bill today, it does not mean that we can stop domestic violence completely, for efforts must be made in other areas.

Therefore, Deputy President, while the proposals in the Bill tabled for our passage today are all positive, I nonetheless think that if we have to spend so much time on such a simple issue but achieving so little result, should the efficiency of the Government be called into question?

In fact, Deputy President, with regard to the DVO, the Family Law Committee of the Law Society of Hong Kong (the Law Society) compiled a "Report on Domestic Violence Ordinance" a few years ago, pointing out the inadequacies of the DVO and putting forward some very positive and concrete recommendations. Indeed, had the Government been receptive to the recommendations of the Law Society's Family Law Committee, it should have introduced these amendments much earlier. To put it simply, what are the recommendations of the Law Society?

The amendments proposed by the Law Society included: Firstly, policy-wise, it proposed the adoption of a "zero tolerance" policy and this is something we all understand. Secondly, domestic violence should be clearly defined, for instance, the meaning of "domestic", "violence" or the scope of "molest" and so on should be defined. This is the first point.

The second point, which is the most vital, is who should be protected? The existing DVO is very narrow in scope as it only covers spouses or cohabitants. So, the Law Society proposed to extend the coverage of domestic relationships to really include all domestic relationships. It is because the entire ordinance focuses on the prevention angle and that is, it involves all the people living together — this is all the more clearly reflected by the word "domestic" — when the use of violence involves people living together in a domestic environment who often have a close relationship with each other, a series of problems will result and it is very difficult for the victims to protect themselves.

Moreover, whether it is the husband abusing the wife or vice versa, or even for former spouses or cohabitants who do not have a marriage relationship, they must also be protected because they are living together in the same place. In this connection, the focus should be this: It should be extended to cover people living in the same domestic environment with a close relationship, especially people who are related by blood, including children and adults, and these people should be protected. When we consider the issue from this angle, we will understand why we have to extend the coverage of domestic relationships under the existing DVO and how it should be extended.

First of all, obviously it must be extended to cover "former spouses", and also cohabitants or former cohabitants. In this connection, the Law Society considers that same sex couples must be included. Why? Firstly, in other jurisdictions, especially England and Wales (the United Kingdom), Canada, and so on, same sex cohabitants and former same sex cohabitants are also protected. The Government has now created a debate for no reason by arguing that if protection is given to same sex cohabitants, does it mean recognizing such a relationship as being lawful, or even giving recognition to same sex marriage?

Let us not forget that this proposal is only about people who need to be protected in a domestic environment. This has nothing to do with the Marriage Ordinance. We are not asking the authorities to amend the Marriage Ordinance in Hong Kong, and we are only saying that people living in the same domestic environment should be given such protection. Does it mean that same sex cohabitants or former same sex cohabitants should be excluded from protection because they do not have a marriage certificate or a formal marriage?

If this ordinance is enacted with the objective of preventing or reducing the occurrence of violence in a domestic environment, the ordinance should therefore cover as many as possible family members who may become victims to violence and face difficulties, unless there is any special reason not to do so. Therefore, if these people are not included, I would consider this a problem in any case. I think this is obviously reasonable and beyond dispute and yet, this has been discussed for such a long time and what is more, this amendment is eventually said to be falling outside the scope of the Bill for technical reasons and so, it could not be incorporated in this exercise and same sex cohabitants would, therefore, have to wait longer. But Deputy President, they may not need to wait for a long time because this particular exclusion of same sex cohabitants may have already fallen into the scope of sex discrimination, which means that

the public can apply for judicial review. Honestly speaking, I really do hope to see same sex cohabitants seeking judicial review, so that the coverage of the ordinance can be extended early in a clear, rational way.

In respect of children, I must say that I am relatively happy with the amendments. The Bill originally provided that children be defined as children related by blood and this, I think, is very much unnecessary. Why should the scope be narrowed for children? In fact, for children living in the same household, if there is not a blood relationship, that is, they are really the children of the adults there, then they are either adopted or step children. Deputy President, why does it have to be like this? Deputy President, you may have more direct experience than I do. It is often the case that a child who lives in a family may be adopted; there may really be this relationship, but it may not be easy to prove such a relationship. So, since they already live in the same place, why must we prove that they have this relationship?

The Government is going to propose Committee stage amendments to extend the coverage of the ordinance and I think this is correct. In this connection, Deputy President, I agree to the original proposal of the Law Society that a wide definition be adopted as a matter of principle by defining that extended family members living in the same household should be protected. It means that apart from spouses, cohabitants and children (including natural and adoptive child), the ordinance should also cover parents, father and mother, father and mother-in-law, brother and sister and their spouses, step brother and sister and their spouses, adult son and daughter, and also relatives by blood, marriage or adoption. This is very simple.

However, Deputy President, with regard to clause 3A of the Bill, we think that the public should really look at it with admiration. There is a long list set out from subclauses (a) to (o). Members can just listen to this: It includes father, mother, step-father, step-mother, spouse, mother-in-law, father-in-law, adoptive parent, step-parent, grandson, granddaughter, step-grandson, step-granddaughter, granddaughter-in-law, grandson-in-law, and there is even the specification of "full blood or half blood or by virtue of adoption", and there are step-parent, step children, niece, nephew or cousin; all these are written on one full page. I wonder if the abuser should take a look and check item by item to ascertain whether any of these relationships is involved before molesting the victim, and if not, even if the abuser has abused the victim, the victim still cannot apply for an injunction order.

Deputy President, when domestic violence occurs, it is imperative for the victims to be provided with protection by the Court expeditiously and directly, and if the process will have to be so technical, I would consider it very inappropriate. When it is necessary to specify certain relationships in law, there is of course a need to adopt this approach. But when it comes to people who should be protected from domestic violence, such a technical approach is indeed unwarranted. It was precisely because the authorities have made things so technical that a statutory relationship was at first proposed to be used as a basis for giving protection to a minor. This is indeed inappropriate. Fortunately, the authorities have rectified this point.

Moreover, the Law Society has also mentioned the injunction order and supported renaming the injunction order as "Restraining and Protection Order". Nomenclature is actually not so important. The most important thing is whether the validity period of the protection order can be extended, and the essence is to provide protection in a more practical manner. The authorities have now extended the validity period while allowing the Court to attach a power of arrest flexibly. This is a good amendment and on this point, the authorities have made it. However, it is inadequate to rely solely on this ordinance.

The ordinance should be able to provide protection to the victims and enable them to apply for an injunction order expeditiously. Despite the practicality of the injunction order, it is still inadequate, for there must be other support measures. Why was the DVO so well-received when it was first introduced? Because it was simple. If these amendments are passed — it is true that the coverage of the ordinance will be extended, but the victims, when applying for an order, must also apply for legal aid, employ a lawyer and must wait for a very long time before an approval is granted. The injunction order is therefore virtually useless. So, the support measures should aim at streamlining the formalities, and it is best that the application form is designed to be user-friendly, so that even if they do not have a lawyer, social workers can provide them with assistance in the more general cases, and this is the best and most practical approach.

Finally, Deputy President, I have to say a few words about the Family Court, for this is of particular concern to the Law Society's Family Law Committee. It says here that governments of many jurisdictions should adopt an integrated approach and set up a specialized Family Court. Why? In fact, many Members have mentioned this earlier, but most importantly — many

people said that criminal and civil routes should be dealt with separately — but as Members can see, especially in England and Wales and also Canada, criminal domestic violence cases cannot be considered as general criminal cases, because for general criminal cases, a person who commits an offence can be arrested and in serious cases, the person being arrested can be sentenced to imprisonment. Very often …… We certainly understand that as many women's organizations have reflected to us, these family cases cannot be categorized simply as family quarrels, and even if assault or bodily harm is involved, these cases should not be handled as criminal cases. We do not agree to this view, as we consider that such cases should be handled as criminal cases.

However, even if they are dealt with as criminal cases, Members must understand that arresting the abuser and hence plunging the whole family into difficulties right away does not mean finding a solution to the problem. So, the first thing is how the problem should be solved, and if we do not adopt an integrated approach, it would be very difficult to solve the problem. Hence, a two-pronged approach may be required.

Second, whether it be adopting the civil or criminal route, the victim still has to give evidence. If the case has to be heard in many Courts, the victim has to give evidence time after time and this will not only do harm to the physical and psychological well-being of the victim, but also prolong the problem. Therefore, the Law Society considers that these cases should be heard by a specialized Court for domestic violence cases. Furthermore, judges are often influenced by their own experience, expertise and so, judges who are accustomed to handling criminal cases may focus only on whether the evidence given is beyond any reasonable doubt, while judges specialized in civil cases may take a more comprehensive perspective. So, this specialized domestic court is not just gliding the lily. The setting up of a Family Court is necessary and essential. So, I hope that the authorities will work on this as soon as possible.

Thank you, Deputy President.

MR ALBERT HO (in Cantonese): At present, the Government takes a comprehensive approach and policy for tackling the social problem of domestic violence. This Bill concerning domestic violence makes up the policy package but I agree with the comment made by an Honourable colleague a while ago that the reforms brought by this Bill …… Since the Tin Shui Wai incident in 2004,

the Government has taken almost three years to prepare this Bill but the reform proposed is so mild and we may even say that only some limited progress has been made within the existing framework.

Even so, the Democratic Party supports this Bill because it has made improvements after all. But we must say that the Government should have considered more macroscopic reforms in the course of discussions. This Council discussed time and again such macroscopic reforms in the past. For instance, Ms Margaret NG has just said that there should be a special Family Court concurrently exercising civil and criminal powers. On this point, we must consider whether criminal aspects exist in domestic violence cases so that, in the course of a legal reform, they would be considered as constituting criminal offences. Experts, academics and the Law Society have suggested considering making the relevant considerations.

According to the Government, there are a host of existing laws specifying wounding as an offence. But as we all know, the term "domestic violence" does not only cover wounding someone and not only violence and inflicting bodily harm, but in some cases also include psychological abuse. These issues are rather complicated and they demand careful and prudent considerations. This is precisely why it is more appropriate for a special Court with civil jurisdiction and civil remedies to deal with the criminalization of domestic violence under certain circumstances. This would be better than having two different Courts handling such cases. We must have such concepts before working towards a more comprehensive and solid reform. This is the first point.

A number of Members remarked a few years ago that the Government should consider setting up an alimony authority for a party to a divorce or separation, especially the spouse taking care of the children, to claim or get alimony from another party. I think the Secretary is aware of the fact that the system has been adopted in a lot of countries. At a debate in this Council some years ago, Members put forward some comparative studies and the Democratic Party worked out a report on the study on an alimony authority. We found upon comparison that Britain, the United States, Australia, Canada and New Zealand had done very well, and experts were of the view that setting up an alimony authority helped members of unfortunate and broken families avoid being subjected to and facing unnecessary sufferings. They no longer had to fight over alimony which would lead to conflicts and even violence. These are factors for consideration.

Another point I would like to make is that the Law Reform Commission submitted a few reports in 1998, but 10 years have passed since then and the Government has not conducted any study yet. These reports cover the reforms of the rights to guardianship and custody, the liability in connection with abducted children, and the conciliation of disputes over domestic proceedings. The scope of conciliation has now become wider and more comprehensive than the pilot scheme of the Family Court. More than 10 years have passed and a lot of concepts have changed. I recall that many women's groups opposed the conciliation of domestic violence years ago. That was why these matters might not be raised 10 years ago. However, there are new ways of looking at things nowadays, and as far as I know, there is room for conciliation even though there is a zero tolerance policy for domestic violence. The conflicts and contradictions between both parties will be identified in the hope of making suitable conciliation to minimize the recurrence of violence though it is not to be tolerated.

I am sorry to say that the Government has not done anything in this connection. When we asked questions, both written and oral ones, a few years ago and met some officials, the Government only told us that it was considering the matter. It has not made any response so far. Some Judges of the Family Court also told us that a suitable legal reform would be helpful in dealing with domestic proceedings and reducing domestic violence.

The passage of the Bill today is only the first step and there is still a lot for us to do. I am not saying that the Government has done nothing these few years. I took part in the inquest into the Tin Shui Wai incident in 2005, and I recall that, in the course of the inquest that lasted more than 10 days, enthusiastic volunteers, NGOs and people well versed in the relevant issues teamed up and co-operated in ascertaining the cause of death. We asked the witnesses a lot of questions and conducted comparative studies. I was totally shocked after questioning so many witnesses to find that we were really outdated, and a lot of social workers had so little legal knowledge. For example, they did not know that verbal intimidation is a criminal offence. They did not think that wounding a person with a chopper constituted a criminal offence. They thought that the parties concerned did not commit an offence for they only threatened to wound other people with choppers in order to frighten them, and there was no evidence that they had really done so. Their legal knowledge was utterly insufficient.

It was also very astonishing that even police officers had outdated concepts. They were of the view that conciliation would be best for a couple having a fight to avoid sending the bread winner of the family to jail. I found it very strange that they considered conciliation as most important. We and Dr Fernando CHEUNG were utterly surprised to find that categorization lists were not available. We knew that social workers, especially police officers in foreign countries had clear classification lists for classifying cases and there were a lot of indicators for reference.

Deputy President, these are things of the past and I admit after this incident that I should praise the Administration's efforts in asking the University of Hong Kong to conduct a study and produce a list. It also provided platforms for the exchange of information and gave social workers more legal support. However, the Administration failed to do something else. The jury made many suggestions at that time, which included the suggestion of carrying pagers which was so detailed. It was because some victims of serious cases failed to find their social workers by making phone calls at critical moments because the social workers had not given them their pager numbers. Even though they had gone back to their refuges …… social workers were keyed up when they provided outreach services; they knew the victims were in danger and promised to call the victims. But when the victims requested the social workers to call them at the refuges, the social workers turned down their requests because they could not give them the telephone numbers of the refuges. When the victims called the hotline in the event of an incident, they would only find that it was always occupied. I can tell Members that I never got through to the hotline in the past two years and the hotline was always occupied. What is the use of that hotline?

I asked at that time whether social workers, especially those in charge of serious cases, could carry pagers. Even if social workers did not tell the victims their pager numbers, could they tell them the 24-hour hotline number and assure them that they could get through to the hotline? If so, the victims calling could find the social workers tackling the relevant problems at once and the social workers could instantly intervene, making it unnecessary for the victims to go over their stories once again. The situation was critical and the victims were in immediate danger. If the victims were again asked to tell their stories …… for instance, social workers could dissuade people from committing suicide or acts of violence; and they had to look for people that the victims knew well and effectively intervene by persuading and so on.

I worked together with Dr Fernando CHEUNG at that time but I got him into trouble. We were blamed by a lot of social workers, especially those working in government departments, for asking them to carry pagers. When the social workers had a debate with us, I asked if they knew lots of doctors and lawyers carry pagers. Barristers may not need to carry pagers but I am sure a lot of solicitors carry pagers. I told these social workers that doctors, irrespective of how excellent they were, will certainly carry pagers and there was no big deal. Nevertheless, the social workers regarded the request as inhuman and doubted if they could have some private time after they had worked so hard.

Deputy President, lots of problems need to be tackled in an all-round manner. I know a lot of improvements have been made by the Government so far. I must admit that the Subcommittee on Strategy and Measures to Tackle Family Violence has met many people from the Government and the police have a Domestic Violence Team. Nonetheless, the legal framework still has shortcomings. I have touched upon some main points a while ago and I agree very much that the issues raised by Dr Fernando CHEUNG and Ms Margaret NG have to be handled in an all-round manner.

Of course, a key improvement is the scope of applying for an injunction order is expanded and which may help more people. More importantly, abusers of domestic violence would be required in the course of civil proceedings to attend a mandatory counselling programme. At present, if the Judge at a criminal Court makes a probation order, a person convicted of an offence will only have to comply with the requirements of a probation order and receive counselling when demanded by the probation officer, but it would be too late and the person has yet to be convicted. Based upon other considerations, the police have not instituted prosecution in lots of cases. These improvements are desirable.

In addition, there have been improvements in such aspects as extending the maximum period of an injunction order. We do not understand why there has been a great deal of arguments in respect of same sex cohabitants. I wonder if the Secretary knows that we took a lot of time arguing about this point at the very beginning and that is hardly comprehensible. A large number of laws including this one seek to protect heterosexual cohabitants from violence. The objective is not to ensure protection for them in property, since the law is not related to property rights. As Honourable colleagues are aware, it is the marriage system that really affects the allocation of property among family members but this legislation is not related to marriage, and there is no concept of family property

under our legal system. There is no law to specify that even though two persons have not got married, as they are members of a family, the property of a family member shall be shared by all members of the family. I do not understand why some Honourable colleagues worry so much; they say that the Government seems to give a green light to reforming the marriage system, which is actually not the case.

It is even more shocking that, as the officers of the Department of Justice may know, the Court of Final Appeal has …… ruled against sexual orientation discrimination. There are relevant precedents but the Government has still made such a provision that fails to protect same sex cohabitants. Finally, the Government has agreed to make changes and enact another legislation to rectify this further. It is a bit late but we cannot do anything if the Government is reluctant to make amendments. The Government says it is restricted by the long title. Anyway, time is pressing and we cannot force the Government to make amendments. To be frank, if the Court is challenged as Ms Margaret NG has just said, I am not sure if it will consider whether the long title is restrictive and if it has the power of scrutiny over the matter. As it turns out, an amendment cannot be declared null and void by the Court because of the restrictive long title. I am sorry but the Court would not adopt such an approach. The legislation violates the Bill of Rights Ordinance. Something must be done and I hope there will not be any further delay.

In addition, a lot of things such as the manning ratio of social workers still need more attention. Dr Fernando CHEUNG has said again and again that the problem is beyond remedy. It is impossible for a social worker handling 50 to 60 cases to work even harder, to prepare the lists and collect data. Let us consider the example in foreign countries, as Dr Fernando CHEUNG has pointed out, a social worker there handles around 30 cases. Our social workers' workload almost doubles theirs. In my opinion, the Administration has to put in suitable and reasonable resources to facilitate the performance of duties by social workers. Training in conciliation is surely important and it is my hope the Government would really further enhance conciliation work in the future, especially for handling domestic disputes involving acts of violence.

I support the Second Reading of the Bill.

MR LEE CHEUK-YAN (in Cantonese): I support this Bill. Women's bodies have long been waiting with eager expectancy. This ordinance was made 20

years ago but no amendments have been made throughout the years. The Administration just conducted an inquest after the Tin Shui Wai incident in 2004 which shocked and traumatized the community. It is very sad that all changes in Hong Kong would only be made after crises or tragedies have taken place. Fortunately, the Administration has finally proposed amendments to this ordinance.

When I discussed this Bill for the first time, I brought up the issue of same sex cohabitants and requested the Government to consider the inclusion of these persons. All persons are equal before the law according to the Basic Law, and the Hong Kong Bill of Rights Ordinance specifies equality and prohibits discrimination. It is explicitly stated in a judgment of the Court of Final Appeal that same sex relationships and sexual orientation of homosexuals are regarded as other status; the Hong Kong Bill of Rights Ordinance guarantees to all persons the protection against discrimination on any ground such as other status. Thus, there is no reason why same sex cohabitants should be excluded.

I am pleased that the Secretary has undertaken to include as soon as possible same sex cohabitants in the Bill to be introduced to the Legislative Council after the commencement of the next term. I anticipate that the Administration would do so in October.

I have received emails asking if this would encourage same sex cohabitation. I do not agree to comments by these groups and I urge the Secretary to keep making efforts. One would have gone to extremes to regard protecting persons in same sex cohabitation from violence as equivalent to giving legal recognition to same sex relationships. It is impossible and unreasonable for violence to be tolerated by some groups, especially those with a religious background.

The Government must keep making efforts and we would certainly support its expanding the scope of the law to cover same sex cohabitants for it would be fairer. We always emphasize zero tolerance of domestic violence, and we think that no violence should be tolerated in families, irrespective of the types of families. I hope that when the Secretary speaks later on, he would undertake more explicitly to expeditiously enact this legislation in the coming year.

Deputy President, I particularly want to touch upon resources. At a recent meeting of the Subcommittee on Strategy and Measures to Tackle Family

Violence (the Subcommittee), we asked the Government how much it would spend on the mandatory counselling programme and we were informed that $1 million would be spent. I expect the Secretary to clarify later on the way in which the figure is computed. The government representative told us that as $10,000 would be needed for each case, $1 million would be needed for 100 cases. In other words, after the relevant amendments have been made, the Administration anticipates that the Court would have to single out 100 offenders to attend mandatory counselling programme.

First, is the estimation a bit too conservative? We read from the newspapers or hear from our neighbours that domestic violence incidents take place every day. Would $1 million be enough? Why does the Government not go further to undertake, for instance, to spend $10,000 on each case, regardless of the number of cases designated by the Court. If it does not, even if the Court orders mandatory counselling, there would be a serious problem of funding shortage. I wish the Secretary would elucidate this point or make undertakings in this connection. An anti-violence programme needs sufficient funding to deal with all cases in order that all abusers would receive suitable counselling. It is my hope that the Secretary would make more explicit undertakings later on.

Deputy President, to thoroughly solve the domestic violence problem, there are many things to be done apart from legislating. This is not a part of the Secretary's portfolio but I would like to point out that we have touched upon the problem of places of residence during the meetings of the Subcommittee and in the course of the scrutiny of the Bill. Many abused women are perplexed by the problem of places of residence. They may not be able to stay for a long time in the Harmony House and they will be forced to go back to their former homes if resources are lacking or are not allocated public housing flats. How can they face their abusers in their former homes? How can these women and their children stand it? Arranging for them places of residence is hence very important.

Another problem is that, the Housing Department very often requires a male abuser to move out of the flat after the couple concerned divorced. It is all right if he can move out but what if he cannot? They have to move into interim housing units under the existing policy, but those already living in interim housing would certainly be reluctant to move out and they cannot be driven out. As a result, abused women or the whole families are forced to face the abusers

after all, and they are actually in great danger. In this connection, the failure of the Housing Department and the Harmony House in arranging for them places of residence is actually a source of risk of violence. Women will have to live in fear if the problem is not solved. I wish the Secretary would particularly sort out the problem of places of residence with the Housing Bureau in the future.

Lastly, I would like to remind the police that, although they have said time and again that they have done a lot such as enhancing training and issuing guidelines, we still hear a lot of comments at the scenes of domestic violence about the police's not thoroughly dealing with domestic violence cases and not attaching paramount importance to the protection of women. The police tend to make concessions to avoid trouble, and they leave the scene after warning the male abuser. We can still hear that the Government handles such cases this way. Despite conducting training and issuing guidelines, the police have so far failed to do a good job. My expectation is that the Administration would monitor this area closely and the senior management of the police would make greater efforts to solve the problem.

Deputy President, these are my remarks in support of this Bill. Thank you.

DR KWOK KA-KI (in Cantonese): Deputy President, I speak in support of the Second Reading of the Domestic Violence (Amendment) Bill 2007 (the Bill). First of all, I would like to extend my thanks to all members of the Bills Committee, especially its Chairman Dr Fernando CHEUNG.

The enactment of the Bill would bring improvements to tens of thousands of families in Hong Kong perturbed by domestic violence. But if we have listened to the remarks of many Honourable colleagues, especially those who are members of the Bills Committee, we will find that, even though the Bill is passed, it may not fully assist families perturbed by violence or shut domestic violence out entirely.

I am going to make several points. First, according to many voluntary organizations concerned about this ordinance, especially the Alliance for the Reform of Domestic Violence Ordinance, the Domestic Violence Ordinance (DVO) is still implemented through civil laws. This is exactly its biggest shortcoming or weakness. We all know that the effects and protection of

criminal laws are very often greater than those of civil laws, with greater deterring effects on family members using violence, and they may also subject these persons to legal sanction. The DVO as a civil law lacks this most important element.

During the discussions of the Bills Committee, Members and deputations have expressed their hope that the Government would include such an element in the new amendments or the sections of the existing criminal laws related to domestic violence. However, it is a great pity that the amended ordinance would still be a civil law, prosecution will only be instituted when domestic violence incidents are as serious as such criminal offences as common assault and battery. When this kind of ordinances is discussed, we frequently point out that family members are badly hurt in the incidents. We can actually avoid such incidents as quickly as possible, and we may cite better ordinances to restrain by means of legal proceedings family members who may violate the law or be sanctioned. Yet, precisely because of the absence of this element in the new legislation, people would only pay attention to domestic violence incidents when they have become very serious, for instance, when there is bleeding and there are news reports on the incidents. That is the worst case scenario.

Lots of family members, especially the abused, are very often disadvantaged in the family. Many of them are not financially independent and do not own properties, and they have to tolerate domestic violence silently. Since there is little room for enforcing criminal laws against these incidents, as Mr LEE Cheuk-yan has just said, we can only restrain the persons concerned when domestic violence incidents are as serious as such criminal offences as common assault and battery, and when the persons assaulted are sent to hospitals. We have cited the example of many regions in the course of scrutinizing the Bill. For example, domestic violence is a criminal offence under the criminal law of the People's Republic of China; although it is not expressly specified in Britain that domestic violence is a criminal offence, as cases involving domestic violence are handled with reference to the provisions on criminal offences, domestic violence is subject to regulation by the provisions of criminal laws within the British jurisdiction. This enables the police to deal with domestic violence incidents as soon as possible and the victims can be protected by court orders. I really hope …… but, Deputy President, it is too late and the Second Reading debate on the Bill is going to resume very soon. Nonetheless, the Secretary still has plenty of time and I believe he can do so if he means to and has a chance to do so.

Second, in connection with a special Court to deal with domestic violence, the Government's response is that it will continue to conduct a study. As Honourable colleagues are aware, we very often need to rely on judicial officers with specific duty or experience to deal with domestic violence incidents. They have to protect the victims affected by domestic violence in accordance with the provisions of the ordinance on different situations and applications. In other words, a special Court is needed to offer them assistance. Important problems in Hong Kong though not very serious have to be handled by the Courts; for example, there is a Tenancy Tribunal for handling tenancy matters, and a Labour Tribunal for handling labour matters. Owing to the fact that we have a host of different needs, we need a special judicial mechanism to help the persons concerned. With respect to the domestic violence problem which is a cause of public concern, the Government fails to include that point within the scope of the Bill when making amendments, and it has also failed to improve the situation through legislative amendments, which is a little disappointing for me.

Another point I would like to make is about the mandatory counselling programme for abusers. Dr Edward CHAN from the Department of Social Work and Social Administration of the University of Hong Kong has conducted a survey. It is found that a large number of regions such as the United States, Canada, Britain, Australia, New Zealand and Singapore have mandatory counselling programmes for domestic violence abusers. A court judgment will order all offenders suspected to be domestic violence abusers to attend mandatory counselling programme. Refusal to attend such programmes will bring criminal consequences including being fined or imprisoned. This is important and I trust that, in respect of domestic violence incidents or other incidents involving acts of violence, we wish to have the cases handled at the very beginning when they are least serious and when we are most able to help. None of us would like to see the recurrence of incidents like the Tin Shui Wai tragedy. Nevertheless, if social workers or the police foresee that certain circumstances may give rise to domestic violence, and consider that the abusers may really need counselling, but the abusers refuse to receive counselling, there is nothing we can do under the existing law. We can only tolerate their behaviours and let them go back home, which is not helpful to them at all.

The function of the law should be twofold. On one hand, it should punish offenders; on the other hand, it should demonstrate that it can help the persons concerned such as making it mandatory for them to accept help when it is offered. We should also make it mandatory to educate a person who has

violated the Public Health Ordinance. Let me cite another example. In the event of a person guilty of a driving offence, it is most important for the Transport Department to help him make improvements through mandatory driving courses. Regarding domestic violence, we actually do not want families to be broken and we believe domestic violence incidents would not take place if the persons concerned can help themselves. They need outside help but not every one of them would take the initiative to undergo counselling. Hence, a better legal framework such as the provision of mandatory counselling can really help these families recognize that domestic violence can be prevented and family relationships can be improved. Now that there are many examples of success in foreign countries, I am sure the Government should not put this kind of counselling out of consideration if we have a chance today. It is a great pity that it has so far put this kind of counselling out of consideration and I am not sure when this essential counselling programme will be offered.

Third, I would like to talk about protection order. People showing concern about domestic violence and academics think that a protection order or property order should be made to give greater legal protection to domestic violence victims. If a family is affected by acts of violence but the victims are isolated and cut off from help, they will certainly want the laws to protect their personal safety and the safety of their families, as well as to ensure that they have a place of residence. What can we do in this regard? We cannot do anything. Even if the Social Welfare Department can provide temporary shelter, it cannot solve the problem. Do the victims have to live there permanently? That is out of the question and not the Government's intent. Now nothing can be done, the Government has refused to replace an injunction with a protection order or a property order, failing to better protect domestic violence victims by law.

Lastly, I wish to talk about molestation. Many acts of domestic violence are marginal cases; some are not as serious as legally defined acts of violence, and many are actually molestation. The Law Reform Commission has conducted a study on molestation and it has even considered protecting victims or preventing molestation through the implementation of the relevant law in the future. Unfortunately, the community has obviously not yet arrived at a consensus about making laws on molestation. But if we include molestation within the scope of domestic violence rather than within the framework of freedom of expression and freedom of the press, we may think differently. Domestic violence comprising molestation would be easily comprehensible and obvious. Concerning law enforcement, I trust that the extent to which such acts

are excluded is definitely lower than its inclusion within the framework of freedom of the press, and it can also render stronger assistance.

Throughout the scrutiny process of the Bill, the Government has not dwelled on the issue of molestation and it has referred the issue to Law Reform Commission or the Judiciary for further study. The problem will never be solved this way. Deputy President, stalking behaviour is an extremely serious problem and it is hard for the community to arrive at a consensus at this stage about handling molestation under a large legal framework. Molestation is easily comprehensible in respect of the DVO which has gone through the law-making process and has been implemented. We often receive from the public feedbacks and cases involving such acts. A lot of domestic tragedies may initially involve molestation and many families are under great pressure or have lots of problems because of the persistent molestation of one of the family members. Yet, the existing ordinance with a fairly narrow scope gives inadequate protection and is enforced through civil proceedings, limiting to a large extent the future implementation of the DVO and the help victims will get. The victims will not be securely and confidently protected.

That being said, I think the amendments to the Bill are not all-embracing. Certainly, I support the expeditious passage of the Bill but I still think that the Bill as tabled today is obviously defective and there are instances of incompleteness and inadequacies. If the Government and Honourable colleagues unanimously agree that there is room for further improvement and optimization, I hope the Government can proceed to second-round legislating right after the passage of the amendments, so as to further improve this defective ordinance.

With these remarks, I support the Second Reading of the Amendment Bill. Thank you, Deputy President.

DR YEUNG SUM (in Cantonese): Deputy President, I support the resumption of Second Reading debate on the Bill and that this Bill be read the Third time and do pass. Basically, the Democratic Party supports all the amendments.

Deputy President, as you may be aware, there is little spark in this debate mainly because the Government has taken on board the views of the Bills Committee in many areas, so our work has been rather smooth though it has taken quite a long time.

First, the Government has accepted the proposed expansion of the definition of domestic violence. Besides marital relations, cohabitation and same sex family relationships are included under the Bill. In the course of our deliberations, the Government has emphasized again and again that it has reservations about same sex marriage policy-wise. All of us know that there are controversies over this kind of relationship in our society. However, our emphasis is on domestic violence, and when one of the parties of same sex cohabitants is abused, he/she should be given legal protection; otherwise, this will fully expose the inadequacies of the Domestic Violence Ordinance (DVO) and be extremely unfair to same sex cohabitants. I wish that people who oppose same sex marriages will understand that it is unfair and unjust for some domestic violence victims to be deprived of protection because of same sex relationship. The Government agrees to introduce a bill as soon as possible in the next legislative session. I hope it will honour its undertaking. Maybe the Secretary can publicly undertake to do so when he speaks for the Government later.

Deputy President, the Government has also expanded the definition of "abuse". Traditionally, abuse mostly involves bodily harm but the Government tends to accept abuse as involving also psychological harm, negligence and molestation, which is pretty good.

With respect to counselling, depending on the circumstances of the cases, the law empowers the Judge to single out abusers of domestic violence to attend mandatory counselling programme. Apart from punishment, counselling is also very important. There are two faces to a coin and most abusers being punished would also need counselling. It would be nice if counselling can make their attitudes and even their marriages better.

(THE PRESIDENT resumed the Chair)

Firstly, it is my hope the Government will put in more resources in future not just for training social workers or police officers, but also to establish refuges such as the Harmony House; expand integrated family services; and tie in with mandatory counselling that may be ordered by the Court. I wish that more resources would be allocated by the Government because merely having policy concepts is not enough.

Mr LEE Cheuk-yan has just touched upon complementary public housing policy. Madam President, I wish to emphasize its importance. As we all know, the victims are mostly females, sometimes males. In the past, some male victims approached my office requesting for setting up a concern group focused on their abuse. Yet, figures in general show that the majority of victims are female. It is really painful for them and their children to continue living with the abusers in the ensuing periods probably because they are completing the formalities for a divorce. I really wish that the Secretary and the Transport and Housing Bureau would make concerted efforts and offer prompt assistance, allowing the victims to transfer to other flats or housing estates. This is very important but such measures have not been taken under the existing government policies. I hope that the Secretary would pay special attention to this.

Secondly, I hope the Government would enhance civic education. The Chinese society is male dominated but this traditional concept demands a radical change. Influenced by this traditional concept, or because men are regarded as bread-winners of the family, females will not report to the police even if they are abused by males. A lot of police officers have told me that the abused females usually denied being abused when they arrived at the scene because they did not want their husbands to be prosecuted or imprisoned, which might cause the loss the source of income for the family. Females pressurized by this traditional concept are also very often pressurized by the reality. My earnest hope is that the Government would step up civic education and give due emphasis on gender equality.

As far as civic education is concerned, I wish to stress that we Chinese traditionally emphasize corporal punishment and believe that children would be taught to follow the right path by giving them corporal punishment. Nevertheless, excessive corporal punishment often makes children think that violent punishment can change people's personality and solve problems. Madam President, we have read about a large number of studies at the university which show that many children who have witnessed their parents resort to violence in solving problems would consider violence as a solution when they grow up because that is how their parents settle disputes. Also, many children who have witnessed violent behaviours or have been violently treated would treat their children or partners in the same way when they become parents. Thus, the Administration should step up public education, put emphasis on gender equality and the point that solving problems by the use of violence is wrong because violence will only breed more violence. I earnestly hope that the Government can deploy more resources and step up efforts in this regard.

Thirdly, I certainly hope that the Government would enhance training of police officers, social workers, nurses and doctors. I have highlighted the members of these organizations because they would mostly likely handle such cases. If school social workers, nurses and doctors at hospitals and the front-line police officers can ascertain at the earliest opportunity whether domestic violence has occurred and make referrals, they should be able to alleviate the severity of domestic violence.

As for the Court concerned, we all know that domestic violence cases have been increasing in recent years and there is a very long waiting time for setting down of hearing, and there are high expenses on defence counsels. If there is a special Court for the trial of domestic violence cases, it is going to bring substantial improvements in terms of time and expenses. Conciliation may also be carried out after the offenders have been convicted. Under certain circumstances, suitable conciliation will help improve family or marital relations, so we can do away with criminal proceedings or the meting out of punishment. The Government does not readily accept this proposal but if an opportunity arises in future, I wish the Government would re-examine the situation, establish a specialized Court for domestic violence and carry out more conciliation rather than merely imposing punishment.

Madam President, I trust that the community wants the smooth and early passage of this Bill. Members have made great efforts in scrutinizing this Bill and it is my wish that the Secretary would not just see Members' efforts but also listen to public opinions. Although the Government has taken on board certain views, I hope the Secretary would bear in mind the points to be improved. What is more, the Government has undertaken to make amendments in respect of same sex relationship; it is hoped that it would honour its undertaking.

With these remarks, I support the motion.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Labour and Welfare to reply.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, first of all, I am very grateful to Dr Fernando CHEUNG, Chairman of the Bills Committee, and members of the Bills Committee for the efforts they have made in scrutinizing the Domestic Violence (Amendment) Bill 2007 (the Bill), and for the valuable views put forward by the Bills Committee and various sectors of the community on the Bill.

I am particularly grateful to Dr Fernando CHEUNG, Miss CHAN Yuen-han and Dr YEUNG Sum who spoke a short while ago for their positive evaluation and compliments on our efforts and this is most heartening. Certainly, I would like to stress that we will continue to work hard and put in more resources to strengthen the provision of direct support and related services to domestic violence victims and put in place the relevant measures proposed in the Bill.

The Domestic Violence Ordinance (DVO) provides civil remedies to victims of domestic violence, allowing a party to a marriage or a de facto spouse relationship to apply for an injunction to be granted by the Court to prohibit another party from molesting the applicant or a child living with the applicant. The Ordinance has been implemented for more than 20 years since 1986.

The major objective of the Bill is to expand the scope of the DVO and enhance protection for victims of domestic violence. The proposed amendments can be grouped into four major areas.

First, to expand the coverage of the DVO from the molestation of persons in spousal/cohabitation relationships and a child living with these persons, to the molestation of persons formerly in spousal/cohabitation relationships; parent, child, sibling; and other extended familial relationships, irrespective of whether or not they are living with the abusers.

The Bill greatly enhances protection for minors under the age of 18. A minor may through his/her "next friend" apply for an injunction order; to protect him/her from being molested by his/her parent or his/her specified relatives. The Court may vary or suspend an existing custody or access order in respect of the child concerned in making an exclusion order.

Besides, the Bill aims at enhancing protection for the victims. The Court may attach a power of arrest to an injunction if it reasonably believes that the

abuser will likely cause bodily harm to the applicant or the minor concerned for the better prevention of domestic violence. The Court may also extend the duration of an injunction order and the related power of arrest for as many times as necessary, and the maximum period is extended from six months to 24 months.

Lastly, to better prevent domestic violence, upon passage of the Bill, the Court may, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme as approved by the Director of Social Welfare seeking to change his/her violent attitude and behaviour.

Madam President, the proposed amendments will substantially enhance protection for domestic violence victims and our proposals are widely supported by the Bills Committee. In the course of scrutiny, members and deputations present have put forward valuable and substantive views. I will later propose some amendments to the Bill to perfect it further.

If the Bill and the amendments are passed by the Legislative Council, the new provisions will take effect on 1 August 2008, and there will then be enhanced legal protection for domestic violence victims.

Concerning same sex cohabitants, the Bill expands the scope of the DVO to cover former cohabitants excluding same sex cohabitants for the three reasons below:

(a) In Hong Kong, a marriage contracted under the Marriage Ordinance is, in law, the voluntary union for life of one man and one woman to the exclusion of all others. The laws of Hong Kong reflect the Administration's policy position that it does not recognize same sex marriage, civil partnership, or any same sex relationship. Recognizing same sex relationship is an issue concerning ethics and morality of the society. Any change to this policy stance would have substantial implications on the society and should not be introduced unless consensus or a majority view is reached by the society;

(b) In accordance with the relevant laws, irrespective of the relationships between the abusers and the victims, all acts of

violence are sanctioned. The current criminal legislative framework gives equal protection to all persons; and

(c) Persons not covered by the DVO may continue to seek protection under the law of tort or within the jurisdiction of the Court.

Throughout the deliberation process of the Bills Committee, members consider that expanding the protection under the DVO to cover persons in same sex cohabitation merely seeks to protect such persons from being molested by their partners, which should not be regarded as equivalent to giving legal recognition to same sex relationships or providing legal entitlements to persons in such relationships. In light of members' views, the Government holds after careful examination that, in respect of this policy area, domestic violence can spiral into personal injuries or even fatality in a short space of time. In view of the immediacy and urgency, we agree to expand the scope of the Bill to cover same sex cohabitants. Nevertheless, the Administration emphasizes that the proposed extension of the scope of the DVO to cover such cohabitation is only introduced in regard to the distinct and unique context of domestic violence. It remains an explicit government policy not to recognize same sex relationships.

As "unmarried heterosexual couple relationship" is specified in the long title of the Bill, the Department of Justice maintains that the proposed amendments to expand the scope of the Bill to cover same sex cohabitants will be inconsistent with the long title of the Bill and fall outside the scope of the Bill. The Administration cannot make amendments to the Bill to expand its scope to cover same sex cohabitants. In addition, as the legislative session is coming to an end, and drafting the proposed amendment to the DVO takes time, we suggest adopting a two-stage approach. In other words, the debate on the Bill will be resumed in this legislative session to ensure the early implementation of the provisions of the Bill to enhance protection for domestic violence victims and that the new proposals will not cause any delay. The Administration will introduce amendments to the DVO to include cohabitation between persons of the same sex at the earliest possible time in the next legislative session. We have already explained this practical two-stage approach to the Bills Committee and we have the understanding and support of its members, to whom I would like to express my heartfelt gratitude. I solemnly undertake that the Administration would introduce amendments as soon as possible following the commencement of the next legislative session.

Madam President, with these remarks, I implore Members to support the Bill and the amendments I am going to move later on.

Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Domestic Violence (Amendment) Bill 2007.

Council went into Committee.

Committee Stage

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

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

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

CLERK (in Cantonese): Clauses 1, 3, 6, 9, 11 to 16 and 18.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 7, 8, 10 and 17.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I move the amendments to the clauses read out just now. The amendments are set out in the paper circularized to Members.

There are three main types of amendments. First, the amendments related to the scope of protection under the DVO. Under the existing DVO, a child living with the applicant, irrespective of whether he/she is a child of the applicant, is protected under the law. We propose amending clause 4(5) to maintain protection for a minor living with the applicant, to protect him/her from being molested by the spouse/cohabitant of the applicant. Also, we propose expanding the scope of protection to cover a minor molested by the applicant's former spouse or cohabitant.

The second type of amendments seeks to amend certain provisions to better reflect our legislative intent and put these provisions beyond doubt. These include amending clauses 4(2), 5 and 7 to explicitly specify that, in relation to an "exclusion order", the respondent would be restrained from "entering and remaining" in the specified area. We also propose amending clause 7(1) to reinstate that the Court may attach an authorization of arrest to a "non-molestation order" or "exclusion order" granted under the inherent jurisdiction of the Court upon application by a party to a marriage against the other party to a marriage. Furthermore, we propose amending clause 8(3) to clarify that the Court should have regard to the permanence of the cohabitation relationship in granting an injunction, and to whether the persons are in an existing or a former cohabitation relationship.

The last type of amendments are technical amendments which include updating the provisions related to computing time and the public officer who is in charge of the Bill, as well as some textual amendments made for the sake of the consistency of the English and Chinese texts.

Madam President, the amendments above have the unanimous support of the Bills Committee. With these remarks, I implore Members to support and pass the above amendments. Thank you.

Proposed amendments

Clause 2 (see Annex III)

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 7 (see Annex III)

Clause 8 (see Annex III)

Clause 10 (see Annex III)

Clause 17 (see Annex III)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Labour and Welfare be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 7, 8, 10 and 17 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, the

Domestic Violence (Amendment) Bill 2007

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Domestic Violence (Amendment) Bill 2007.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Buildings (Amendment) Bill 2007.

BUILDINGS (AMENDMENT) BILL 2007

Resumption of debate on Second Reading which was moved on 5 December 2007

PRESIDENT (in Cantonese): Mr KWONG Chi-kin, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MR KWONG CHI-KIN (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Buildings (Amendment) Bill 2007 (the Bills Committee), I shall now brief the Council on the deliberations of the Bills Committee.

The Buildings (Amendment) Bill 2007 (the Bill) mainly seeks to introduce a streamlined minor works control system which will classify minor works into three categories according to their scale, complexity and safety needs. Under the Bill, penalties for offences relating to minor works are set out and a validation scheme will also be introduced for three specific types of unauthorized building works (UBWs) which have been completed before the commencement of the minor works control system.

The Bills Committee supports the policy intent of the Bill as the introduction of a minor works control system will streamline the existing buildings control regime in respect of minor works, facilitate the general public

to carry out minor works in a more convenient and economical manner as well as enable more efficient use of Government resources.

Regarding the scope of minor works, the Bills Committee shares the view of the Hong Kong Institute of Surveyors that works which require the issuance of occupation permits should not be classified as minor works. Following further consultation with the relevant professional institutions, the authorities eventually agreed that minor works should not comprise works which require the issuance of occupation permits. The authorities will move Committee Stage Amendments (CSAs) to delete relevant clauses of the Bill to this effect.

The Bill proposes the establishment of a registration system for qualified registered minor works contractors (RMWCs). Individual workers who are competent in carrying out Class III minor works can be registered as Class III RMWCs. The Bills Committee has raised concern that individual practitioners applying for registration will have difficulties in providing documentary proof of their experience, as in the case of the registration of Chinese medicine practitioners and construction workers. The authorities have advised that flexibility will be exercised in verifying the applicants' experience. For instance, the applicant can certify certain part of their experience by way of statutory declaration. The Bills Committee welcomes the arrangement.

The Bills Committee holds the view that as there will be 114 items of minor works under the proposed system, consideration should be given to streamlining the registration system of RMWCs to facilitate their operation. The Bills Committee has also suggested that RMWCs should be required to clearly display their registration numbers and relevant details in the publicity materials. The authorities have advised that to reduce inconvenience to multi-task RMWCs, consideration will be given to issuing smart cards to facilitate identification of their eligibility to carry out minor works. The authorities have agreed to consider the suggestion of the Bills Committee and to map out detailed requirements in the regulations to be made upon consultation with the industry. For this purpose, a CSA will be moved to amend the relevant section to refine the provisions on the regulation-making power under the Buildings Ordinance (the Ordinance).

The Bills Committee has examined the feasibility of rationalizing the proposed minor works registration system together with the construction workers registration system under the Construction Workers Registration Ordinance

(CWRO) to facilitate compliance by practitioners. The authorities have explained that most Class III minor works practitioners are involved in multiple trades designated under the CWRO, and the skill level required in each trade to fulfill their job assignment is normally less comprehensive and demanding than that required for registration as skilled workers under the CWRO. As such, the authorities will consider acceding to the practitioners' request that a separate category of trades be established under the CWRO for minor works. The Bills Committee notes that Phase I Prohibition of the CWRO which commenced on 1 September 2007 prohibits workers from carrying out construction works on construction sites unless they are registered workers under the CWRO. As such, Members have urged the authorities to strive to ensure the compatibility of the minor works control system and the CWRO. The authorities have advised that in implementing the remaining phase of prohibition of the CWRO, skilled workers are required to register according to their specific areas of expertise. The authorities will make reference to the classification of works items under the minor works control system in consultation with the trade before the implementation of this phase, with a view to facilitating practitioners' registration under the two registration systems. At the request of the Bills Committee, the authorities have advised that consideration will be given to streamlining the registration procedures of RMWCs and those under the CWRO.

Under the Bill, a validation scheme will be introduced to rationalize the existence of three types of UBWs, namely works relating to supporting frames for air conditioners, drying racks and small canopies, completed before the commencement of the minor works control system. Building owners will have to appoint building professionals or registered contractors to certify on inspection that such works meet the safety requirements. The Bills Committee has raised concern on the legal implications of the validation scheme on existing UBWs which are minor in nature. The Bills Committee notes that the existing three types of works mentioned above which are not authorized under the current Ordinance will still be regarded as UBWs even if they have been validated under the proposed validation scheme. In this connection, the Bills Committee has requested the authorities to seek the views of the Law Society of Hong Kong (LSHK) and the Hong Kong Bar Association (HKBA) on the proposed scheme. Both the LSHK and the HKBA have not raised any objection to the scheme.

The Bills Committee has examined the procedures to notify the Building Authority (BA) upon completion of minor works carried out by RMWCs. The Bills Committee considers that a simple form should be devised for RMWCs to

notify BA upon completion of minor works. The authorities agree that a specified form will be used, the design of which will be as simple as possible to facilitate RMWCs in completing the forms. The authorities have advised that the information provided by contractors in the certificates, including plans or photos of the completed works, will be scanned and made available for public inspection in the Building Information Centre of the Buildings Department (BD). The relevant information will be uploaded onto the Internet and maintained by the BD on a regular and permanent basis. To this end, the authorities have indicated that CSAs will be moved to empower the BA to make available building plans and documents in an electronic form via the Internet for public inspection.

The Bill proposes that if a person intends to carry out minor works under the simplified requirements, he should appoint registered professionals and registered contractors to carry out the relevant works. In respect of the legal responsibility of the person for whom minor works are to be carried out, Members note that any person who knowingly contravenes the relevant requirements shall be guilty of an offence and shall be liable on conviction to a fine and imprisonment for six months. As the relevant proposed new sections do not specify the building owner as the person for whom minor works are to be commenced or carried out, the Bills Committee considers that the possible criminal liabilities of parties involved in the carrying out of minor works should be more clearly defined. In particular, Members are of the view that it is not uncommon in practice for building owners to order for the carrying out of such minor works through an agent. In this connection, Members consider that further safeguards should be provided for building owners ordering the minor works. Having considered Members' concern, the authorities have indicated that the relevant proposed sections will be revised and new sections will be proposed to the effect that the person who has arranged for the carrying out of minor works will commit an offence if he has knowingly failed to appoint registered building professionals or registered contractors. If the building owner has appointed another person to arrange for the carrying out of minor works, such appointed person will be regarded as the person who arranged for the carrying out of minor works and the building owner will not be held responsible for the carrying our of such works.

Besides, the Bills Committee considers that the authorities should delete the proposed term of imprisonment imposed on the person for whom minor

works are to be carried out, taking into account the simple nature of minor works and the insignificant offence. Having considered Members' view, the authorities agree to delete the term of imprisonment under the relevant provisions.

Regarding publicity, the Bills Committee considers that publicity materials should be provided to the public and practitioners to enhance their understanding of the implementation details of the control system, in particular measures to enhance building owners' understanding of the division of duties among the professional streams of the building industry and channels to help aggrieved building owners. The authorities undertake to conduct extensive publicity and public education campaigns and produce user-friendly pamphlets with illustration of diagrams and charts and tailor-made technical guidelines after the passage of the Bill to facilitate the understanding of various trades in the industry and the relevant building owners and owners' corporations on the implementation details of the control system.

The Bills Committee supports the CSAs proposed by the authorities to address the concerns raised by the Bills Committee and various organizations and to improve the drafting of the provisions.

Madam President, I so submit.

MR CHEUNG HOK-MING (in Cantonese): Madam President, under the existing Ordinance, building owners who wish to carry out minor works have to comply with a very stringent set of criteria. As in the case of the erection of supporting frames for air conditioners and the erection of drying racks on external walls, prior approval of the building plans and consent for the commencement of the works have to be obtained from the Building Authority (BA), and authorized persons have to be appointed to supervise the works. I consider such regulation very stringent and the procedures very complicated for the general public.

Such stringent requirements will only result in the public's non-compliance. For members of the general public who are unfamiliar with the relevant legislation, it may have never appeared to them that they have to comply with this set of complicated procedures even for the installation of daily household facilities in order to avoid attracting liability and running into trouble.

When the society is so accustomed to what is wrong that it has taken it to be right, most people have not paid any attention at all to this piece of legislation when carrying out minor works, all of which are carried out without any supervision as a result. The original purpose of the existing legislation to ensure safety is therefore defeated. It is thus necessary for the authorities to introduce a simplified control mechanism.

Regarding the implementation of the Bill, there are two major considerations, namely the impact on contractors and on building owners. The Bill proposes to classify minor works into three classes. Building professionals and registered contractors have to notify the BA before commencing Class I and Class II minor works, while prior notification is not required for the commencement of Class III minor works. Within a period of time after the completion of the relevant works, the Buildings Department (BD) will decide whether or not to carry out an audit check based on the documents and plans submitted by the contractor or the appointed person. If no audit check is required, an acknowledgement of receipt will be issued. If an audit check is required and the relevant minor works are found to be satisfactory, an acknowledgement letter will be issued by the BD. This arrangement will provide the industry with the procedure and mechanism for the authorities' confirmation of acceptance of completed minor works.

The Bill also proposes to establish a registration system in which applicants for registration may be corporate or individuals. As individual applicants for registration will have difficulties in providing documentary proof of their experience, flexibility will be exercised and applicants can certify certain part of their experience by way of statutory declaration. Besides, a two-year provisional registration arrangement will be put in place for applicants operating as firms. As for individual applicants, provisional registration is not required because they can obtain the registration after attending a one-day top-up course.

Under the proposed new system, a database on completed minor works will be set up. Information provided by registered minor works contractors (RMWCs) in the completion certificates, including plans or brief description and photos of the completed works, will be scanned and placed in the BD's Building Information Centre for public inspection, and will be uploaded onto the Internet in the future. This measure confirms that the relevant minor works have been done in accordance with the Ordinance and provides evidence that the works have been done to the contractor's satisfaction, thereby enabling such

information to be formally recorded, maintained and facilitate public inspection in the future.

As it is not uncommon in practice for building owners or tenants to order for the carrying out of minor works through a property management company or an air-conditioning retailer providing installation service, the authorities have revised the relevant clauses in the Bill to specify that the appointed person, that is, the property management company or the retailer providing installation service of the air-conditioners, will be subject to the criminal liability for non-compliance of the new requirement. This amendment has clarified the responsibilities among building owners, tenants and the appointed agents, and has provided further safeguards to building owners and tenants.

Madam President, the new system will streamline the existing buildings control regime in respect of minor works and allow the general public to carry out minor works in a more convenient and economical manner. Besides, under the new arrangement, further safeguards will be available to property owners, and the public will also be able to access the information on minor works in the database to be set up by the BD in the future and gain an understanding of the actual situation expeditiously. Besides, the system can also enhance the responsibility of the ordering for the carrying out of minor works, and is more effective than the current Ordinance in achieving the objective of providing safety protection. Madam President, with these remarks, I support the relevant amendment.

MS MIRIAM LAU (in Cantonese): Madam President, under the existing legislation, all private construction works are subject to the regulation of the buildings control regime. That is to say, even if property owners have to carry out some trivial construction works, such as the erection of supporting frames for air-conditioners or drying racks, they have to apply to the Government, and upon approval, order for such works to be carried out by authorized building professionals. This process is not only complicated but is also very time- and money-consuming. This can be said to have caused great nuisance to the public. Even the Government has admitted that for minor works with lower risk, the requirements under the current regime are too stringent and impractical. Many members of the public are not aware of the statutory procedures in carrying out such construction works, and even if they are aware of these procedures, they are reluctant to follow them. Thus, a lot of unauthorized

building works have emerged, and in turn many safety problems are caused and a certain threat to the lives and properties of the public is posed.

The Amendment Bill introduced by the authorities has put the carrying out of minor works under control and streamlined and rationalized the entire regime by introducing a simple and effective mechanism according to the nature and risk of the works to facilitate compliance by the public, thereby enhancing the effectiveness of the control regime, preventing the increase of unauthorized building works and reducing accidents caused by illegal works. The Liberal Party supports such a move.

During the discussion of the Bills Committee, one of Members' major concerns is the penalties for offences relating to minor works, especially the legal responsibility of people who appoint a third person to carry out minor works. The original clauses in the Bill introduced by the authorities have not clearly spelt out the possible criminal liability for people involved in carrying out minor works. For example, when building owners or tenants order for the carrying out of building maintenance works through property management companies, or when members of the general public order for the installation of an air-conditioner through air-conditioning retailers, these works will be regarded as commenced or carried out for them. In the original clauses, they are required to appoint qualified building professionals or registered contractors to carry out the works. However, they will not carry out such an appointment in practice because they have already ordered for the carrying out of such an appointment through the management company or the air-conditioner retailer.

I believe Members will agree that it is not uncommon for building owners or tenants to carry out some minor works, such as the erection of drying racks, supporting frames for air-conditioners and so on. If the relevant requirements are not clearly stipulated in the law, a lot of building owners or tenants or even members of the general public will easily be caught unaware by the law, or may even attract imprisonment because the original Bill seeks to impose the penalty of imprisonment for such offences. Just imagine, how can an ordinary housewife envisage herself being put into jail as a result of purchasing an air-conditioner or erecting a drying rack? Therefore, the Liberal Party considers that this legal responsibility has to be clearly spelt out in the legislation.

I am very grateful to the Government for heeding sound advice and agreeing to amend the relevant clauses to specify that if a certain person has appointed another person to arrange for the commencement or the carrying out

of a minor work, the person who makes the appointment will not be deemed as the person who has arranged for the commencement or the carrying out of the minor work. Therefore, even if the person he/she has appointed has, for whatever reason, commissioned an unqualified person to carry out such work, he/she is not subject to the criminal liability under this legislation. At the same time, the authorities have also withdrawn the proposed penalty of imprisonment. The Liberal Party considers that the amendments proposed by the authorities will provide greater protection for the general public, and may thus be more acceptable to them. Therefore, the Liberal Party supports the passage of this Bill and the amendments proposed by the authorities.

Madam President, with these remarks, I support the resumption of Second Reading of the Bill.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, first of all, I would like to extend my sincere gratitude to the Chairman of the Bills Committee, Mr KWONG Chi-kin, and other Members of the Bills Committee for their valuable opinions on the Buildings (Amendment) Bill 2007 (the Bill). During the deliberation of the Bill, the Bills Committee has also invited various relevant stakeholder groups to give their views. We have taken on board the views of the Bills Committee and the industry and have made relevant amendments to refine the contents of the Bill. I will give a thorough account of the relevant details when I propose the Committee Stage Amendments (CSAs) later.

The Bill seeks to introduce a simplified minor works control system to facilitate the general public to carry out minor works by way of more convenient statutory procedures, thereby enhancing the safety of buildings in Hong Kong.

Under the existing buildings control regime, all construction works, with the exception of exempted works, are under the control of the same stringent regime under the Buildings Ordinance (BO), irrespective of their nature, scale, complexity and safety risk. For minor construction works which are relatively simple and of a small scale, this control regime is too stringent and complicated, which has caused a lot of such works to be carried out without proper approval. Therefore, we think that there is a need to streamline the approval procedure of minor works in order to meet the needs of the society. I am very glad that the Bills Committee and the relevant stakeholder groups agree with the above-mentioned policy objectives.

The Bill introduces into the BO the new category of "minor works" which will be classified into three classes according to their nature, scale, complexity and safety risk. The major characteristic of the new system is that no prior approval of plans and consent by the Building Authority (BA) are required for carrying out minor works; the three classes of minor works will be subject to different degrees of control, and building owners can commission works staff with different qualifications according to the complexity of the works, thereby achieving savings in the costs and time required for the works as well as enhancing the flexibility.

One of the key concerns of the Bills Committee during the scrutiny of the Bill — a few Members have also mentioned this just now — is the liability of the building owner in commissioning qualified persons to carry out minor works. Most Members consider that, apart from our original proposal, the relevant liability of the persons who arrange for the carrying out of the minor works should be further clarified so as to provide further safeguards to building owners to avoid their being caught unaware by the law. We have taken the Bills Committee's view on board and will move the relevant CSA.

The Bills Committee is also concerned about the registration of minor works contractors. Under the new system, a register of registered minor works contractors will be set up. We will provide assistance to the relevant people, especially front-line workers who carry out Class III minor works, to enable them to acquire a thorough understanding of the arrangements under the new registration regime. We aim to allow existing minor works practitioners with adequate qualifications and experience to register as minor works contractors by way of a simple arrangement. We will provide them with simple short top-up

courses to upgrade their standards and ensure that they have an understanding of the new legislation.

The Bills Committee has discussed the interface between the minor works control system and the Construction Workers Registration Ordinance (CWRO). We are actively consulting members of the industry to consider how amendments should be made to Schedule 1 of the CWRO to facilitate minor works contractors who have already registered under the BO to register as skilled workers under the CWRO in the future. We will continue to maintain close contact with the industry in order to arrive at a consensus expeditiously.

To ensure that minor works carried out are in compliance with the statutory requirements and are of a certain quality and standard, the Buildings Department (BD) will conduct random audit inspections on minor works and take enforcement actions against unauthorized building works. Upon the completion of minor works carried out according to the simplified requirements, the relevant works staff has to submit documents to the BD for record purposes. Normally, the BD will issue an acknowledgement letter to the building owner within 14 days upon receipt of the relevant documents or completion of audit inspection to acknowledge the receipt of the records. Such records will be made available for public inspection to facilitate the public's confirmation of the situation of the relevant minor works in the building.

We have also noticed that under the existing regime, minor works are often carried out without the prior approval and consent of the BA, and are thus regarded as unauthorized building works. Common examples include the erection of supporting frames for air conditioners, drying racks and small canopies. We appreciate that these three types of installations are of practical household use. In order to allow building owners to retain these facilities for continued use, a "validation scheme" will be introduced under the new system. Subject to the inspection and certification by a building professional or a registered contractor and the conduct of strengthening works when necessary, no enforcement actions will be taken against these three types of unauthorized minor works unless their safety conditions have changed, and members of the public can retain these installations for continued use. No time limit will be imposed on participating in the "validation scheme" and in order to reduce the costs, members of the public can validate the illegal structures in the unit when large-scale maintenance of the building is carried out. The Bills Committee is satisfied with the relevant arrangements under the "validation scheme".

The Bills Committee has also pointed out that as the minor works control system is a new policy, the authorities have to enable building owners and the industry to acquire an adequate understanding of the details and requirements of the new system. In this connection, we will launch an extensive public education campaign to enhance the understanding of the new legislation by various sectors in the community in order to facilitate the compliance of the control system by members of the public. Tailor-made guidelines will also be produced for building owners, minor works practitioners, building managers and business operators to cater for their individual needs, with emphasis placed on how the new system operates. Besides publicity, members of the public can also seek our assistance when they encounter any problems or difficulties relating to minor works. The BD will also set up advisory services for building owners, contractors and workers in conjunction with the Hong Kong Housing Society to help them solve the specific difficulties they encounter in complying with the legislation.

Under the new proposal, the efficiency and flexibility of the control of minor works will be greatly improved. On the one hand, this system is able to simplify the approval procedures for minor works in a timely and appropriate manner, and on the other hand, it is able to enhance the standard of the contractors and the safety standard of the works, thus bringing benefits to all.

Upon the passage of the Amendment Bill on the primary legislation, we will continue the drafting work of the relevant subsidiary legislation to set out the specific detailed *modus operandi* of the minor works control system. The preliminary draft of the relevant regulation has been submitted earlier for reference by the Bills Committee. We will continue to listen to the views of the industry during the drafting process and introduce the relevant regulation to the Legislative Council for scrutiny as soon as possible. Subject to the progress of the scrutiny and preparation work, we hope that the new minor works control system can be implemented by the end of 2009.

I am very glad that the Bills Committee agrees with and supports the Bill, and I am very grateful to Members for their valuable opinions. I urge Members to support the CSAs to which I will move later.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Buildings (Amendment) Bill 2007.

Council went into Committee.

Committee Stage

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

BUILDINGS (AMENDMENT) BILL 2007

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

CLERK (in Cantonese): Clauses 1, 2, 4, 5, 8, 10, 11, 12, 14, 17, 19, 20, 23, 25, 29 to 41 and 43 to 47.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 6, 7, 9, 13, 15, 16, 18, 21, 22, 24, 26, 27, 28 and 42.

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam Chairman, I move the deletion of clause 18 and amendments to the other clauses read out just now, as set out in the paper circularized to Members. I now give a brief account of the major amendments.

As I have pointed out at the resumption of the Second Reading debate just now, in response to the suggestion made by the Bills Committee to clarify the responsibility of the building owners or tenants in the appointment of building professionals or contractors to carry out minor works, we propose to amend clauses 7 and 13 of the Buildings (Amendment) Bill 2007 (the Bill). The revised provisions will clearly specify that the person who arranges for the carrying out of minor works will commit an offence if he has knowingly failed to appoint a qualified building professional or contractor. Besides, if a person has appointed another person to arrange for the carrying out of minor works, only such an appointed person will have to bear the relevant responsibility. For example, when a property owner purchases an air conditioner from an electrical appliance company and the company undertakes to arrange for the installation of the air conditioner at the owner's apartment, the appointed party, that is, the electrical appliance company, will be regarded as the person who arranges for the carrying out of the minor works and the relevant owner will not have to bear

the responsibility under the relevant provisions. This amendment has addressed the Bills Committee's view that further safeguards should be provided for owners in general for carrying out minor works.

The above revised provisions have also clarified that the penalties of the relevant appointment procedure only apply to minor works which have actually commenced or carried out. In other words, if a person has merely appointed an unqualified building professional or contractor but the minor works have not actually commenced, that person has not contravened the relevant provisions.

Consequential to the above amendments to clauses 7 and 13 of the Bill, amendments will have to be made to clauses 3, 16 and 27 to preserve the consistency and integrity of the various provisions on the minor works control system in the Buildings Ordinance. The revision made to clause 27 of the Bill seeks to state clearly the prescribed penalties for the failure to appoint a qualified building professional or contractor to carry out minor works under the simplified requirements. We will also amend the existing section 40(1AA) of the Buildings Ordinance to remove the application of the penalty provision to construction works carried out under the existing system contained therein on minor works. Besides, at the request of the Bills Committee, the penalty of imprisonment for the commencement of minor works under the simplified requirements will be withdrawn.

The above proposed amendments seek to define in a clearer and more reasonable manner the criminal liability imposed on the general public, including building owners and tenants, as well as building professionals and contractors, for the failure to comply with the minor works control system.

During the scrutiny of the Bill, various professional institutions have also expressed detailed views on the Bill. Upon thorough examination of such views in collaboration with these institutions and consultation with the Bills Committee, we have proposed the following amendments.

To facilitate the industry's understanding of the requirements under the minor works control system and to spell out more clearly the purpose of the new system, we have taken on board the views of the professional institutions and renamed the definition "prescribed requirement" as "simplified requirements". To this end, consequential amendments will be made to clauses 3, 6, 9, 15, 16, 21, 22, 24, 26, 27 and 42.

We also agree with the viewpoint of the relevant professional institution that minor works should not comprise construction works which require the issuance of occupation permits, and we will thus delete clause 18 of the Bill. As for the definition of exempted works, the relevant professional institution has proposed to maintain the existing wording describing the loads of building works in the existing section 41(3) of the Buildings Ordinance. Therefore, amendment will be made to clause 28 of the Bill.

Some Members of the Bills Committee have also pointed out that minor works should not cover piling works. As such, we will delete the wording in relation to piling works in clause 27 of the Bill.

Besides, some Members have also suggested that minor works contractors should be required to show their registration numbers and relevant details in the publicity materials to facilitate building owners to confirm and identify the qualifications of contractors. We consider this suggestion feasible and will seek the industry's views in order to map out the relevant regulatory details in the regulation to be made in future. For this purpose, we propose to amend clause 24 of the Bill to empower the authorities to introduce provisions in the relevant regulation for the future implementation of the requirement in this respect.

Finally, other provisions of the amendments also comprise some textual and technical changes, such as replacing "an authorized person, a registered structural engineer or a registered geotechnical engineer" with the term "prescribed building professional" in clauses 3, 24 and 27, and other minor changes in order to enhance the clarity and accuracy of the provisions. There are also some consequential amendments to other ordinances in the light of the implementation of the new system.

Madam Chairman, the above amendments have been scrutinized and endorsed by the Bills Committee. I urge Members to support and pass the relevant amendments.

Thank you, Madam Chairman.

Proposed amendments

Clause 3 (see Annex IV)

Clause 6 (see Annex IV)

Clause 7 (see Annex IV)

Clause 9 (see Annex IV)

Clause 13 (see Annex IV)

Clause 15 (see Annex IV)

Clause 16 (see Annex IV)

Clause 18 (see Annex IV)

Clause 21 (see Annex IV)

Clause 22 (see Annex IV)

Clause 24 (see Annex IV)

Clause 26 (see Annex IV)

Clause 27 (see Annex IV)

Clause 28 (see Annex IV)

Clause 42 (see Annex IV)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 18, which deals with deletion, has been agreed, clause 18 is therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 3, 6, 7, 9, 13, 15, 16, 21, 22, 24, 26, 27, 28 and 42 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New clause 23A	Sections repealed
	New clause 23B	Sections added
	New clause 41A	Fees
	New heading before new clause 44A	Buildings Ordinance (Application to the New Territories) Ordinance
	New clause 44A	Effect of certificate of exemption.

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam Chairman, I move that the new clauses and new heading read out just now as set out in the paper circularized to Members be read the Second time.

Clauses 23A, 23B and 41A seek to empower the Building Authority to make available building plans and documents in an electronic form via the Internet for public inspection. This service will allow members of the public to access and copy building records, including those of minor works, through the Internet to facilitate the carrying out of and enquiries on minor works.

As for clause 44A, which is a technical amendment to complement the introduction of the minor works control system, seeks to exclude buildings built under the Buildings Ordinance (Application to the New Territories) Ordinance from the minor works control system.

Madam Chairman, the above new clauses have been discussed at the meetings of the Bills Committee and have received the support of the Bills Committee. I sincerely urge Members to support and pass the relevant new clauses. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and new heading read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 23A, 23B, 41A and 44A, and the new heading before new clause 44A.

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam Chairman, I move that the new clauses and new heading read out just now be added to the Bill.

Proposed additions

New clause 23A (see Annex IV)

New clause 23B (see Annex IV)

New clause 41A (see Annex IV)

New clause 44A (see Annex IV)

The new heading before new clause 44A (see Annex IV)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and the new heading read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

BUILDINGS (AMENDMENT) BILL 2007

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, the

Buildings (Amendment) Bill 2007

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Buildings (Amendment) Bill 2007.

PRESIDENT (in Cantonese): Honourable Members, I wish to inform you at this stage that as there are still two motions with no legislative effect on the Agenda, we are unable to finish all the business by midnight. As Honourable Members have already reserved the next morning for the continuation of Council meeting, I plan to suspend the meeting after dealing with all the motions with legislative effect and leave the remaining two Members' motions with no legislative effort for the meeting to be resumed tomorrow morning.

Secretary for Security, sorry, I was unable to inform you beforehand. *(Laughter)*

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' Motions. Three proposed resolutions under the Interpretation and General Clauses Ordinance in relation to extension of the period for amending subsidiary legislation. First motion: Extending the period for amending the Building (Planning) (Amendment) Regulation 2008.

I now call upon Ms Emily LAU to speak and move her motion.

PROPOSED RESOLUTIONS UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS EMILY LAU (in Cantonese): President, in my capacity as Chairman of the Subcommittee to study the Building (Planning) (Amendment) Regulation 2008 gazetted on 16 May 2008 (the Subcommittee), I move that the motion under my name be passed.

The Subcommittee has held five meetings. The Subcommittee has no objection to the Amendment Regulation. To allow Members more time to examine whether further clarification of the relevant Amendment Regulation is required, Members have agreed that I should move a motion to extend the scrutiny period of the Amendment Regulation to the Legislative Council Meeting on 9 July 2008.

With these remarks, I urge Members to support this motion.

Ms Emily LAU to move the following motion:

"RESOLVED that in relation to the Building (Planning) (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 124 of 2008 and laid on the table of the Legislative Council on 21 May 2008, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 9 July 2008."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Emily LAU 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.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Second motion: Extending the period for amending the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008.

At this stage, I should call upon Miss CHOY So-yuk to speak and move her motion. However, Miss CHOY So-yuk is not in the Chamber at the moment, I think this is also a good chance for me to announce the suspension of the meeting until 9 am tomorrow. *(Laughter)*

Suspended accordingly at five minutes past Nine o'clock.

Annex I

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) (NO. 2) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services and the Treasury

Clause	Amendment proposed
3(1)	In the proposed section 43B(1), in the English text – (a) by deleting ", and" and substituting "and,"; (b) by adding "to" before "a daily penalty".
3(1)	In the proposed section 43B(1B), by deleting "section 7A(7)" and substituting "section 7A(1), (2) or (7)".
3(1)	By deleting the proposed section 43B(1C)(*a*) and substituting – "(*a*) in the case where he has deducted any amount from the employee's relevant income for the contribution period concerned as the employee's contribution and the total amount of contribution paid in respect of the employee to the approved trustee for that contribution period is less than the amount so deducted, liable on conviction to a fine of $450,000 and to imprisonment for 4 years; and".
4	By adding immediately before subclause (1) – "(1A) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the definition of "arrears", by adding "7AE or" after

"section".".

4(1) By deleting "of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)".

5 In the proposed section 7AA, by deleting subsections (2) and (3) and substituting –

"(2) The employer must, in the case referred to in subsection (1)(*a*), for each contribution period ending on or after that commencement during which the employee is not such a member –

(*a*) from the employer's own funds, contribute to a registered scheme that is to be determined in accordance with section 7AC the amount determined in accordance with subsection (4); and

(*b*) subject to subsection (6), deduct from the employee's relevant income for that period as a contribution by the employee to that scheme the amount determined in accordance with subsection (4).

(3) The employer must, in the case referred to in subsection (1)(*b*), for each contribution period ending after the date the employee becomes a relevant employee during which the employee is not such a member –

(*a*) from the employer's own funds, contribute to a registered scheme that is to be determined in

accordance with section 7AC the amount determined in accordance with subsection (4); and

(*b*) subject to subsection (6), deduct from the employee's relevant income for that period as a contribution by the employee to that scheme the amount determined in accordance with subsection (4).".

5 In the proposed section 7AA(4), by deleting "subsection (3)(*a*) and (*b*), the amount to be paid by an employer" and substituting "subsections (2) and (3), the amount to be contributed by an employer, or to be deducted from an employee's relevant income,".

5 In the proposed section 7AA(5), by deleting "the purposes of subsection (3)(*a*) and (*b*)" and substituting "those purposes".

5 In the proposed section 7AA(6)(*a*) and (*b*), by deleting "subsection (3)(*b*)" and substituting "subsection (2)(*b*) or (3)(*b*)".

5 In the proposed section 7AA, by adding –

"(6A) An employer must ensure that contributions required to be made in accordance with this section in respect of an employee of the employer are paid to the Authority on or before the contribution day.".

5 In the proposed section 7AA(11), by adding "a Saturday," before "a public holiday" where it twice appears.

5 In the proposed section 7AB(2)(*h*), by deleting "section 7AA(3)(*a*)" and substituting "section 7AA(2)(*a*) or (3)(*a*)".

5 In the proposed section 7AB(2)(*i*), by deleting "section 7AA(3)(*b*)" and substituting "section 7AA(2)(*b*) or (3)(*b*)".

10 In the heading, by deleting "**mandatory contributions that are in arrears**" and substituting "**arrears and contribution surcharges**".

10(2) By deleting everything after "amended" and substituting "by adding "under subsection (1) or section 7AE" after "due for payment to the Authority".".

11 By deleting the proposed section 43B(1D).

11 In the proposed section 43B(1E), by deleting "section 7AA(6)" and substituting "section 7AA(2), (3) or (6)".

11 By adding after the proposed section 43B(1E) –

"(1F) An employer who, without reasonable excuse, fails to comply with section 7AA(6A) commits an offence and is –

(*a*) in the case where he has deducted any amount from the employee's relevant income for the contribution period concerned as the employee's

contribution and the total amount of contribution paid in respect of the employee to the Authority for that contribution period is less than the amount so deducted, liable on conviction to a fine of $450,000 and to imprisonment for 4 years; and

(*b*) in any other case, liable on conviction to a fine of $350,000 and to imprisonment for 3 years.".

12 In the proposed section 43BA(3), by deleting "(1D)" and substituting "(1F)".

12 In the proposed section 43BA(4), by deleting "(1D)" and substituting "(1F)".

12 In the proposed section 43BA, by adding –

"(4A) An employer who, without reasonable excuse, fails to comply with an order made under this section commits an offence and is liable on conviction to a fine of $350,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a daily penalty of $500 for each day on which the offence is continued.".

17(5) In the proposed section 78(6)(*c*)(i), in the English text, by deleting "members'" and substituting "member's".

New — By adding –

"**18A. Participating employer to calculate relevant income and pay mandatory contributions**

Section 122(4) is amended by adding "a Saturday," before "a public holiday" where it twice appears.".

20 — By deleting the clause and substituting –

"**20. Rate of contribution surcharge**

Section 134 is repealed.".

22 — In the heading, by adding "**or contribution surcharges**" after "**contributions**".

New — By adding immediately before clause 25 –

"**24A. Interpretation**

Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended –

(*a*) in the definition of "associate", by adding "a natural person referred to in paragraph (*d*) of the definition of "controller" or" after "in relation to";

(*b*) in the definition of "controller", in paragraph (*d*), by repealing ", a close relative, partner or" and substituting "an associate, a close relative or an".".

25(1) By deleting "of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)".

31 In the proposed section 42A(2) –

(a) by deleting the definition of "indirect controller";

(b) by adding –

""shadow director" (幕後董事), in relation to an approved trustee that is a company, means a person described in paragraph (*b*) of the definition of "controller" in section 2(1) of the Ordinance;".

31 In the proposed section 42C, in the heading, by deleting "**indirect controllers**" and substituting "**shadow directors**".

31 In the proposed section 42C(1) and (5), by deleting "an indirect controller" wherever it appears and substituting "a shadow director".

31 In the proposed section 42C(4) –

(a) by deleting "an indirect controller" and substituting "a shadow director";

(b) by deleting "or indirect controller" and substituting "or shadow director".

31 In the proposed section 42D(8)(*a*), by deleting "close relative, partner" and substituting "associate, close relative".

31 In the proposed section 42E(9) –

(a) by deleting “an indirect controller” and substituting “a shadow director”;

(b) by deleting “the indirect controller” and substituting “the shadow director”.

31 In the proposed section 42F(4)(*a*), by deleting “close relative, partner” and substituting “associate, close relative”.

32(*b*) In the proposed item 12E in Part II of Schedule 4, by deleting “indirect controller” and substituting “shadow director”.

32(*b*) In the proposed item 12F in Part II of Schedule 4, by deleting “Indirect controller” and substituting “Shadow director”.

32(*b*) In the proposed item 12M in Part II of Schedule 4, by deleting “Indirect controller” and substituting “Shadow director”.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Honourable CHAN Kam-lam, SBS, J.P.

Clause	Amendments proposed
New NEGATIVED	By adding—

"**12A. Liability of officers, managers and partners**

Section 44(1) is repealed and the following substituted—

"(1) Where an offence under this Ordinance is committed by a company and—

(a) unless there is evidence showing that the following person has not consented to or connived in the offence—

(i) any officer of the company; or

(ii) any other person concerned in the management of the company, or any person who was purporting to

NEGATIVED

act in that capacity,

is presumed to have consented to or connived in the offence; or

(b) the offence is proved to be attributable to the negligence on the part of any officer or other person described above,

the officer or person as well as the company commits the offence and is liable to be proceeded against and punished accordingly." .".

New NEGATIVED

By adding—

"**12B. Section added**

The following is added—

"**44A. Civil liabilities of company directors and shareholders**

(1) Where—

(a) any employer, which is a company, has been convicted more than once under section 43B;

(b) recovery of mandatory

NEGATIVED

contribution that is in arrears by the Authority against the employer is unsuccessful because it has insufficient assets; and

(c) the employer continues to carry on business and persists in failing to pay any contribution due,

a court of competent jurisdiction may, upon an application by the Authority and being satisfied that it is just and equitable to do so, make an order that the directors (including a shadow director) or shareholders of the employer or any one or more of them shall personally pay to the Authority within the time specified in such order the mandatory contribution that is in arrears together with any contribution surcharge payable under section 18(2) in respect of those arrears.

(2) For the purpose of this section, "shadow director" （影子董事）has the meaning assigned to the expression in section 2(1) of the Companies Ordinance (Cap. 32).".".

Annex II

TRADE DESCRIPTIONS (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Economic Development

Clause	Amendment Proposed
3(*a*)	By adding "false," before "misleading".
4(2)	(a) By deleting the proposed paragraph (*k*) and substituting – "(*k*) availability in a particular place of – (i) a service for the inspection, repair or maintenance of the goods; or (ii) spare parts for the goods;".
	(b) In the proposed paragraph (*l*), by deleting "facilities" and substituting "service or spare parts".
	(c) In the proposed paragraph (*m*), by deleting "facilities" and substituting "service or spare parts".
	(d) In the proposed paragraph (*n*), by deleting "facilities referred to in paragraph (*k*)" and

substituting "service referred to in paragraph (*k*)(i)".

(e) In the proposed paragraph (*o*), by deleting "facilities" and substituting "service or spare parts".

(f) In the proposed paragraph (*p*), by deleting "facilities" and substituting "service or spare parts".

7 (a) In the heading of the proposed Part IIA, by adding "FALSE," before "MISLEADING".

(b) In the proposed section 13A, by deleting the section heading and substituting –

"**13A. Price per unit of quantity on signs must be readily comprehensible**".

(c) By deleting the proposed section 13A(1)(*a*) and (*b*) and substituting –

"(*a*) indicates a price set by reference to any unit of quantity for any goods that are exposed for sale; but

(*b*) fails, within the meaning given by subsection (2)(*b*), to indicate the price per unit of quantity in a readily comprehensible manner,".

(d) In the proposed section 13A(2), by adding before paragraph (*a*) –

"(*aa*) "quantity" (數量) includes length, width, height, area, volume, capacity, weight and number;".

(e) In the proposed section 13A(2)(*b*), by deleting "weight unit for any goods fails to give clear information as to the actual price of the goods" and substituting "unit of quantity for any goods fails to indicate the price per unit of quantity in a readily comprehensible manner".

(f) In the proposed section 13A(2)(*b*)(i), by deleting "weight unit" and substituting "unit of quantity".

(g) By deleting the proposed section 13A(2)(*b*)(ii) and substituting –

"(ii) because of any discrepancy between the manner of presentation of any letter, word, numeral or character on the sign that indicates the price or the unit of quantity and that of any other letter, word, numeral or character on the sign that indicates the price or the unit of quantity in terms of –

(A) the size and distinctiveness of the letters, words, numerals or characters; or

(B) the colour of the letters, words, numerals or characters as contrasted with the colour of the background on which they are marked,

it is reasonably likely that a person not having a close look at the sign will be unable to get a clear idea of the accurate price per that unit of quantity; or".

(h) In the proposed section 13A(2)(*b*)(iii), by deleting "weight unit" and substituting "unit of quantity".

(i) In the proposed section 13A, by adding –

"(3) If a person –

(*a*) displays in the course of any trade or business a sign which –

(i) indicates the price of any goods set by reference to a unit of quantity; but

(ii) does not indicate that unit of quantity; and

(*b*) displays another sign which indicates that unit of quantity by reference to which the actual price of such goods is to be calculated,

subsections (1) and (2) shall have effect in relation to the person as if such signs were a single sign.".

(j) In the proposed section 13B(2)(*a*), by adding "(as determined in accordance with section 2 of Part 2 of Schedule 2)" after "principal function".

(k) In the proposed section 13B(3)(*d*), by deleting "; and" and substituting a semicolon.

(l) In the proposed section 13B(3)(*e*), by deleting the full stop and substituting "; and".

(m) In the proposed section 13B(3), by adding —

"(*f*) any other relevant considerations.".

(n) By deleting the proposed section 13C(2)(*a*) and substituting –

"(*a*) in connection with –

(i) the supply or possible supply of any goods in the course of any trade or business; or

(ii) the promotion of the supply of any goods in the course of any trade or business,

makes a representation to any other person ("information recipient") that the seller who supplies the goods is connected with or endorsed by any individual or body ("subject individual or body");".

(o) In the proposed section 13C(2)(*b*), in the Chinese text, by deleting "有關個人" where it twice appears and substituting "當事個人".

(p) In the proposed section 13C(3)(*a*)(i), in the Chinese text, by deleting "其他" and substituting "以其他身分對該賣方具有產權權益".

(q) In the proposed section 13C(4), by deleting "had reasonable cause to believe that the representation was true" and substituting "did not know and had no reason to believe that the representation was false".

(r) In the proposed section 13C, by adding —

"(5) It is a defence for a person charged under subsection (2) to prove that he believed, on reasonable grounds, that the information recipient did not mistake the

subject individual or body for the reputable individual or body.".

10 (a) In Part 1 of the proposed Schedule 2, in the Chinese text, in item 5, by deleting "數碼".

(b) In section 1 of Part 2 of the proposed Schedule 2, in the English text, in paragraph (*b*) of the definition of "digital audio player", by deleting "an".

(c) In section 1 of Part 2 of the proposed Schedule 2, in the English text, in paragraph (*c*) of the definition of "digital audio player", by deleting "a".

(d) In section 1 of Part 2 of the proposed Schedule 2, in paragraph (*a*) of the definition of "mobile phone", by adding "and" at the end.

(e) In section 1 of Part 2 of the proposed Schedule 2, in the definition of "portable multimedia player", by deleting "數碼".

(f) In section 1 of Part 2 of the proposed Schedule 2, in the English text, in paragraph (*b*) of the definition of "portable multimedia player", by deleting "an".

(g) In section 1 of Part 2 of the proposed Schedule 2, in the English text, in paragraph

(*c*) of the definition of "portable multimedia player", by deleting "a".

(h) In section 2(*b*) of Part 2 of the proposed Schedule 2, by deleting "and".

(i) In section 2(*c*) of Part 2 of the proposed Schedule 2, by deleting the full stop and substituting "; and".

(j) In section 2 of Part 2 of the proposed Schedule 2, by adding –

"(*d*) any other relevant information.".

Annex III

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Labour and Welfare

Clause	Amendment Proposed
2	By deleting "Secretary for Health, Welfare and Food" and substituting "Secretary for Labour and Welfare".
4(2)(g)	(a) In the English text, by deleting "excluding" and substituting "provision". (b) In the English text, by adding "prohibiting" before "the respondent –". (c) In the proposed section 3(1)(c)(i) and (ii), by deleting "from –" and substituting "from entering or remaining in –".
4(5)	In the proposed section 3(3), by deleting everything after "means a" and substituting – "minor – (a) who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned; or

(b) who is living with the applicant concerned.".

5 In the proposed section 3A(4)(b), by deleting "excluding the respondent from –" and substituting "prohibiting the respondent from entering or remaining in –".

7(1) (a) In the proposed section 5(1), by deleting everything before "the court" and substituting –

"(1) Where a court grants, pursuant to section 3 or 3A, or pursuant to any other power upon an application made by a party to a marriage against the other party to the marriage, an injunction containing –

(a) a provision restraining any person from using violence against another person ("protected person"); or

(b) a provision prohibiting any person from entering or remaining in any premises or area,".

(b) In the proposed section 5(1A), by deleting "an authorization of arrest under subsection (1)" and substituting "under subsection (1) an authorization of arrest to an injunction granted against a person".

(c) In the proposed section 5(1A)(a), by deleting

"respondent" and substituting "person".

(d) In the proposed section 5(1A)(b), by deleting "respondent will likely cause" and substituting "person will likely cause actual".

7 (a) By adding –

"(2A) Section 5(2) is amended by adding "or remaining in" after "entry into".".

(b) By adding -

"(5) Section 5(4) is amended by adding "warning day or black rainstorm" after "gale".".

8(3)(a) By adding "under section 3" after "made".

10 In the proposed section 7A(3)(b)(ii), in the Chinese text, by repealing everything after "包括" and substituting "在聆訊進行時備呈法院的社會福利署署長的任何報告。".

17 In the proposed Schedule, in the English text, by adding "actual" after "likely cause".

Annex IV

BUILDINGS (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Development

Clause	Amendment Proposed
3(1)(*a*)	In the proposed definition of "contraventions of the provisions of this Ordinance" – (a) in paragraph (*b*), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements"; (b) in paragraphs (*c*) and (*d*) – (i) by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements"; (ii) by deleting "the prescribed" and substituting "the simplified".
3(1)	By adding – "(*ba*) in the Chinese text, in the definition of "臨街處所擁有人", by repealing the full stop and substituting a semicolon;".
3(1)(*c*)	(a) By deleting the proposed definitions of "prescribed requirement minor works" and "prescribed requirements".

(b) By adding –

""electronic record" (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"prescribed building professional" (訂明建築專業人士) means an authorized person, a registered structural engineer or a registered geotechnical engineer;

"simplified requirements" (簡化規定) means any requirements prescribed in the regulations as simplified requirements for the purposes of this definition;

"specified document" (指明文件) means –

(*a*) a document made, issued or given, or a plan submitted to or approved by the Building Authority, under or for the purposes of this Ordinance or the Buildings Ordinance 1935 (18 of 1935); or

(*b*) any part of the document or plan;

"specified document record" (指明文件紀錄) means –

(*a*) a record of a specified document made under section 36C(*a*);

(*b*) an electronic record made under section 36C(*b*); or

(*c*) a copy of an electronic record made under section 36C(*c*);".

3(2) In the proposed section 2(1A), by deleting "prescribed requirement minor works" and substituting "minor works

commenced under the simplified requirements".

3(2) By adding after the proposed section 2(1A) –

"(1B) For the purposes of this Ordinance, minor works that are commenced or carried out without the approval and consent of the Building Authority under section 14(1) are to be regarded as minor works commenced under the simplified requirements if –

(*a*) a prescribed building professional or a prescribed registered contractor has been appointed in respect of the works; or

(*b*) the works are commenced or carried out by a prescribed registered contractor.".

6(2) In the proposed section 4(1A), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

7 (a) By deleting the proposed section 4A and substituting –

"**4A. Appointment of prescribed building professionals: minor works commenced or carried out without approval and consent**

(1) This section applies to minor works –

(*a*) that are commenced or carried out without the approval and consent of the Building Authority under section 14(1); and

(*b*) in respect of which one or more prescribed building professionals are required to be appointed by the regulations.

(2) If minor works to which this section applies have been commenced or carried out and the person who arranged for the works to be commenced or carried out has knowingly failed to appoint the prescribed building professional or the prescribed building professionals (as the case may be) required by the regulations to be appointed in respect of the minor works concerned, that person commits an offence.

(3) For the purposes of subsection (2), a person who has appointed another person to arrange for the commencement or carrying out of minor works is not to be regarded as a person who arranged for the commencement or carrying out of minor works.

(4) Subject to subsection (5), if a prescribed building professional appointed in respect of the minor works to which this section applies is unable to act, whether by reason of the termination of his appointment or for any other reason, or is unwilling to act, a person other than a prescribed building professional required by the regulations to be appointed in respect of the minor works concerned shall not be appointed in his place.

(5) Where a prescribed building professional appointed in respect of the minor works to which this section applies is temporarily unable to act by reason of his illness or absence from Hong Kong, that prescribed building professional may nominate another prescribed building professional required by the regulations to be

appointed in respect of the minor works concerned to act in his place for the period of such illness or absence.".

(b) By deleting the proposed section 4B and substituting –

"**4B. Duties of prescribed building professional appointed or nominated in respect of minor works commenced under simplified requirements**

(1) A prescribed building professional appointed or nominated in respect of minor works commenced under the simplified requirements shall, in relation to the works, comply with the simplified requirements.

(2) Without affecting the generality of subsection (1), the prescribed building professional shall also –

(*a*) supervise in accordance with the supervision plan the carrying out of minor works commenced under the simplified requirements;

(*b*) supervise in the manner prescribed in the simplified requirements the carrying out of minor works commenced under the simplified requirements;

(*c*) notify the Building Authority of any contravention of the regulations which would result from the carrying out of any works shown in the plan required to be submitted to the Building

Authority in respect of minor works commenced under the simplified requirements;

(*d*) ensure that –

(i) fire service installations or equipment in relation to minor works commenced under the simplified requirements are provided in accordance with the Code of Practice referred to in section 16(1)(*b*)(ii); and

(ii) the carrying out of minor works commenced under the simplified requirements does not result in the relevant minimum requirements under the Code not being complied with in respect of the fire service installations or equipment;

(*e*) ensure that the carrying out of minor works commenced under the simplified requirements would not contravene –

(i) any enactment; and

(ii) any approved or draft plan prepared under the Town

Planning Ordinance (Cap. 131);

(*f*) if minor works commenced under the simplified requirements are carried out within a comprehensive development area of an approved or draft plan prepared under the Town Planning Ordinance (Cap. 131), ensure that the carrying out of the works would not contravene the master lay-out plan approved by the Town Planning Board under section 4A(2) of that Ordinance; and

(*g*) comply generally with this Ordinance.".

9(1)(*b*) In the proposed section 7(1)(*ba*) and (*bb*), by deleting "prescribed requirement minor works" and substituting "minor works commenced or to be commenced under the simplified requirements".

9(2) By deleting paragraph (*b*) and substituting –

"(*b*) by adding –

"(*f*) has certified minor works commenced under the simplified requirements that have been carried out in contravention of this Ordinance;

(*g*) has supervised minor works commenced under the simplified requirements that

have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);

(*h*) has certified building works (other than minor works) as if it were minor works commenced under the simplified requirements;

(*i*) has supervised building works (other than minor works) as if it were minor works commenced under the simplified requirements; or

(*j*) has not carried out his duties under section 4B(2)(*d*), (*e*) or (*f*) in respect of minor works commenced under the simplified requirements.”.”.

9(3)(*a*) In section 7(2), by deleting “prescribed requirement minor works” and substituting “minor works commenced or to be commenced under the simplified requirements”.

9(3)(*c*) In the proposed section 7(2)(*bb*), by deleting “prescribed requirement minor works” and substituting “minor works commenced or to be commenced under the simplified requirements”.

13 By deleting the proposed section 9AA and substituting –

“**9AA. Appointment and duties of prescribed registered contractors: minor works**

(1) This section applies both to minor works that are commenced or carried out with the approval and consent of the Building Authority under section 14(1) and to minor works that are commenced or carried out without that approval and consent.

(2) If minor works to which this section applies have been commenced or carried out and the person who arranged for the works to be commenced or carried out has knowingly failed to appoint a prescribed registered contractor required by the regulations to be appointed in respect of the minor works concerned, that person commits an offence.

(3) For the purposes of subsection (2), a person who has appointed another person to arrange for the commencement or carrying out of minor works is not to be regarded as a person who arranged for the commencement or carrying out of minor works.

(4) A prescribed registered contractor appointed to carry out minor works commenced otherwise than under the simplified requirements shall –

(*a*) provide continuous supervision in relation to the carrying out of the minor works in accordance with his supervision plan;

(*b*) notify the Building Authority of any contravention of the regulations which would result from the carrying out of any works shown in the plan approved by the Building Authority for the minor works; and

(*c*) comply generally with this Ordinance.

(5) A prescribed registered contractor appointed to carry out minor works commenced under the simplified requirements shall, in relation to the works, comply with the simplified requirements.

(6) Without affecting the generality of subsection (5), the prescribed registered contractor appointed to carry out minor works commenced under the simplified requirements shall also –

(*a*) provide continuous supervision in relation to the carrying out of the minor works commenced under the simplified requirements;

(*b*) notify the Building Authority of any contravention of the regulations which would result from the carrying out of any works shown in the plan required to be submitted to the Building Authority in respect of the minor works commenced under the simplified requirements; and

(*c*) comply generally with this Ordinance.".

15(1)(*d*) In the proposed section 13(1)(*d*), (*e*) and (*f*), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

15(2) By deleting paragraph (*b*) and substituting –

"(*b*) by adding –

"(*f*) has certified minor works commenced under the simplified requirements that have been carried out in contravention of this Ordinance;

(*g*) has supervised minor works commenced under the simplified requirements that have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);

(*h*) has carried out minor works commenced under the simplified requirements in such a manner that they have caused injury to a person;

(*i*) has carried out building works (other than minor works) under the simplified requirements as if it were minor works commenced under the simplified requirements; or

(*j*) has certified building works (other than minor works) as if it were minor works commenced under the simplified requirements.".".

15(3) In the proposed section 13(4)(*d*), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

16 By deleting the proposed section 14AA and substituting –

"**14AA. Approval and consent not required for minor works**

Section 14(1) does not apply in respect of minor works commenced under the simplified requirements.".

18 By deleting the clause.

21(1) By deleting "**prescribed requirement minor works**" and substituting "**minor works commenced under simplified requirements**".

21(2) In the proposed section 24(1A), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

22 In the proposed section 24AA –

(a) in the heading, by deleting "**prescribed requirement minor works**" and substituting "**minor works commenced under simplified requirements**";

(b) in subsection (1), by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

New By adding –

"**23A. Sections repealed**

Sections 36, 36A and 36B are repealed.".

New By adding –

"**23B. Sections added**

The following are added –

"**36C. Powers to make records of specified documents and copy records**

The Building Authority or a person authorized by the Building Authority may –

(*a*) make a record in the form of –

(i) a paper document;

(ii) a microfilm; or

(iii) an electronic record,

of any specified document;

(*b*) convert a record in the form of a paper document or a microfilm made under paragraph (*a*) into an electronic record; or

(*c*) make a copy of a record made under paragraph (*a*) or (*b*).

36D. Disposal of documents

Where it is not necessary or desirable to maintain a specified document in the form in which it was submitted to or approved by the Building Authority, the document may be destroyed or disposed of after a specified document record of it is made.

36E. Specified document records to be treated as specified documents

A specified document record is to be treated for all purposes as the specified document from which the specified document record is made.

36F. Making available specified document records to public through electronic networks

The Building Authority or a person authorized by the Building Authority may make a specified document record available for inspection by any person through the Internet, an intranet or a similar electronic network.

36G. Issue, certification and inspection of copies, etc. of specified documents or specified document records

(1) The Building Authority or a person authorized by the Building Authority, may, on the payment of the prescribed fee, issue to a person a copy, a print or an extract of or from a specified document or a specified document record, to facilitate the ascertaining by that person of any matter mentioned in subsection (4).

(2) The Building Authority or a person authorized by the Building Authority, may, on the payment of the prescribed fee, issue to a person a copy, a print or an extract of or from a specified

document or a specified document record, that is certified under section 36H, to facilitate the ascertaining by that person of any matter mentioned in subsection (4).

(3) The Building Authority or a person authorized by the Building Authority, may, on the payment of the prescribed fee, make available for inspection –

(*a*) at any reasonable time, a specified document or a specified document record, at a place specified by the Building Authority or by a person authorized by the Building Authority; or

(*b*) a specified document record by the means mentioned in section 36F,

to facilitate the ascertaining by any person of any matter mentioned in subsection (4).

(4) The matters referred to in subsections (1), (2) and (3) are –

(*a*) matters relating to the construction of any building or the carrying out of any building works or street works;

(*b*) whether a building, building works or street works have been completed or carried out in compliance with the

provisions of this Ordinance or any other enactment; and

(*c*) any other matter that the Building Authority considers appropriate to be made available in the interest of the public.

36H. Power to certify copies, etc. of specified documents or specified document records

The Building Authority or a public officer authorized by the Building Authority may certify a copy, a print or an extract of or from a specified document or a specified document record as a true copy, print or extract of or from the specified document or the specified document record.

36I. Admissibility in evidence of copies, etc.

(1) A copy, a print or an extract of or from a specified document or a specified document record that purports to be a true copy, print or extract of or from the specified document or the specified document record, is admissible in evidence in criminal or civil proceedings before any court on its production without further proof if it is certified under section 36H.

(2) The court before which the certified copy, print or extract is produced shall, unless there is evidence to the contrary, presume that –

(*a*) the certification or signature is made by the Building Authority or a public officer authorized by the Building Authority; and

(*b*) it is a true copy, print or extract.

(3) Nothing in this section –

(*a*) affects any claim of the Government to withhold the original of any specified document or a specified document record on the ground that its production would be contrary to the public interest; or

(*b*) affects the admissibility of any evidence which would be admissible apart from the provisions of this section.”.”.

24(1)(*d*)

(a) In the proposed section 38(1)(*ka*)(iii), by deleting “an authorized person, a registered structural engineer and a registered geotechnical engineer” and substituting “prescribed building professionals”.

(b) In the proposed section 38(1)(*ka*)(iv), by deleting “and”.

(c) By deleting the proposed section 38(1)(*kb*) and substituting –

"(*kb*) the prescription of any requirements as simplified requirements for the purposes of the definition of "simplified requirements" in section 2(1), including –

(i) the duties of any prescribed building professionals and prescribed registered contractors, appointed in respect of minor works commenced under the simplified requirements (whether to be performed before or after the commencement of the minor works);

(ii) the requirements for the commencement, carrying out, completion and certification of minor works under the simplified requirements; and

(iii) the requirements for the submission or delivery of prescribed plans, certificates, notices or other documents to the Building Authority or other persons;".

(d) In the proposed section 38(1)(*kc*), by deleting "prescribed" and substituting "simplified".

(e) In the proposed section 38(1), by adding –

"(*kca*) matters relating to the display or indication of information relating to –

(i) the registration number of any prescribed registered contractor; and

(ii) the class, type and item of the minor works in respect of which any prescribed registered contractor is registered,

in order to facilitate any member of the public to ascertain whether he is, in relation to any matter

connected with any activity under this Ordinance, dealing with a contractor registered under this Ordinance;".

26 By deleting the proposed section 39C(4) and substituting –

"(4) Where the person appointed under subsection (2) considers that for the safety of the prescribed building or building works, it is necessary to carry out minor works to alter, rectify or reinforce the prescribed building or building works, such works are to be carried out by a prescribed registered contractor under the simplified requirements.".

27(1) By deleting the proposed section 40(1AA) and substituting –

"(1AA) Any person who knowingly contravenes section 14(1) in respect of building works (other than minor works) or street works shall be guilty of an offence and shall be liable on conviction –

(*a*) to a fine of $400,000 and to imprisonment for 2 years; and

(*b*) to a fine of $20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(1AB) Any person who commits an offence under section 4A(2) or 9AA(2) shall be liable on conviction to a fine at level 6.".

27(9)(*c*) In the proposed section 40(2A)(*ba*), by deleting "prescribed" and substituting "simplified".

27(10) By deleting the proposed section 40(2AAAA) and substituting –

"(2AAAA) Any prescribed building professional who contravenes section 4B(2)(*c*), or any prescribed registered contractor who contravenes section 9AA(4)(*b*) or (6)(*b*), shall be guilty of an offence and shall be liable on conviction to a fine at level 5.".

27(12)(*b*) In the proposed section 40(2AC)(*b*), by deleting ", piling works".

27(13)(*b*) In the proposed section 40(2B)(*d*), by deleting ", piling works".

27(15) (a) In the proposed section 40(2F), by deleting "an authorized person, a registered structural engineer and a registered geotechnical engineer" and substituting "a prescribed building professional".

(b) In the proposed section 40(2G), by deleting "registered general building contractor, a registered specialist contractor or a registered minor works contractor" and substituting "prescribed registered contractor".

28(1) By deleting the proposed section 41(3) and substituting –

"(3) Building works (other than drainage works, ground investigation in the scheduled areas, site formation works or minor works) in any building are exempt from sections 4, 9, 9AA, 14(1) and 21 if the works do not involve the structure of the building.".

28(3) By deleting the proposed section 41(3B) and (3C) and substituting –

"(3B) Designated exempted works that are prescribed in the regulations are exempt from sections 4, 9, 9AA, 14(1) and 21.

(3C) Drainage works (other than minor works) in any building are exempt from sections 4, 9 and 14(1) if the works do not involve –

(*a*) the structure of the building;

(*b*) any drain or sewer into which there is discharged, or into which it is intended to discharge, any trade effluent, chemical refuse, waste steam, petroleum spirit, carbide of calcium, acid, grease or oil;

(*c*) altering any manhole at which any drain or sewer from the building is connected with a public sewer;

(*d*) altering any septic tank or cesspool;

(*e*) making a direct or indirect connection of an additional drain or sewer to a septic tank or cesspool; or

(*f*) underground drainage works in a scheduled area that is described as area number 3 in the Fifth Schedule.".

New By adding –

"**41A. Fees**

(1) Regulation 42 is amended, in the Table of Fees, in item 10(*a*) –

(*a*) by repealing –

"For issue under section 36(2) of the Ordinance of a certified copy, print or extract of or from any document (other than a plan) which is recorded in –"

and substituting –

"For issue under section 36G(2) of the Ordinance of a certified copy, print or extract of or from a document made, issued or given under or for the purposes of the Ordinance or the Buildings Ordinance 1935 (18 of 1935), or a certified copy, print or extract of or from a specified document record that is made from the document, that is in –";

(*b*) by repealing "pursuant to section 36(2A)(*b*)" where it twice appears and substituting "or record pursuant to section 36G(3)".

(2) Regulation 42 is amended, in the Table of Fees, in item 10(*b*) –

(*a*) by repealing –

"For issue under 36(2) of the Ordinance of a certified copy, print or extract of or from any plan which is recorded in –"

and substituting –

"For issue under section 36G(2) of the Ordinance of a certified copy, print or extract of or from a plan submitted to or approved by the Building Authority under or for the purposes of the Ordinance or the Buildings Ordinance 1935 (18 of 1935), or a certified copy, print or extract of or from a specified document record that is made from the plan, that is in –";

(*b*) by repealing "pursuant to section 36(2A)(*b*)" where it twice appears and substituting "or record pursuant to 36G(3)".

(3) Regulation 42 is amended, in the Table of Fees, in item 11(*a*) –

(*a*) by repealing –

"For issue under section 36(2A)(*a*) of the Ordinance of a copy, print or extract of or from any document (other than a plan) which is recorded in –"

and substituting –

"For issue under section 36G(1) of the Ordinance of a copy, a print or an extract of or from a document made, issued or given under or for the purposes of the Ordinance or the Buildings Ordinance 1935 (18 of 1935), or a copy, a print or an

extract of or from a specified document record that is made from the document, that is in –";

(*b*) by repealing "pursuant to section 36(2A)(*b*)" where it twice appears and substituting "or record pursuant to 36G(3)".

(4) Regulation 42 is amended, in the Table of Fees, in item 11(*b*) –

(*a*) by repealing –

"For issue under section 36(2A)(*a*) of the Ordinance of a copy, print or extract of or from any plan which is recorded in –"

and substituting –

"For issue under section 36G(1) of the Ordinance of a copy, a print or an extract of or from a plan submitted to or approved by the Building Authority under or for the purposes of the Ordinance or the Buildings Ordinance 1935 (18 of 1935), or a copy, a print or an extract of or from a specified document record that is made from the plan, that is in –";

(*b*) by repealing "pursuant to section 36(2A)(*b*)" where it twice appears and substituting "or record pursuant to 36G(3)".

(5) Regulation 42 is amended, in the Table of Fees, in item 12(*a*) –

(*a*) by repealing –

"For inspection under section 36(2A)(*b*) of the Ordinance of a plan or document which is recorded in –"

and substituting –

"For inspection under section 36G(3) of the Ordinance of a specified document or a specified document record, that is in –";

(*b*) by repealing "plans or documents" wherever it appears and substituting "specified documents or specified document records.".

42 In the proposed regulation 48 –

(a) in the heading, by deleting "**prescribed requirement minor works**" and substituting "**minor works commenced under simplified requirements**";

(b) by deleting "prescribed requirement minor works" and substituting "minor works commenced under the simplified requirements".

New By adding in Part 4 –

"**Buildings Ordinance (Application to the New Territories) Ordinance**

44A. Effect of certificate of exemption

Section 7(1)(*a*) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) is amended by adding ", 9AA" after "9".".

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Education to Mr Jeffrey LAM's supplementary question to Question 2

As regards the Education Bureau's plan in helping language teachers who did not attain the qualification requirements within the time frame to attain the required qualifications, in the circular memorandum issued by the Education Bureau in March 2004, schools were clearly advised that when offering appointment to new language teachers without the qualifications recommended by the Standing Committee on Language Education and Research, they should set conditions in the employment contract that the teachers concerned must acquire the qualifications within three or five years. Schools have also been asked to plan the professional development of these teachers and report progress to their school management.

The Education Bureau is aware that some Chinese and English language teachers who joined the profession in the 2004-2005 school year have not attained a relevant degree or relevant teacher training within the three years time frame. We believe that the schools and the language teachers concerned have endeavoured to attain the qualifications required. Owing to various reasons, some language teachers have not been able to attain the qualifications required within the given time frame. The Education Bureau is planning to conduct a survey to understand the progress made by these teachers in attaining the necessary qualifications, their plans for attaining the qualifications and the difficulties encountered. The Education Bureau will then consider possible measures that could help the language teachers concerned to attain the required qualifications. The survey will cover all the language teachers who have joined the profession since the 2004-2005 school year but have not attained the relevant qualifications upon entry of the profession.