

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 25 June 2008

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, 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 WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

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

MEMBERS ABSENT:

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

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE VINCENT FANG KANG, 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 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 EDWARD YAU TANG-WAH, J.P.

SECRETARY FOR THE ENVIRONMENT

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

PRESIDENT (in Cantonese): A quorum is not present as there are only 28 Members. Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): A quorum is 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:

Subsidiary Legislation/Instruments *L.N. No.*

| | |
|--|----------|
| Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (United Mexican States) Order | 172/2008 |
|--|----------|

| | |
|--|----------|
| Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order | 173/2008 |
|--|----------|

| | |
|---|----------|
| Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) (Revocation) Order | 174/2008 |
|---|----------|

Other Papers

No. 99 — Report by the Trustee of the Correctional Services Children's Education Trust for the period from 1 September 2006 to 31 August 2007

No. 100 — Airport Authority Hong Kong Annual Report 2007-2008

Report of the Bills Committee on Prevention of Bribery (Amendment) Bill 2007

Report of the Bills Committee on Revenue Bill 2008

Report of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Monitoring of Fund-raising Activities

1. **MR WONG TING-KWONG** (in Cantonese): *President, it has been reported that the earthquake in Sichuan has prompted the people of Hong Kong to donate money generously for relief work, but there may be lawless elements taking advantage of the situation. It has also been reported that the police are investigating 12 organizations which have claimed to be raising funds for relief work relating to the earthquake in Sichuan, suspecting that they have carried out unlicensed fund-raising activities. In this connection, will the Government inform this Council:*

- (a) *of the progress of investigation into the above 12 cases of suspected unlicensed fund-raising;*
- (b) *of the number of cases of suspected unlicensed fund-raising into which the authorities conducted investigation in the past three years and, among them, the number of substantiated cases of unlicensed fund-raising, as well as the major types of fund raising activities and the total amount of money involved in such cases; and*
- (c) *whether the authorities commence investigation into unlicensed fund-raising activities upon receipt of complaints or on their own initiative, and of the effective measures they currently have in place to prevent members of the public from being deceived into donating money to lawless elements?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, legitimate fund-raising activities are an important source of income for charitable organizations to undertake their services and charitable work. For this reason, the Administration will facilitate these organizations in conducting their charitable fund-raising activities. At the same time, the Administration has to safeguard the interests of the donors and ensure that the activities in question do not cause the public undue nuisance and inconvenience.

At present, the Director of Social Welfare may issue Public Subscription Permits (PSPs) under section 4(17)(i) of the Summary Offences Ordinance (Cap. 228) for any collection of money or sale or exchange for donation of badges, tokens or similar articles for charitable purposes in public places. Any person who, without lawful authority or excuse, organizes, provides equipment for, or participates in any of the above activities shall be liable, on conviction, to a fine of \$2,000 or imprisonment for three months. If the police receive complaints or information on suspected unauthorized fund-raising activities, it will take follow-up action as appropriate.

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

- (a) On the 12 referrals from the Social Welfare Department (SWD) on suspected unauthorized fund-raising activities in public places in relation to the relief of the Sichuan earthquake, the police, based on information available conducted follow-up investigation. The findings are as follows:
- For eight cases, upon investigation it was found that there were no fund-raising activities at the reported locations.
 - For two other cases, PSPs had been obtained from the Director of Social Welfare for the fund-raising activities concerned. However, one of the fund-raising organizations was found to be conducting the activity at a location which was outside the PSP's specification. The police warned the responsible person of the organization that he should abide by the conditions stipulated in the PSP when organizing similar fund-raising activities in future.

- The two remaining cases involved the same fund-raising activity organized by the owners' committee of an industrial building where a donation box was placed in the lift lobby to raise funds for victims of the Sichuan earthquake. After investigation, the police confirmed that the funds raised had been deposited into the bank donation account set up by the Home Affairs Bureau. However, the organizer misinterpreted the definition of "public place" and did not apply for a PSP from the Director of Social Welfare. The police explained to the responsible person of the owners' committee in question the legal definition of "public place" and reminded him that he had to comply with the legal requirement and submit an application to the specified department when organizing similar activities in future.
- (b) In 2005 and 2006, the police successfully prosecuted three persons for conducting unauthorized charitable fund-raising activities in public places. The three persons were involved in two fund-raising cases, and each of them was fined \$1,000. In these two cases, funds were raised respectively by paying visits to shop owners to solicit their donations, and by distributing leaflets and raising funds in public places. The existing record of the police does not indicate the amount involved in the two cases.

Neither do the police have record of the number of reported cases it received regarding unauthorized fund-raising activities in the past three years.

- (c) To protect the public from fraudulent fund-raising activities, we endeavour to enhance the transparency and accountability of charitable fund-raising activities so that the public can make an informed choice, while not stifling these activities by imposing onerous and potentially costly administrative requirements on the fund-raisers.

More specifically, in granting a PSP under the Summary Offences Ordinance, the Director of Social Welfare will, depending on circumstances, examine the background of the applicant, including whether the applicant organization or the beneficiary organization is

a recognized charitable institution or trust of a public character under section 88 of the Inland Revenue Ordinance (Cap. 112), the purpose of the event, and whether consent from the relevant venue management has been obtained, and so on.

The Director of Social Welfare also specifies in the PSP a number of transparency requirements, including the condition that the grantee shall display prominently the PSP at the place where the fund-raising activity is held so as to inform the public that a PSP has been obtained from the Director of Social Welfare in accordance with the law. If the fund-raising activity is not carried out at a fixed location, the volunteers are required to carry and produce copies of the PSP for inspection upon request by any person in the course of solicitation of donations. The public can also telephone the SWD on its hotline at 2343 2255 or visit SWD's homepage for enquiries on the list of organizations which have obtained PSPs for charitable fund-raising activities. Through press releases, posters, the electronic media, leaflets, the Internet, publicity materials, and so on, the SWD will from time to time remind the public of the above ways to identify authorized fund-raising activities. When issuing PSPs, the SWD also reminds the fund-raising organizations in the approval letter that they should arrange for sufficient publicity on the proposed fund-raising activities so that the general public is aware of the organizing body and the fund-raising purpose.

Furthermore, when issuing a PSP, the SWD will send a copy to the police for record, so that the police can take immediate follow-up actions when there are suspected unauthorized charitable fund-raising activities. Should the SWD receive complaints or information on suspected unauthorized fund-raising activities, it will refer them to the police for follow-up investigation. The public can also report to the police directly on suspected illegal fund-raising activities.

Since 2004, the SWD has also introduced a Reference Guide on Best Practices for Charitable Fund-raising Activities. The Reference Guide outlines suggested best practices in areas of the donors' rights, fund-raising practices, financial accountability, and so on.

It encourages the charities to disclose their financial information and to minimize the fund-raising costs. It also serves as a reference for the public in gauging the practice of a charity on fund-raising. The Reference Guide has been publicized through the media and uploaded on SWD's website. It has also been promoted through various channels.

MR WONG TING-KWONG (in Cantonese): *President, there are many ways to raise funds, so are fraudulent fund-raising practices, such as on-line and on-street fund-raising. Recently, there was a fraudulent case where an account number was posted in front of the monitor of an auto-teller machine to solicit public donations. How are the authorities going to tackle this problem? How can such cases be prevented?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, basically we will enhance the transparency in a number of ways. Firstly, as I have explained just now, sufficient information will be provided to the donors so that they can be smart and informed donors. Relevant information is available in our website. In case of suspicion, people may telephone the SWD hotline at 2343 2255, or ask the people raising funds or selling flags to produce copies of their PSPs. This is the right of the donors.

Regarding the fraudulent case mentioned by Mr WONG just now, the police will follow it up by conducting criminal investigation. In the abovementioned case, a Chinese man was arrested and he is now under investigation. For such cases, the police will make charge on fraud. If there is sufficient evidence proving that the suspect is guilty, the maximum penalty is imprisonment for 14 years.

MR CHAN KAM-LAM (in Cantonese): *President, does the Government take enforcement action only after it has received a report or a complaint, or the police will take the initiative to probe or inquire into the matter when fund-raising activities have been found in the course of a public meeting or procession, or there are other possibilities?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, generally speaking, we will follow up cases upon receipt of reports or complains by the public. Certainly, just as I have explained in the main reply earlier on, cases that fall under the purview of the SWD mainly involve technical violation of regulations, such as not having applied for PSPs or not carrying out the relevant flag-selling or fund-raising activities at the designated location. For cases of deliberate fraud, follow-up action will definitely be taken by the police. Just as I have said, fraud is a criminal case and therefore it is subject to criminal procedures.

MR DANIEL LAM (in Cantonese): *As stated in the main reply, 12 organizations are under police investigation in connection with raising funds for Sichuan's relief work without applying for a PSP. Will the Secretary inform this Council whether contravention of the relevant law by so many organizations is attributable to the deficiencies in the law?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, our explanation has been clearly set out in the main reply. Mr LAM, of those 12 cases, site investigation has been conducted for eight of them where the complaints were about fund-raising activities being carried out in the absence of PSPs. However, there were no fund-raising activities at the scene when the police arrived. This has been mentioned in the main reply. As for the other two cases, the fund-raising organizers concerned might have misunderstood the law, such as thinking that PSP was not required if they raised funds in such public places as the lobby. But, in fact, a PSP must be applied even if the venue is the lobby of a building, which is a public place. We can see from those 12 cases that they only involve very minor technical irregularities, and are not fraudulent at all.

These are the cases that we dealt with most of the time. Nonetheless, just as I said earlier on, fraudulent cases will not be tolerated and would be passed to the police for follow-up.

MR LAU KONG-WAH (in Cantonese): *President, in part (c) of the main reply, the Secretary said that the transparency and accountability of charitable*

fund-raising activities would be enhanced. What measures have been put in place to ensure that the fund-raising organizations concerned would set out such details as the amount of money donated for public inspection after completion of the relevant activities, so as to avoid leaving them unaccounted for?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, the PSPs currently issued by the Director of Social Welfare have clearly set out that the money collected must be audited by an auditor or an incorporated accountant, and all audited accounts should be submitted to the Director of Social Welfare before the specified date. This is the first requirement. Secondly, if the money so raised will be spent not only locally, but also outside Hong Kong, the organizer concerned should publish the audited account in one local Chinese Language newspaper and one local English Language newspaper to give a full account of the event. This is the practice in connection with transparency and accountability. We have issued a guideline on the best practices a few years ago to set out some successful experience. The guideline has been published for general information, and in fact it is being followed by many organizations.

MISS CHOY SO-YUK (in Cantonese): *President, may I ask if the Secretary would consider assigning the SWD to centrally provide and open all the donation boxes, which will be affixed with the name of the organization concerned and on completion of the event, can only be opened in SWD's offices in the witness of both SWD staff and the organization concerned? I think this is the best practice to ensure that the money collected is clearly known.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, insofar as the policy of fund-raising activities is concerned, we have to balance the interests of three parties, namely the fund-raising organizers, the donors and members of the public. If the SWD were to follow this practice fully, I believe that there will be problems in flexibility, and it is manpower consuming. As we may be aware, there are flag days all year round. If all flag-selling activities organized by different organizations are fully responsible by the SWD alone, the demand for manpower and resources will be enormous. After all, a mechanism has been put in place. Just as I have said earlier, the Director may request the organizer concerned to produce its account before

issuing a PSP, and deposit all the collected money into the bank before a specified date. The regulations and guidelines have been clearly laid down and enforced effectively, Madam President.

PRESIDENT (in Cantonese): Miss CHOY So-yuk, has your supplementary question not been answered?

MISS CHOY SO-YUK (in Cantonese): *No, President. I think that the Secretary might have misinterpreted my supplementary question. I asked if the SWD can centrally provide all the donation boxes. I am not asking the SWD to genuinely carry out fund-raising activities on its own. Instead, I require that only it can open those boxes. Certainly, the fund-raising events would still be carried out by the organizations concerned.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I wish to stress that the autonomy of an organization is very important. Furthermore, different donation boxes may have different characteristics as some organizations do have their specific logo. If the donation boxes are centrally provided, I believe this will probably arouse the concern of many organizations. It must be handled cautiously.

DR KWOK KA-KI (in Cantonese): *President, I wonder if the Secretary has seen this before. In some crowded MTR stations, I see some strange organizations raising funds nearly every week. As evident in the Secretary's main reply, in 2005 and 2006, the police successfully prosecuted three persons for conducting unauthorized charitable fund-raising activities in public places. I believe, however, the number should not be so small. And yet, may I ask if the SWD has negotiated with the police about conducting checks or spot checks on its own initiative? If so, how many checks have been conducted? What is the percentage of these cases in the total number of authorized fund-raising events?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, we have not conducted any specific spot checks. And yet, in the

main reply given by me earlier on, I have stated that the Director of Social Welfare would send to the police a copy of the PSP issued to the charitable organization. Frontline police officers at various districts are actually fully aware of where and when an organization will be carrying out fund-raising activities in the district. Very often, police officers will take the initiative to ask those volunteers to produce the relevant documents. This is what they often do. However, in case members of the public or donors are in doubt, they should exercise their rights by calling SWD's hotline at 2343 2255. In fact, information is available from various sources, such as websites, for members of the public or the donors to check before making donations.

DR KWOK KA-KI (in Cantonese): *President, I hope that the Secretary would clarify again if it is true that it has never taken any initiative to inquire into any cases except that of the reported ones.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): No surprise checks have been conducted so far. As I have said just now, should frontline police officer find anything suspicious on patrol, they will follow up and take action. It is quite impossible to require SWD staff to conduct daily patrol because, as Members may be aware, such fund-raising events as flag days are conducted every day. We must be careful in the deployment of manpower. Or else we will be wasting too much manpower on one matter. Is this worthwhile?

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

MR LAU KONG-WAH (in Cantonese): *President, just now the Secretary said that all accounts must be submitted to the Director of Social Welfare. However, has he considered fully disclosing these accounts for general information? Given that in some cases the administrative costs can be as high as 50% at present, will the Secretary consider issuing guidelines to foster public confidence?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, just now I have already said that when the money collected will be spent outside but not inside Hong Kong, all accounts must be published in one local Chinese Language newspaper and one local English Language newspaper. This is a transparent approach. Furthermore, I have also said that in the Reference Guide issued a few years ago, a consensus was reached on the administrative cost whereby the relevant cost of flag day should not exceed 10%. It is nonetheless very difficult for other fund-raising activities to comply with this. For instance, for night shows in which singers are invited to perform, the costs would probably be higher. So, the yardstick may vary in different occasions. We however maintain that the administrative cost of flag days should not exceed 10% of the total amount of money collected. This guideline has been strictly enforced and I believe it can at least help minimize the cost. If not, the amount of money collected for charity purpose will actually diminish as a result of high administrative cost.

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has not answered why the accounts inside Hong Kong cannot be disclosed.*

PRESIDENT (in Cantonese): Secretary, Mr LAU asked about the accounts inside Hong Kong.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Does he mean how long it would take to disclose the relevant information?

PRESIDENT (in Cantonese): He asked about the accounts inside Hong Kong, that is, the accounts concerning local spending.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Generally speaking, we do not require an organization to publish in a newspaper an account of its local fund-raising events. However, enquiries can be made to the SWD when necessary.

PRESIDENT (in Cantonese): Second question.

Security Problem of Websites Using Domain Names Ending with ".hk"

2. **MR ANDREW LEUNG** (in Cantonese): *President, it has been reported that a survey report recently published by an internationally renowned anti-virus software company points out that web sites using domain names ending with ".hk", which are susceptible to viruses and spyware, are the most dangerous in the world, and their security level has dropped drastically by 27 ranks when compared with last year's level. In this connection, will the Government inform this Council:*

- (a) *whether it has ascertained the reasons for the drastic drop in the security level of such web sites, if it has, of the reasons for the drastic drop in the security level (including whether the drop is related to the internal operation of Hong Kong Internet Registration Corporation Limited (HKIRC) which is responsible for the administration of the ".hk" Internet domain names); if it has not, the reasons for that; whether it has assessed the impact of the security problem of such web sites on various sectors of the Hong Kong community; if it has, of the assessment outcome; if not, the reasons for that; and the actions to be taken by the Government to reduce the risks concerned;*
- (b) *how it ensures that HKIRC's administration of the ".hk" Internet domain names meets international standards; whether it knows if HKIRC has provided any guarantee to the users regarding the security level of the domain names; if HKIRC has provided such guarantee, of the details of the guarantee; if not, whether the authorities will require HKIRC to provide a specific guarantee, and whether the authorities have monitored HKIRC's work on a regular basis; and*
- (c) *whether the authorities have accepted the consultant's recommendations mentioned in the Consultation Paper on the Review on Administration of Internet Domain Names in Hong Kong published in May 2007, including the recommendations that HKIRC*

should establish a new Consultative and Advisory Panel and reduce the number of directors on the Board of HKIRC; if they have, of the transitional arrangements and progress of the restructuring of the Board, and whether the authorities have monitored the implementation of the recommendations by HKIRC and its progress.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Madam President, governments around the world have been collaborating with the private sector and community organizations as well as intergovernmental and international organizations to prevent, detect and respond to Internet abuses and cyber-crimes. We have been sharing knowledge and intelligence about sources of Internet abuses, network vulnerabilities, and technical, educational and policy solutions with our counterparts at the international level.

Internet domain names are used to identify computers or other resources on the Internet, such as web addresses and email addresses. The global system for administration of domain names is run by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN delegates administration of particular top level domains (TLDs) such as ".com" to Internet domain name registries. Country-code TLDs such as ".hk" are regarded as a public resource, so its administration would be delegated to an entity designated by the authorities of the country or territory concerned.

Internet domain name registries are responsible for the administration of domain names but it is the domain name holder who controls how a domain name is used and the content of any associated web sites. Registries therefore have no direct influence over the security of individual web sites but their agreements with domain name holders normally give them the ability to cancel a domain name registration if the domain is found to be used for illicit, illegal or abusive purposes.

The Government has designated HKIRC to administer ".hk" Internet domain names. This arrangement was recommended by a joint Government and industry task force in 2000, which had drawn reference from the international best practices in the administration of Internet domain names.

With this background, my reply to the three-part question raised by the Honourable Andrew LEUNG is as follows:

- (a) The mode of operation of spammers and hackers is to look for a place where they can register domain names easily. They will make use of these domain names as their bases to conduct their abusing activities until they encounter a strong counter measure from that place. In the second half of 2006, HKIRC enhanced its online registration process for second level ".hk" domain names to make it more user-friendly. This, however, had made ".hk" domain names more attractive to spammers and hackers.

In 2007, there was a substantial increase in spamming and phishing activities using second level ".hk" domain names. In response, HKIRC, Office of the Government Chief Information Officer (OGCIO), Office of the Telecommunications Authority (OFTA), Hong Kong Police and Hong Kong Computer Emergency Response Team Co-ordination Centre (HKCERT) stepped up efforts to crack down on malicious and suspicious web sites with ".hk" domain names. As a result, more than 14 000 such domain names were cancelled. There has been a drastic drop in spamvertising and phishing cases using ".hk" domain names, from an average of 262 cases a week in 2007 to the weekly average of two cases during the past three months (March to May 2008).

The survey referred to in the Honourable Member's question gives a misleading impression of the risk profile of ".hk" domains. The timing of the survey happened to coincide with a brief period in which the ".hk" domain was being targeted by malicious operators. The enforcement activities that I have mentioned mean that the domain names that were used for the abuses should no longer exist. However, we need to make sure that the survey report does not have a long-term impact on the image of Hong Kong. We have been working with HKIRC and other industry organizations to set the record straight, and to rebuild the branding of ".hk" domain names. We will continue to require HKIRC to exercise the measures vigorously and implement additional ones as appropriate in the light of emerging developments in the future.

- (b) The Government closely monitors the HKIRC's work through regular meetings between the management of HKIRC and the OGCIO. Through this mechanism, the Government ensures that HKIRC adopts international standards for the administration of ".hk" domain names, such as those on information security management.

Around the world, it is the domain name holders, not the domain name registries, who take responsibility for the activities associated with a domain name. Registries therefore do not provide guarantee to users about the contents or transactions associated with a domain name, or whether the domain name is bona fide. On the other hand, registries are required to co-operate with governments and other relevant organizations in combating Internet abuses and cyber-crimes. In this respect, the SAR Government has already set up the collaboration mechanism to tackle such abuses and cyber-crimes as mentioned above.

- (c) The current Board structure is seeking — within a single board — to engage all interested parties and to manage the operations of the critical infrastructure of ".hk" domain names. The Consultation Paper referred to in the Honourable Member's question recommended a smaller Board of Directors to focus on corporate governance and a new Consultative and Advisory Panel to enable various stakeholder groups to advise the Board. We briefed the Information Technology and Broadcasting (ITB) Panel on the above recommendations in June 2007. Following public consultation, we accepted the recommendations and invited HKIRC to settle the detailed implementation arrangements. To monitor the progress of implementation of the recommendations, OGCIO has been holding regular meetings with HKIRC.

The Board of HKIRC has now come to a resolution on the way forward for restructuring the governance arrangements. I understand that they will be proposing to an Extraordinary General Meeting that there should be four Government-appointed directors and four directors elected by members of the company. There will be two directors elected by the Supply Class of members and two by the Demand Class. There will also be a Consultative and Advisory

Panel (CAP) as recommended in the Consultation Paper. The company is aiming to implement the new arrangements before the end of this year.

As recommended by the consultancy study and in view of the progress made, it is our intention that the designation by the Government of the domain name management function to the HKIRC, an arm's length organization, should be continued. We envisage that the appointed directors will be chosen to give the company access to experienced non-executive directors and to insights about the wider interests of the community. To give continuity, we will consider inviting the retiring directors to the CAP. Separately, we will implement open and transparent means to monitor the company's activities on the basis of a new Memorandum of Understanding with the company.

We will continue to update the ITB Panel periodically on the details and progress of implementation of the changes.

MR ANDREW LEUNG (in Cantonese): *President, today many Hong Kong people are concerned about Mr MA's health. I wish him good health and quick recovery after leaving the office, when the pressure will be greatly reduced.*

However, concerning the health of domain names, we need the Government's continuous monitoring. May I ask the Secretary how much time is needed for early recovery of the soundness of Hong Kong's domain names after he has made so many proposals?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I am grateful to Mr LEUNG's concern. Health should be sustainable and we have to do a lot of work to maintain the health of our domain names, just like the case of a person. Of course, sometimes we can make greater efforts. For instance, we have planned to implement most of the proposals which I mentioned in my main reply by the end of the year. I believe the situation of the domain names will be much healthier in Mr LEUNG's eyes by that time.

DR PHILIP WONG (in Cantonese): *Specific recommendations were made by the consultant in the Consultation Paper on the Review on Administration of Internet Domain Names in May last year. However, these recommendations have not yet been implemented over the past 15 months, illustrating that the Board of HKIRC has reservations about such recommendations. Can the Government inform this Council of: (a) the reasons why the Board is reluctant to implement the recommendations early; and (b) whether appropriate measures will be adopted to eliminate problems involving personal interests?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Just now Dr WONG asked why we had to spend so much time on the matter. As we all know, we should understand why a lot of time is needed for the reconstruction of a company, particularly when the recommendations are relatively complicated and a major revamp is involved. We should understand why we have to spend so much time. But I certainly agree that the progress should be expedited if possible because the operation of HKIRC will also be benefited if the mechanism as a whole can be improved.

As I said in the main reply, we have now come to a resolution on the way forward for the implementation of the arrangements for the recommendations. It will be implemented as soon as approval is granted at the General Meeting.

Regarding personal interests, we believe there is no such problem. There may be divergence of views leading to problems in communication in the process. Such a situation may possibly arise. However, as we all know, corporations in Hong Kong, particularly those non-profit-making ones with government officials sitting on their Board of Directors, are subject to very stringent monitoring. We will certainly look at the issues squarely should matters involving personal interests or irregularities arise.

MR TOMMY CHEUNG (in Cantonese): *Nowadays, more and more people in Hong Kong deal with their financial matters or do shopping via the Internet. May I ask the Authorities how they ensure that the web sites managed by HKIRC and providing such services are totally safe so as to safeguard people's property?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): In the past few years, a lot of cyber-crimes have been seen due to the increasing popularity of the Internet. However, all of us, including the police and Internet users, also know that we should be vigilant. The users should certainly be careful and so should the police, who will inform the users once they notice such crimes. As we have seen time and again, fake web sites of several financial institutions in Hong Kong have been used but were soon discovered and intercepted immediately. Nevertheless, a number of financial institutions have devoted a lot of resources to protect their web sites over the past few years. For instance, other than simply striking a few keys, the customers of some banks have to take more steps before they can enter their web sites.

Besides, we have to protect our privacy ourselves. Sometimes, if you are asked by some web sites to enter your personal data, then you have to be careful. In other words, efforts should be made by both parties. The users should certainly make efforts, and on the other hand, the law-enforcement agencies, including the police, should also pay more attention and issue a warning to the public once anything has happened. So, I believe we have to co-operate — the consumers have to be vigilant and the law-enforcement agencies have to keep abreast of the time along with the advance of technology. So, we have to know the technological changes in order to be aware of how these crimes can be prevented.

MR ALAN LEONG (in Cantonese): *President, I heard earlier that the Secretary was sick and would like to express my regards.*

President, in part (c) of the penultimate paragraph of the main reply, the Secretary said that "we will implement open and transparent means to monitor the company's activities on the basis of a new Memorandum of Understanding with the company." President, according to my understanding, among the existing 13 board members, one is selected and appointed by the Government. In future, among the eight board members, four will be selected and appointed by the Government. In other words, the proportion will be changed from 1/13 to one half. May I ask the Secretary whether such a change implies that the Government will be participating in the work of the Board in a more stringent way? If yes, in what aspects will this be demonstrated?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mr LEONG for his regards.

The Government has the responsibility to ensure the effective governance of the domain name ".hk". I believe all of us will agree that this is in line with the interests of our society. We will make it clear to the Board of Directors that they are expected to make timely progress when the new institutional framework has been put in place while details will be provided by them.

Mr LEONG is right in saying that there are 13 members on the Board of Directors who will sit on the advisory body. Under such a reform, the Government will be able to appoint four directors to the Board, in the hope that their overall governance can be improved and more independent elements can be introduced. The four directors nominated by us in fact come from the industry and there will be more independent professionals on the Board in the future. They will offer views on the Memorandum and the operation of the company as a whole in order to work towards the goal which is expected by the industry. On the other hand, however, this will also protect the very crucial infrastructure of Hong Kong.

PRESIDENT (in Cantonese): This Council has spent more than 18 minutes on this question. Last supplementary question.

MR JEFFREY LAM (in Cantonese): *The ".hk" Internet domain names, which represents Hong Kong and is also Hong Kong's invaluable resources, is now under the management of a company which is a non-statutory and non-profit making body. Although the Government pointed out that such a practice was feasible and appropriate in the Consultation Paper on the Review on Administration of Internet Domain Names in Hong Kong published in May 2007, can the Government consider further strengthening the management and operation of the company to ensure a sufficient degree of transparency in respect of its management by converting it into a statutory body or through a statutory means?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Our current mode of management is the common practice in the international community and only in a few countries are such companies

managed by the Government. In our opinion, the existing mode is the best in terms of the management of public resources which Mr LAM said earlier. In fact, according to an international survey conducted by the International Telecommunication Union in 2003, as I said earlier, the relevant registries in most places are also institutions or commercial companies and are authorized by the Government through a contract or memorandum of understanding. As we all know, members have been appointed by us to the Board of Directors. Therefore, we think that there is no need for any change at present as we have adopted an international trend and an international mode. However, as the operation of all government committees or bodies is subject to review from time to time, I can assure Mr LAM that we will constantly review these situations. If we really think that there are problems, we will make changes. But we consider the existing mode most suitable for Hong Kong.

PRESIDENT (in Cantonese): Third question.

Chinese Medicine Practitioner Licensing Examination

3. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, it has been learnt that at present a group of graduates from part-time undergraduate degree courses in Chinese medicine are not permitted by the Chinese Medicine Practitioners Board (CMPs Board) of the Chinese Medicine Council of Hong Kong (CMCHK) to take the CMPs Licensing Examination. In this connection, will the Government inform this Council whether:*

- (a) *it knows the number of the graduates mentioned above; and*
- (b) *the Government will proactively help this group of graduates to obtain permission to take the CMPs Licensing Examination; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the registration system for CMPs is based on the Chinese Medicine Ordinance (the Ordinance). The CMCHK is the regulatory body established under the Ordinance. The CMPs Board under CMCHK is specifically responsible for regulating CMPs.

The Ordinance stipulates that the CMPs Board shall conduct a CMPs Licensing Examination. Listed CMPs, as well as those who have satisfactorily completed such undergraduate degree course of training or its equivalent as is approved by the CMPs Board, are eligible to undertake the licensing examination.

The quality of CMPs has a direct impact on people's health and even safety, so the CMPs Board has a duty to ensure that all CMPs practicing in Hong Kong are up to professional standards. The CMPs Board, as empowered by the Ordinance, stipulates that a course must be a full-time undergraduate degree course in Chinese medicine if it is to be recognized for the purpose of undertaking the licensing examination. This is to ensure that registered CMPs have received comprehensive university education, and have adequate opportunities to practice continuously.

Some students enrolled in non-local part-time Chinese medicine degree courses have previously requested through the Legislative Council and other channels that they should be allowed to undertake the licensing examination. One of their arguments was that the CMPs Board had once decided that students enrolled in the part-time Chinese medicine degree courses of the University of Hong Kong and the Hong Kong Baptist University in or before 2002 could sit the licensing examination. As repeatedly explained by the CMCHK and the CMPs Board, that decision was made after considering the historical circumstances of Chinese medicine education in Hong Kong. It was an exceptional and one-off arrangement and did not extend to subsequent local part-time courses nor various non-local part-time courses existing then.

Moreover, a student of a non-local part-time degree course in Chinese medicine applied for judicial review of and appealed against the decision of the CMPs Board. The judicial review and the appeal, however, were both dismissed. The Court of Appeal of the High Court considered that the CMPs Board's distinction between local and non-local part-time degree courses was a valid, rational and proportionate one. There was nothing wrong with the decision of the CMPs Board to make an exceptional arrangement for the universities in Hong Kong only.

I will proceed to answer the two parts of the main question.

- (a) We do not have the number of all local and non-local part-time Chinese medicine degree courses and the corresponding number of

graduates. Since 2003 when the CMPs Board first conducted the licensing examination, 21 applications from students enrolled in non-local Chinese medicine degree courses for sitting the licensing examination have been rejected.

- (b) If education institutions would like to apply for recognition of their Chinese medicine courses, they should make reference to the requirements announced by the CMPs Board in designing their courses, and submit them to the CMPs Board for consideration. The CMCHK and the CMPs Board, as independent statutory bodies, will consider the applications under the principle of professional autonomy.

As far as we understand, some Hong Kong students are still taking the two non-local part-time Chinese medicine degree courses that are not recognized by the CMPs Board. The total teaching hours (excluding clinical training) of the two courses range from around 660 to 1 000 hours. In comparison, the total teaching hours (excluding clinical training) of the local full-time courses recognized by the Board amount to 2 600 hours or more.

The CMPs Board's requirement for recognized courses is premised upon safeguarding people's health and maintaining the professional standards of CMPs. We understand that the CMPs Board therefore has no intention to relax the requirement that recognized courses must be conducted in full-time mode.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has not directly answered me whether the Government will proactively help this group of graduates to obtain permission to take this licensing examination.*

I do not know if the information the Secretary has obtained is wrong, which has led him to say in part (b) of the main reply that the total teaching hours (excluding clinical training) of these courses range from around 660 to 1 000 hours. In fact, those are the figures for one year only. On the whole, their total teaching hours exceed 4 200 hours.

The Secretary stated in the introductory paragraphs of the main reply that the decision was an exceptional and one-off arrangement, which was made after considering the historical circumstances of Chinese medicine education in Hong Kong. May I ask the Secretary why there cannot be another such arrangement? Why can't the authorities make another exceptional arrangement to proactively help this group of graduates? What is the reason for that?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as far as I know, this one-off arrangement was made in 2003 because previously some students had enrolled in a part-time course offered by a local university. The relevant authority, having assessed the contents of this course, came to this decision.

Members may well know that, after 2003, three local universities in Hong Kong offer full-time undergraduate degree courses in Chinese medicine. They include the University of Hong Kong, the Hong Kong Baptist University and the Chinese University of Hong Kong. At present, there are 79 graduates every year. As far as we understand, the CMPs Board is of the view that the existing mechanism can provide sufficient Chinese medicine training for Hong Kong.

Thus, we find it unnecessary to accept any more part-time courses of other qualifications. Instead, we tend to overtly recognize some Chinese medicine courses offered by 28 mainland universities because they meet the qualifications for sitting the CMPs Licensing Examination in Hong Kong. Thus, on the one hand, local graduates can meet the supply of CMPs for Hong Kong, and on the other hand, graduates from some mainland universities are eligible for applying to take the licensing examination in Hong Kong. We hold that this is a rational arrangement, and are thus of the view that no more students of part-time courses should be allowed to obtain this eligibility.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary question not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *No, President. The Secretary has not answered my supplementary question because I have pointed out just now that his figures are wrong. In relation to the figures, the total hours on teaching*

and clinical training of these undergraduate degree courses should be 4 200 hours. I thus asked the Secretary whether his refusal to make an exceptional arrangement was based on wrong information. Moreover, these part-time courses are run in collaboration with recognized education institutions in the Mainland. Why can't an exceptional arrangement be made? He has not answered this part of my question just now.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we obtained the figures from the CMPs Board. But the crux is that the decision of the CMPs Board seeks to disallow any more part-time course students to take the licensing examination as three universities in Hong Kong and 28 universities in the Mainland are offering full-time undergraduate degree courses. In order to ensure the qualifications of CMPs in Hong Kong are up to standard, we hold that it is inappropriate to have any more part-time course students possessing this qualification.

MR TAM YIU-CHUNG (in Cantonese): *President, may I ask whether the Government will consider discussing with the CMPs Board to follow the example of the earlier incident of accreditation of nursing programme of the Hong Kong Institute of Technology? For instance, whether it has considered addressing this issue by setting up some bridging programmes for these part-time course graduates, so that they can take the licensing examination after completing such programmes? This issue has greatly bothered this group of part-time graduates who have spent a lot of time and money but are ultimately denied any chance of taking the licensing examination by the authorities. In fact, I hold that allowing them to take the examination is already a major gatekeeper. May I ask whether the Government will discuss this with the CMPs Board?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in fact, many Members of the Legislative Council have told us about this situation and we have also liaised with the CMPs Board, which holds that this is a rather difficult case. First of all, for any undergraduate degree course to be recognized, a prerequisite consideration is whether it is a full-time course. If they are not full-time students, it is difficult for us to recognize their qualifications.

Regarding the example cited by Mr TAM just now about the nurses, the situation is somewhat different because the Hospital Authority provides clinical training for them and it also provides training courses for students of other nursing programmes in Hong Kong, and these students are full-time students, not part-timers.

MS LI FUNG-YING (in Cantonese): *If the Secretary says that he has to ensure the quality of CMPs because it has a direct impact on people's health, I do not think we will object to this.*

However, the Secretary has stressed time and again that they are part-time course students and therefore the opportunity for them to sit the examination would be denied. I find this hard to accept. If their qualifications cannot meet the requirement, they should make up for the shortfall. I think this is understandable. But I hold that we cannot accept the Secretary's remark. Why should these part-time students be discriminated? Part-time mode is also a mode of study. If they do not meet the requirement for studying these part-time courses, I have nothing to say. Does the Secretary find this an act of discrimination against the part-time students? Is there a need to review this policy?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I cannot think of any profession, in particular specialized ones, which will recognize part-time courses offered by overseas universities. Regarding health care services, we find that almost all specialized professions require full-time study and the undergraduate courses have to be accredited by relevant bodies in Hong Kong.

I am thus fully aware of this and I also find this a difficult case. But we have offered help as far as possible to the students concerned and the court has handed down its judgment. Hence, if these students intend to practice Chinese medicine in Hong Kong, they should consider switching to study existing full-time courses in Hong Kong or recognized full-time courses in the Mainland, in order to have the opportunity to practice Chinese medicine in Hong Kong.

MISS CHAN YUEN-HAN (in Cantonese): *President, the gentleman on my left is a barrister. He pursued his part-time study and passed the examination in*

Britain. There are people who pursued their part-time study in Hong Kong and passed the examination in Britain, are there not? Chinese medicine is a recognized course in Australia. What kind of people are those in the CMPs Board?

President, I very much regret and I am angry because when we scrutinized the Ordinance, we did not expect people like these to become members of the CMPs Board. President, in fact, the Secretary has been fooled by them

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

MISS CHAN YUEN-HAN (in Cantonese): *Yes. There are different scenarios concerning these part-time students. Some of them started their study before the establishment of the CMPs Board and the courses were offered in collaboration with recognized mainland universities. If the issue now concerns insufficient teaching hours, we should then only discuss the number of teaching hours. If the issue is a lack of clinical training, they should then be given the opportunity to receive clinical training, for they only wish to undertake the examination*

PRESIDENT (in Cantonese): Please put your supplementary question because other Members also wish to ask questions.

MISS CHAN YUEN-HAN (in Cantonese): *President, does the Secretary feel that he has been cheated by the CMPs Board? Why are Barristers who have completed their study in Hong Kong able to take the examination in Britain? Australia recognizes the courses which are not recognized by the CMPs Board in Hong Kong. Some universities recognize these graduates as Bachelor's degree holders. Does the Secretary feel that he has mistrusted the CMPs Board? Or, is it because he has been sitting on the CMPs Board for too long?*

President, I have put two supplementary questions. Let the Secretary choose which one to reply.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, first of all, no one can mislead our judgment. When we examined the work of the

CMPs Board, we held that its decision concerned was made in accordance with the regulation.

MR LEUNG KWOK-HUNG (in Cantonese): *The Chief Executive has not pursued formal university study. Am I correct? It is thus outrageous that he allowed this to happen.*

In our society, we always talk about being knowledge-based and lifelong learning. The issue we are now discussing is whether they can be given an opportunity to sit the examination. Not allowing part-time students to sit the examination is actually discrimination against part-time study. May I ask the Secretary whether the Government, which has adopted such policy to deal with a group of knowledgeable people who could have served the people of Hong Kong, has gone against the Confucian education ideal of teaching everyone without discrimination?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we are now in the 21st Century and we cannot purely use the Confucian ideas to formulate our policy. The Basic Law stipulates that Hong Kong shall use its own system to formulate recognized qualifications for specialized professions.

On this front, we let various professional sectors, including the CMPs, to formulate their professional qualifications which they regard as acceptable to the Hong Kong people. The CMPs Board has clearly stipulated the qualifications required in this regard. I have listed in my main reply just now all conditions and necessary qualifications. I thus hold that this is completely reasonable and legitimate.

MR LEUNG KWOK-HUNG (in Cantonese): *As Confucius says, "I wish not to see this". This is my response to his reply*

PRESIDENT (in Cantonese): You only need to state the part of your supplementary question which has not been answered.

MR LEUNG KWOK-HUNG (in Cantonese): *I quoted from Confucius' word that I do not wish to see this.*

PRESIDENT (in Cantonese): You cannot do this. What you have said is a comment and not a question. You may sit down first. This Council has spent 17 minutes on this question. Last supplementary question.

MS EMILY LAU (in Cantonese): *President, I hope that the authorities can think of some ways to help these graduates, too.*

However, President, not only did the Secretary mention in the main reply that he would not help these people, he also stated that some students are still enrolled in other unrecognized courses. Is this not creating more problems? May I ask the Secretary whether he will help this group of graduates; and for the current students, whether he can find ways to inform them that they need to do better in some aspects to be eligible for taking the examination? Otherwise, they will still have to seek help from the Legislative Council after completing their course and the problem will persist. President, may I ask what are the ways available?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I believe that any student who is studying any course should know whether the course is recognized by the CMPs Board. Hence, if they are studying the recognized courses, they will know that they can take the examination. If they are not studying the recognized courses, basically, they already know that there is no possibility for them to can take the examination.

I have already said just now that if they truly have the intention to become a registered CMP in Hong Kong, they must enroll in recognized full-time undergraduate courses in Chinese medicine offered by the three universities in Hong Kong or by the 28 universities in the Mainland.

PRESIDENT (in Cantonese): Fourth question.

Property Projects at Tsuen Wan West Station

4. **MR LEE WING-TAT** (in Cantonese): *President, the MTR Corporation Limited (MTRCL) is planning to take forward three property developments at the sites of TW5, TW6 and TW7 at Tsuen Wan West Station of the West Rail. The developments include the construction of 20 residential blocks of 39 to 52 storeys with building heights ranging from 138 m to 194 m, as well as two blocks of hotels. Some of the residential blocks will be constructed in a row along the waterfront promenade, while some others will be spread out in a straight line, and there will also be a total of three groups of paired blocks standing side by side. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed the impact of such developments after their completion on the air ventilation in the inland areas of Tsuen Wan; if it has, of the results; if not, the reasons for that;*
- (b) *it has assessed the impact on the coastal view of the area to be brought about by the construction of buildings with such heights at the sites along the waterfront, and if the planning policy of constructing low-rise buildings at sites along the waterfront has been violated; and*
- (c) *it will request MTRCL to reduce the scale of such developments and revise the layout and design of the buildings, with a view to minimizing their impact on the air ventilation and coastal view of the area?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, the three developments, which are located at the sites of TW5, TW6 and TW7 of the Tsuen Wan West Station of the West Rail, fall within the "Comprehensive Development Area". The Master Layout Plans (MLPs) for these developments were submitted by the applicant (the former Kowloon-Canton Railway Corporation (KCRC)) to the Town Planning Board (TPB) for approval and were granted planning permissions between 2000 and 2001. In approving the applications, the TPB has taken into account the assessment of studies on the visual, traffic, environment and drainage impacts submitted by the former KCRC, as well as the views collected from consultation at the district level.

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

- (a) In 2006, the Hong Kong Planning Standards and Guidelines were revised to incorporate the Qualitative Guidelines on Air Ventilation. However, these qualitative guidelines are not legally binding. Later, a "Technical Circular on Air Ventilation Assessment" (Technical Circular) was also promulgated to encourage quasi-government organizations and private developers to initiate air ventilation assessment when planning and designing their projects. As the above three developments were approved before the promulgation of the Technical Circular, the applicant does not need to submit air ventilation assessment reports for the projects.
- (b) Planning guidelines on the construction of low-rise buildings along the waterfront were incorporated into the "Urban Design Guidelines", Chapter 11 of the Hong Kong Planning Standards and Guidelines, in November 2003. The MLPs of the waterfront developments of TW5 and TW6 had been approved by the TPB before amendments were made to the Urban Design Guidelines.
- (c) Regarding the development of TW5, although the relevant MLP was approved in 2000, amendments to the approved MLP were initiated by the former KCRC, which included deleting one residential block at the waterfront site, constructing hotels at the non-waterfront site instead, adjusting the disposition of the buildings, and widening the breezeway and view corridor to improve the air ventilation and visual permeability. The amendments were approved by the TPB on 29 June 2005.

We are aware of Tsuen Wan residents' concerns over the scale of the three developments as well as the disposition and design of the buildings and their impact on air ventilation and waterfront view of the area. We understand that the former KCRC representatives, when attending the Tsuen Wan District Council meeting in 2006 to listen to members' concerns and views on the possible impact of the three developments on air ventilation and visual quality, indicated that they would consider accommodating and enhancing, as far as they could, the design of the buildings, including sky gardens, greening and building materials, and so on. Recently, the Planning

Department, after meeting with Mr LEE, has liaised with the MTRCL, hoping that they would take into account the public concerns and views expressed and endeavour to enhance the design at the detailed design stage of the developments in future.

MR LEE WING-TAT (in Cantonese): *President, this example repeats the case of the Mega Tower in Wan Chai, the planning permission of which was granted ten years ago but no building has been erected. Over the past few years, the community has reached a strong consensus on the density of planning in the waterfront areas.*

As most of the stakes of the MTRCL are still in the hand of the Government, which has also taken the initiative to lower the density in the development of government land such as that in Oil Street, I wish to ask the Secretary, since the public are so averse to wall buildings and hope very much to lower the density of the developments along the waterfront, why doesn't the Government take the initiative to adjust the density and height of the developments on these lots of land? The Government has made adjustments to the Yuen Long Centre and why doesn't it do the same in respect of these lots of land?

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, about Mr LEE's observations, as in the few examples we have discussed recently, they are faced with the same kind of difficulty and problem, and that is, many of these projects have gone through statutory procedures in the past and approval has been granted by the Town Planning Board (TPB). However, due to some reasons, the projects did not commence right away and after the passage of some time, public opinion has changed and different demands have surfaced in the community. Even Members of this Council have different views. But we cannot just scrap every project and do it all over again.

With respect to the three development projects in Tsuen Wan, as I have said, they have gone through all the approval procedures and this applies especially to the waterfront project of TW5. At that time the former KCRC initiated some amendments and deleted one residential block to improve air ventilation. Therefore, after weighing considerations from all sides, these projects should be allowed to commence.

However, the problem here is not as Mr LEE has said, that it is due to money considerations. As Mr LEE knows it very well, the property developments at the stations of the West Rail are not for the purpose of financing the developments. These property developments are owned by the joint-venture company formed by the SAR Government and the former KCRC, and the MTRCL is tasked with the development of these projects as an agent. Put it simply, if losses are incurred in these projects, it can be said to be losses in public money and this will not cause any direct impact on the income of the MTRCL, which is a listed company.

Besides, these developments are important housing developments and I am sure Mr LEE is also very concerned about the recent supply of residential properties. The MTRCL has announced that approval for three projects of developments at the rail stations would be granted in this financial year and TW5 and TW7 are two such projects among these three. A total of nearly 5 000 residential units will be provided. If any sudden change is made to these projects, this will lead to serious consequences.

Having said that and as Mr LEE has pointed out, the Chief Executive has appointed us to examine all the development projects along the stations of the West Rail and the Chief Executive pointed out in the policy address last year that a reassessment of the property developments in Nam Cheong and Yuen Long stations would be undertaken. We hope that along with these two particular property development projects, the density of the developments can be lowered as much as possible.

MR ALBERT HO (in Cantonese): *Madam President, we can see that the property developments at the Tsuen Wan Station of the West Rail are in much the same situation as the other projects which we have brought to the attention of the Secretary. That is to say, after approval has been granted by the TPB to the plans and even the construction plans, there is considerable delay when the projects actually commence. In the meantime, there are many changes in the circumstances, which can be public demands on transport, density or visual quality and so on, and many conflicts are thus created.*

In view of these examples, has the Secretary ever considered reviewing the Town Planning Ordinance or the Buildings Ordinance to see if there is any need

to require the submission of a fresh application if the projects cannot be implemented within a certain period of time so that the projects can adapt to the demands of the contemporary circumstances?

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, I appreciate Mr Albert HO's understanding that after an approval is granted to these projects, outside factors have caused delays to these projects and thus we may have to face some problems now.

As we all know, these developments along the West Rail are part of the housing policy at that time and the time taken for granting lease to these lands was lengthened to address certain needs that arose in the community.

Mr Albert HO has mentioned the Town Planning Ordinance and under the existing law, before the commencement of these approved projects — I am afraid I have to put it this way, because the other project in Wan Chai we are talking about is not just a project which has been granted planning permission. According to our definition, it is a project which has already commenced, for it is a project for which approval from the Buildings Department has been obtained. In general, there is a time limit for projects approved by the TPB. Therefore, if a project approved by the TPB has not commenced before the expiry of the time limit, the applicant or the developer in question will have to go back to the TPB again. The TPB may then take into account various factors or impose some additional terms and require that a fresh application from the applicant be submitted before consideration is made to granting an approval. Hence, there is an existing mechanism.

MR SIN CHUNG-KAI (in Cantonese): *President, will the Secretary inform this Council about the plot ratio of this development? Also, the Secretary points out in part (c) of the main reply that the KCRC initiated some amendments and these included deleting one residential block at the waterfront site. Actually, has the TPB ever imposed any requirement as to the maximum usable ratio of this project or has the ratio been lowered already?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, these development projects are on the lots in a Comprehensive Development

Area and it is stipulated that the plot ratio for the residential development there is five and the plot ratio for non-residential development is 9.5. Therefore, compared with many other urban areas, these plot ratios cannot be said to be very high.

As for the other supplementary question raised by Mr SIN, basically no major change has been made to the overall floor area between the time in 2005 when the applicant initiated amendments to the development of TW5 and the time when approval was granted by the TPB. In other words, the development has been constructed according to the ceiling in plot ratio. However, some public demands are addressed in the layout and design. Actually, TW5 can be divided into two sites, one near the waterfront and the other near the urban area. The former KCRC deleted one residential block which was more than 40 storeys in height from the waterfront site and construct two hotel blocks which are very low and not more than 20 storeys at the site close to the urban area.

MR JAMES TO (in Cantonese): *President, we are talking about the changes in the values held by the public. We would like to have more air and sunlight, instead of wall buildings.*

With respect to the "Technical Circular on Air Ventilation Assessment" issued in 2005, the Government only encourages private developers and quasi-government organizations to initiate air ventilation assessment on their own and there is no need to submit any reports. I would like to ask the Government whether or not by doing so it has fulfilled its duty in preventing the appearance of wall buildings and whether or not it thinks that more legislative efforts can be made to achieve this end. Has it ever occurred to the Government that application can still be made to the TPB to amend the plan concerned at this moment so that the availability of reasonable air and sunlight to the citizens can be further safeguarded?

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, I understand perfectly well that with the passage of time, public demands and views may change, but the policies formulated by the Government should be persistent and taken forward consistently. Otherwise, the overall interest of Hong Kong might be jeopardized.

With respect to urban planning, we have been updating our planning guidelines from time to time on beautifying waterfronts and on air ventilation. On the so-called wall buildings, as the Chief Executive said in the policy address last year, there is no scientific way to assess which buildings are wall buildings and which ones are not. And this is also somewhat related to tall buildings and the size of buildings. If we do not like to have tall buildings nor densely clustered buildings, many of the lands in Hong Kong cannot be developed.

On the query made by Mr TO on whether we have made all legislative efforts, of course, the laws can be updated after discussions in the legislature so that the latest demands can be met. But when designing what actions we can take with the law, we have to take into consideration the overall interest of Hong Kong, too. Though these guidelines are not legally binding now, most of the private developments have to undergo vetting and approval by the TPB. This applies especially to the Comprehensive Development Areas which have all along been a concern of Mr LEE Wing-tat, and approval must be sought with reference to the master layout plan. The TPB will act according to these guidelines and if it is of the view that an assessment should be made on the air quality in a certain lot under development or if the waterfront design of a site should be re-examined, the TPB will then impose such binding requirements.

MR JAMES TO (in Cantonese): *What I ask the Secretary to reply is: will the Government take the initiative to apply to the TPB for amendments made to the plan? The Secretary has not answered this last part of my question.*

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, on these three development projects in Tsuen Wan, we would not do so. As for the reasons, I have explained them already.

MR LEE CHEUK-YAN (in Cantonese): *President, the people of Hong Kong are really miserable. The ground surface has already been overcrowded and now even air ventilation has become a problem for them. I think the people are most disappointed to see that even the SAR Government is building these wall buildings itself.*

The Secretary has just said that one out of the proposed 20 blocks has been deleted and the way she puts it gives people an impression that it is like a great favour from the Government. But when we take a second thought, 20 blocks are not a small number and we are not talking about one or two blocks, or four or five blocks, but 20 blocks. Now, it sounds like a big favour to the public when one block is deleted. Does the Secretary agree that good air ventilation is a public aspiration? Even the Government itself is encouraging quasi-government organizations and private developers to undertake assessments in air ventilation. Although the Government is not required to follow up the actions taken by the applicants because prior approval has been obtained from it already, will the Government take the initiative to require that development projects should comply with the requirements in the "Technical Circular on Air Ventilation Assessment"?

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, I do not think we have any difference in this regard. Now all new development projects of the Government follow the internal guidelines issued in 2006 as I have mentioned earlier. Provided that one of the factors listed is fulfilled, such as the area of the site exceeding a certain area or the total floor area is over 100 000 sq m, we have to undertake air ventilation assessment.

Members will surely know, if they are aware of it, that when I announced the Application List this year, I said that although the land lots were to be sold to the developers for development, should air ventilation assessment be needed, we would first make an assessment in accordance with the internal guidelines. In this way, parameters can be set to control land development and hence prevent future disputes with the developers.

So Mr LEE can rest assured that the items we put into the guidelines will certainly be in line with the changes in social values and public aspirations. However, our divergence now lies in whether the guidelines issued in 2006 can take retrospective effect on projects approved earlier and there will be grave consequences if this is the case. A possibility is that these 5 000 residential units may disappear as a result. If approval for these projects cannot be granted this year, these two residential developments will disappear from the supply of residential properties.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question, now the last supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *President, the Secretary mentioned in her reply earlier that there were no scientific standards to determine whether buildings could be called "wall buildings". If this is the case, will the Government appoint some consultancy firm to undertake a study on the wall effect? If such a study is being undertaken, what is the progress? Besides, will the Government further implement the findings of these studies to ensure that new developments henceforth will not affect air ventilation in the districts concerned?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, as I have said earlier, there is no scientific definition of the term "wall buildings" and what they in fact are. However, with respect to air ventilation assessment, we do have some very concrete and scientific studies and some related data. Perhaps in the coming meetings of the Panel on Development, we can offer some real examples and explain to Members what air ventilation assessment is about, such as under what circumstances should what amendments in design be undertaken for certain projects, as well as the extent of improvement in air ventilation and so on. We do have some data on that.

PRESIDENT (in Cantonese): Fifth Question.

Nuisance Caused to Kwun Tong Residents by Public Cargo Working Areas, Scrap Metal Recovery Factory and Refuse Transfer Station

5. **MR ALAN LEONG** (in Cantonese): *Madam President, it has been reported that the public cargo working areas (PCWAs) in Kwun Tong and Cha Kwo Ling as well as the scrap metal recovery factory nearby have been causing much nuisance to the residents of the district (such as Laguna City) over the years. The Berth Licence Agreements for the two PCWAs will expire next month, yet the authority concerned is planning to extend the operation period of the existing operators for three years and then a refuse transfer station will be*

built at the Cha Kwo Ling PCWA site. In this connection, will the Government inform this Council:

- (a) whether it will consider withdrawing its plan to extend the operation period of the two PCWAs for three years so as to vacate the land for immediately building a waterfront promenade; if it will not, of the reasons for that;*
- (b) of the measures in place to address the nuisance caused by the operations of the scrap metal recovery factory and PCWAs to the residents of Laguna City; and*
- (c) whether it has consulted the residents of the district on its plan to build a refuse transfer station at the Cha Kwo Ling PCWA site; if it has, of the outcome; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President,

- (a) The Government's long-term planning intention is to decommission the PCWAs in Kwun Tong and Cha Kwo Ling to make way for the proposed development and other related projects set out in the Kai Tak Outline Zoning Plan.

As there are no suitable sites at East Kowloon for reprovisioning the Kwun Tong and Cha Kwo Ling PCWAs, and that other PCWAs do not have sufficient vacant berths for reprovisioning of the operators in these two PCWAs, the immediate decommissioning of these two PCWAs after the expiry of the existing Berth Licence Agreements in July 2008 is not a suitable or feasible option, as it will seriously affect the livelihood of the operators and those employed at the PCWAs. It is estimated that the two PCWAs provide more than 2 300 jobs and most of these jobs are low skilled ones.

We fully understand and attach much importance to the public's request for a waterfront promenade. After August 2008, we will make available the vacant berths at part of the Kwun Tong PCWA, that is, a 200 m marine frontage to the south of the PCWA and

adjacent to the Kwun Tong Pier and the entrance, for the development of a waterfront promenade. Moreover, we will encourage existing operators at the Kwun Tong and Cha Kwo Ling PCWAs to relocate on a voluntary basis to vacant berths, arising from natural wastage, in other PCWAs.

- (b) The Marine Department (MD) received two complaints concerning noise generated from the Cha Kwo Ling PCWA in the past two years, and none for the PCWA in Kwun Tong. The complaints were mainly about the noise generated from cargo handling as well as about cargo handling activities after the close of the PCWA at night.

The situation has improved following discussion between staff of the MD and the operators on ways to abate the noise. No further complaints were received. Since November 2005, the duty hours of security guards have been extended from 9 pm, when the PCWA closes, to 11 pm, to ensure no cargo handling activities are conducted outside the operating hours of the PCWA. The MD will continue to extend the duty hours of the security guards from time to time for effective monitoring.

Regarding the waste recovery yard, the Environmental Protection Department (EPD) has received 14 noise complaints in the past two years. Results of the noise measurement made by staff of the EPD showed that, the daytime noise levels at Laguna City's flats had not exceeded the acceptable noise levels. As the waste recovery yard did not produce noise persistently and the background noise in that location was relatively high, the EPD could not take any legal action.

When entering into a short-term tenancy (STT) with the waste recovery yard operator, the Lands Department included a condition stating that the operations of the waste recovery yard should not cause nuisance to residents or owners of the neighbouring lots. The EPD also specified in the STT that the waste recovery yard would have committed a breach of contract, if the noise generated during its operation exceeded the acceptable noise level.

Separately, the STT also stipulated that the site could not be used for the purpose of recycling scrap metal. Nevertheless, the tenant was found in breach of this condition. The Lands Department terminated the STT accordingly, but the tenant refused to surrender the site. As judicial proceedings have commenced, it will be inappropriate for us to make any comments regarding the case.

- (c) Refuse transfer station is integral to Hong Kong's waste management system. To keep up with the future development of the District and the expanding population, we need to provide a refuse transfer facility which the Kowloon East District now lacks. Based on the South East Kowloon Development Comprehensive Planning and Engineering Review, the Government proposes to build the South East Kowloon Material Recovery and Transfer Station at the disused Cha Kwo Ling Kaolin Mine site and the east portion of the decommissioned Cha Kwo Ling PCWA.

In May 2007, the EPD consulted the Kwun Tong District Council on this proposal. Staff of the EPD also met the Laguna City and Cha Kwo Ling Village residents on several occasions and attended residents' meetings to listen to their views.

We fully understand that there is a general concern among the residents that the refuse transfer station may have adverse effects on the environment, hygiene and transport of the district. In July 2008, the EPD will commence a review study on the proposed site of the refuse transfer station. A comparison of the effectiveness of waste management, engineering feasibility, environmental impacts, transport, and so on, of the proposed site and other possible alternative sites will be made, to determine the best site for the refuse transfer station. During the study period, the EPD will continue to maintain communication with stakeholders in the community.

MR ALAN LEONG (in Cantonese): *Madam President, I would like to follow up the last paragraph of part (a) of the main reply in which the Secretary said, "We will encourage existing operators at the Kwun Tong and Cha Kwo Ling PCWAs to relocate on a voluntary basis to vacant berths, arising from natural wastage,*

in other PCWAs". May I ask the Secretary the locations of other PCWAs which are, in the foreseeable future, most likely to have vacant berths and how many berths will be available?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, vacant berths are available in every district, but they are a little scattered. We estimate that 15 vacant berths will be available. There are 34 berths in the two districts up till end July. However, the berths are still inadequate, as it is estimated that there will be 34 operators. Generally speaking, they hope that they can operate with certainty in the future. Therefore, if they are told vacant berths are available, most of them will be willing to relocate ahead of schedule. In this connection, we will continue to maintain communication with them.

MR ALBERT CHAN (in Cantonese): *President, a big fuss will be caused in the community each time a PCWA is relocated or decommissioned. In other words, the mid-stream operators of the barging industry have often been victimized. At the same time, the Government has often failed to give regard to mid-stream operators and provide sites for their reprovisioning. For instance, similar problems have been experienced in Tsuen Wan, Wan Chai and Kennedy Town in the past. Regarding the current problem with the PCWAs in Kwun Tong and Cha Kwo Ling, can the Government inform this Council in unequivocal terms whether it has definite and specific plans regarding the relocation and handling of the PCWAs and assure us that it will not cause a big fuss in the community, thereby victimizing the mid-stream industry in the end?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we agree that the industry has a certain economic function for Hong Kong by providing a relatively inexpensive mode in addition to container terminals, for handling bulk cargoes and general cargo in particular. Of course, it also provides a series of low-skilled jobs. Therefore, it is very difficult for a balance to be struck. As Members are aware, the industry, given its mode of operation, will definitely cause nuisance to many residents. But actually, this mode of operation can be dated back to the 1960s, which was very often earlier than the development of the districts concerned.

Essentially, there are berths in six regions. In addition to Kwun Tong and Cha Kwo Ling, which are the focus of our discussion, berths are also available in other regions such as Stonecutters Island, Tuen Mun, Rambler Channel, Yau Ma Tei, and so on. However, I think Mr Albert CHAN is hoping that we could have a comprehensive reprovisioning programme. However, it is difficult to do so.

Regarding this question raised by the Honourable Member, we have come up with the following proposal: Can the 10-odd waste paper recyclers be relocated to the same spot outside Cha Kwo Ling? Actually, a trunk route named T2 will be built in the future. As a site adjacent to it cannot be put to use for quite some time, can the operators be relocated there in the interim? As for the remaining operators, we will relocate them in the vacant berths in the remaining PCWAs in an efficient manner. This is relatively difficult because we know that the residents in the district also have opinions about this. Therefore, we must communicate with the residents and give them a reasonable explanation before our goal can be achieved.

MR ALBERT CHAN (in Cantonese): *President, I raised these questions in the last part of my supplementary question: Will the mid-stream operators be victimized on every occasion? Will the Secretary ensure that the operators will not be victimized on this occasion?*

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I have already explained that it is very difficult to strike such a balance. However, from my position as Secretary for Transport and Housing, I have no doubt that this mode of operation has its economic value. Therefore, we will definitely make every effort to give them assistance. However, views are still divided on some of the modes proposed by the Government, as I mentioned earlier. For instance, as I stated earlier, we can endeavour to help them relocate to berths which are left vacant at the moment. We will definitely do our best.

MR FRED LI (in Cantonese): *President, there is currently one refuse transfer station in Kwun Tong, which is located within an industrial area in Kowloon Bay. Not much objection has been raised to the station because it is located within an industrial area. The present site selected by the Government, however, is met with opposition from various residents' groups and the two Owners' Committees of Laguna City precisely because the site is located just opposite to Laguna City and Cha Kwo Ling. Given such a strong opposition faced by the Government in the district, can the Secretary announce today that the Government will give up the selected site and conduct a comprehensive study of alternative sites so that this incident will not drag on any longer, thereby causing strong dissatisfaction among the residents of the district?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): I would like to thank Mr Fred LI for his supplementary question. According to our current plan, it is hoped that the South East Kowloon Material Recovery and Transfer Station will be built in Cha Kwo Ling. Members should understand, in the light of population growth and development, that substantial waste transfer facilities are required in the South East Kowloon district, including Kwun Tong, Wong Tai Sin, Kowloon City, and even part of Sai Kung.

As mentioned by Mr Fred LI earlier, a vacant site in Kowloon Bay, once used as a transfer station, is unable to cope with the future need because of its limited size. On the other hand, as Honourable Members might also understand, there are at present seven transfer stations for general waste in the territory. Most of them are located near the waterfront and they are operated by sea transport. It is our hope that the future recovery and transfer station for South East Kowloon could also be built along the waterfront to facilitate waste recycling as well as centralized packing to enable waste to be directly transported to landfills, such as those in North West New Territories, by vessels, which is a cleaner approach, thereby greatly alleviating the impact of refuse trucks on the traffic in the entire district.

Hence, given the new requirements, we hope that, in addition to adequate size, the waterfront facilities can be provided to achieve the transportation function as I explained earlier. Of course, we consider the proposed site a satisfactory one, but we also realize that there are views from the residents in the district. This is why the Secretary for Transport and Housing mentioned in the main reply that a review study on the proposed site was being conducted to

examine if other appropriate sites were available in nearby districts. I have also heard about some other sites proposed by the residents in the district. Those sites will be taken into consideration too. President, Honourable Members, this programme must be implemented in the long run. On the one hand, we hope that an ideal place can be selected; on the other hand, we must ensure that the facilities can alleviate the nuisance caused to the residents on the environmental front.

MR FRED LI (in Cantonese): *I feel that the Secretary has not answered my question regarding whether the Government is still studying its proposed site without regard to local residents' objection. I wish to clarify this point: Is the Government still continuing with its study or has it given up its proposed site and begun studying other alternative sites?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, as pointed out in my reply given just now, our proposed site, that is, Cha Kwo Ling, is one of our ideal choices. Of course, we have to undertake other tasks, such as environmental evaluation, as well. I also pointed out earlier than we had referred to the views of local residents. Besides reviewing this proposed site, we will also take the alternative sites proposed by local residents into consideration as well before making a decision.

DR RAYMOND HO (in Cantonese): *President, the Secretary mentioned earlier that a review would soon be conducted to study the policy on waste transfer stations. There are currently seven transfer stations and three landfills, which will be used up in the near future and cannot be put to use again. Although transfer stations are an integral part of our waste management system, is the Government wasting resources by continuing with its study on increasing the number of these transfer stations?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): I would like to thank Dr Raymond HO for his supplementary question. As Members are aware, in addition to making use of landfilling — landfills are expected to be full in four to eight years' time — we need to, on the one hand, resort to expansion and, as proposed before, expeditiously consider building an integrated waste handling facility in a timely manner on the other hand. This is why site

selection and environment evaluation have begun. Regardless of the work progress, transfer facilities are needed in urban areas. As pointed out in my answer to Mr Fred LI's supplementary question earlier, these transfer facilities can help hand such wastes in an effective and clean manner and reduce the nuisance caused by individual refuse vehicles running within the district. Therefore, the new transfer stations to be constructed in the future are expected to be cleaner and better managed. They can also complement landfilling or be used jointly with the integrated waste handling facilities to be commissioned in the future.

MS MIRIAM LAU (in Cantonese): *President, in answering Members' questions earlier, the Secretary for Transport and Housing said that PCWAs play an important role in Hong Kong's economy and people's livelihood, and affect many businesses operating there and workers working there. However, PCWAs often get entangled with the Government every two or three years on renewal issues, and objections to their existence are often raised by residents. Even if the PCWAs in Kwun Tong and Cha Kwo Ling are allowed to survive on the existing sites this time, they are given three years only. The number of berths might still be inadequate even if operators are encouraged to relocate to vacant berths in other PCWAs. The Secretary has merely described the situation as very, very difficult. Despite such difficulty, the problem must be resolved. While there is not much she can do within her own policy area, can the Secretary collaborate with, for instance, the Development Bureau and the Environment Bureau, in formulating a comprehensive plan to enable these PCWAs, as an economic element vital to Hong Kong's economy and people's livelihood, to continue to operate in the territory?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Transport and Housing.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, as I mentioned earlier, PCWAs certainly have an important economic function in such areas as bulk cargoes and general cargo, as well as providing low-skilled jobs. However, insofar as comprehensive planning is concerned, it is very difficult to find suitable sites in down town areas to be used as PCWAs. Transport inconvenience can actually affect their competitive edge. So, can the place be used as a PCWA in the future? It is not an easy task at all. This

explains why a river trade terminal was planned at that time. It was hoped that some other modes of operation could be introduced, in addition to the PCWA, which is relatively basic, to complement the operation of major terminals.

Ms Miriam LAU was right in saying that the three-year renewal period was problematic. In addition to this problem, we also need to address our tendering practice. For instance, we were requested by the Public Accounts Committee years ago to conduct open tender. Although restricted tender has been arranged for some of the PCWAs in the current exercise, we are already moving in a gradual and progressive direction towards public tender. I believe a balance has already been struck on the socio-economic front. We will make available a 200 m site this time around for the development of a waterfront promenade in Kwun Tong. It is also hoped that the Kwun Tong and Cha Kwo Ling PCWAs will be decommissioned in the future. This involves long-term planning, and a procedure is required too. Therefore, what Ms Miriam LAU said earlier was definitely right. However, this does not mean that we have enormous room for planning PCWAs in a long-term and satisfactory manner.

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

MS AUDREY EU (in Cantonese): *President, it was mentioned in the third paragraph of part (a) of the main reply that some operators in PCWAs would be relocated in August 2008 and, in considering the sites for relocation, the operators would be consulted on the sites to which they would be willing to be relocated on a voluntary basis. President, I happened to go to the Kennedy Town PCWA with some of my colleagues yesterday, and I found that several berths had been reserved there for the relocation of operators in Kwun Tong and Cha Kwo Ling. May I ask the Secretary if the local District Council would be consulted should operators in Kwun Tong and Cha Kwo Ling be really relocated to the Kennedy Town PCWA? If no consultation would be carried out, why not? Will this be a violation of the Government's promise to build a waterfront promenade in Western District as well? If consultation will be conducted, when will it be held? As I understand that the agreement will expire in July, so when will the consultation be conducted?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, perhaps I should clarify some information. First of all, no berths have been reserved by us because a public tender is underway and it is drawing to a close. Some vacant berths are already available in Western District. While the final outcome of this tender exercise cannot be known beforehand, some berths must be reserved to meet the need of the West Hong Kong Island Line project. Furthermore, the site has along been used as a PCWA. But, of course, we are aware of the requirements for long-term planning. As I stated earlier, on the one hand, the PCWA has an economic function and serves to provide low-skilled jobs; on the other hand, there are requirements for long-term planning, and the residents do have their opinions too. Madam President, it is difficult to strike a balance in this respect. During the process, we certainly hope, as stated by Ms Audrey EU earlier, to listen to the voices of the public. However, we do not imply that the operators should carry on or cease business. They are merely carrying on with their existing mode of operation. We will certainly respect the future long-term planning regarding, for instance, whether and what long-term facilities will be planned in the district.

MS AUDREY EU (in Cantonese): *President, I think the Secretary's information is not as updated as mine, because I just made a consultation on this issue yesterday. According to the Secretary, berths number 1 to 3 would be reserved for the West Hong Kong Island Line. However, a total of 29 berths are available there, with three of them reserved for the operators in Cha Kwo Ling and Kwun Tong to be relocated there. Therefore, the Secretary has not yet answered my question regarding whether the Central and Western District Council will be consulted on this issue because, if the operators are to be relocated there, the relocation would have to take place in August, given the expiry of their agreements in end July. If consultation will be held, when will it be held? If no consultation will be held, will this be a violation of the Government's promise to the Central and Western District Council to build a waterfront promenade in Western District? President, this is part of the supplementary question raised by me earlier.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we are talking about a short-term three-year tender and long-term planning. Let me clarify again that the three vacant berths are not reserved for the operators in Kwun Tong. The berths are already vacant at the moment.

As regards whether other vacant berths will be made available in the future, the situation will not be known until the current tender exercise is over. I do not think this short-term arrangement will affect long-term planning.

PRESIDENT (in Cantonese): We shall now proceed to the sixth oral question.

Flooding Problems in Central and Western District

6. **MISS CHOY SO-YUK** (in Cantonese): *It has been reported that on the second day upon his assumption of office in 2005, the Chief Executive visited the Central and Western (C&W) District, which was then affected by serious flooding, and extended sympathy to the business operators. He pointed out that the Government was concerned about the incident and he had urged the Drainage Services Department (DSD) to expedite the flood protection works in order to reduce the risk of flooding in future. Last year, the Government also spent over \$200 million on the implementation of a drainage improvement works project in the district. However, after the downpour on the seventh of this month, Sheung Wan was still hard hit and the water level there was once chest high. Many dried seafood shops in the district suffered losses of tens of million dollars, as their expensive ginseng and dried seafood were totally soaked in water. In this connection, will the Government inform this Council:*

- (a) *whether it will investigate the above flooding incident to find out if human negligence was involved; if it will, of the details, and if the investigation outcome indicates that human negligence was involved, whether it will consider compensating the affected business operators; if investigation will not be conducted, the reasons for that;*
- (b) *given that the problem of flooding has been troubling business operators of the C&W District, and it has been reported that the stormwater interception drains laying works carried out in the C&W District by DSD can only divert 30% of stormwater, it is expected that the problem of flooding at the district can only be completely solved after the commissioning of the Sheung Wan stormwater pumping station next year, whether DSD had implemented relevant preventive or temporary measures in advance before the torrential*

rain on the seventh of this month; if it had, of the details; if not, the reasons for that; and what short-term and long-term measures the authorities have in place to avoid similar serious flooding incidents in the C&W District during the rainy season this year and in future; and

- (c) *whether senior government officials have, after the above flooding incident, visited the district to understand the situation; if they have, of the precise time of such visits and the officials involved; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, in the morning of 7 June 2008, many areas of Hong Kong saw record high rainfall. On that day, we received a total of 622 flooding reports and 130 landslide reports. From this we can see the problems caused by the particularly heavy rainstorm that day.

My reply to Miss CHOY's three-part question about flooding in Sheung Wan on the day is as follows:

- (a) The area around Wing Lok Street in Sheung Wan is low-lying and is only 2.64 m above the principal datum at its lowest. The existing stormwater drainage system within the area was built decades ago and does not meet the current standards. As such, the area is prone to serious flooding during heavy rains and high tides. The Government has been actively improving and upgrading the stormwater drainage system there and implemented preventive measures, including those that ensure proper functioning of the existing drainage system, and an alert mechanism to prompt business operators and residents to take precautions against flooding. On 7 June, the particularly heavy rainstorm coincided with a high tide in the morning. The sea level reached 2.5 m above the principal datum at its highest. This is close to the lowest point of the low-lying area of the Wing Lok Street area. Serious flooding was resulted.

Before the rainstorm, the DSD had stepped up clearing the drainage system of the Wing Lok Street area and downstream to ensure its proper functioning. In fact, the DSD had thoroughly cleared the

drains of sediments before the onset of the rainy season. The DSD also conducts monthly inspection and clearing of the drainage system in the Wing Lok Street area during the rainy season from now to October.

On 7 June, the Hong Kong Observatory (HKO) issued the Amber rainstorm warning at 5.15 am. The DSD issued the Amber rainstorm warning message at 5.22 am. Subsequently when the HKO issued the Red rainstorm warning at 5.55 am, the DSD sent out the message of "flooding in Sheung Wan" at 5.59 am. This is in accordance with an alert mechanism put in place in April 2006. The system issues an alert message of rainstorm or flooding, as appropriate, to registered business operators/residents, for timely precautions against flooding whenever there is a high tide, a typhoon or rainstorm warning from the HKO. Currently, a total of 400 business operators and residents have registered with the DSD for receipt of the messages.

On 7 June, after the HKO had issued the Amber rainstorm warning at 5.15 am, a DSD emergency team arrived at the Wing Lok Street area at 6 am, and in other words, within one hour, to check and clear the drainage inlets. The team comprised five workers equipped with tools such as high-pressure water jets and pumps.

As the DSD had already taken actions to minimize flooding at Wing Lok Street under the particularly heavy rainstorm in accordance with established guidelines, we do not consider that human negligence was involved in the incident.

- (b) To tackle Sheung Wan's flooding problem more effectively, we need to start with reinforcing the flood prevention infrastructure. In this connection, we launched the "Drainage Improvement in Northern Hong Kong Island — Intercepting Drains at Queen's Road Central" project in March 2006 at an estimated cost of \$46.3 million. The project includes laying intercepting drains along Queen's Road Central and Gilman's Bazaar with a view to collecting and diverting flows from upstream of the Wing Lok Street area to a newly constructed box culvert at Gilman's Bazaar for discharging into the sea. The intercepting drains, which have been

operational since their completion in late April 2008, diverts about 30% of stormwater from getting into the Wing Lok Street area. We have also launched the "Drainage Improvement in Northern Hong Kong Island — Sheung Wan Stormwater Pumping Station" project in June 2006 at an estimated cost of \$177.6 million. The project includes constructing an underground stormwater pumping station with a 9 000 cu m flood storage tank. The flood control tank collects the stormwater from the Wing Lok Street area from which it is pumped into the Victoria Harbour. The project has moved to top gear and is expected to complete before the start of the rainy season in 2009. It would then alleviate the flooding problem in Sheung Wan.

Before the completion of these projects, we will continue to adopt stringent preventive measures. Based on the experience gained during the rainstorm on 7 June, the DSD will deploy more emergency teams to the areas around Wing Lok Street to clear blocked drainage inlets in times of rainstorm. Apart from immediately deploying the first emergency team after the Amber rainstorm warning is issued, two more teams will be mobilized in succession when the rainstorm warning is upgraded to Red and subsequently Black. An engineering truck will also be stationed at the junction of Wing Lok and Morrison Streets when a Black rainstorm warning is issued, to provide instant assistance to business operators.

To resolve more completely the flooding problem in the Sheung Wan area and Hong Kong Island West, we are investing over \$3 billion in the "Drainage Improvement in Northern Hong Kong Island — Hong Kong West Drainage Tunnel project" with a view to intercepting and discharging directly the stormwater from the upstream catchments between Tai Hang and Pokfulam into the sea, thereby reducing the volume of stormwater entering the lower catchments. Construction works have commenced in November 2007 for completion in early 2012. Moreover, the "Drainage Improvement in Northern Hong Kong Island — Western Lower Catchment Works" project is set to start by the end of 2008 at a cost of over \$370 million. The project aims at improving drains that have aged or with inadequate flood conveyance capacity in Wan

Chai and C&W District. The works will be carried out in phases for completion by late 2012. When the above drainage improvement works come into operation, the risk of flooding in Northern Hong Kong Island will be greatly diminished.

- (c) The Director of Drainage Services (D of DS) and the District Officer of Central and Western District visited the Wing Lok Street area of Sheung Wan in the afternoon of 7 June, the day of the rainstorm. On the following day, that is, Sunday, 8 June, together with the D of DS and the Assistant District Officer of Central and Western District, I inspected Wing Lok Street and visited about five to six shops in the afternoon in order to understand how they were affected by the flooding and listen to the operators' views.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary said in the main reply that one of those three projects had already been completed before 7 June, whereas the remaining two projects could not be completed until 2009, at the earliest. According to the Secretary's reply, from now to 2009, all that the Government can do, in fact, is just to send two more DSD teams to the affected area in during rainstorms. Can the Secretary tell us what these two teams of workers will do after arriving there? If this measure is effective, why did the authorities not send two more teams of workers there that day?*

SECRETARY FOR DEVELOPMENT (in Cantonese): As I have explained earlier, it was due to a combination of several factors that the particularly heavy rainstorm on the day had caused very serious flooding at Wing Lok Street. These factors include a record high volume of rainfall that day, which coincided with a high tide, thus causing the sea level to rise to a point close to the level of the low-lying area at Wing Lok Street. As a result, sea water flowed back and flooded the streets.

Moreover, there is a third reason which I did not mention in the main reply but we all knew about it later. A landside occurred on the campus of the University of Hong Kong that day. A large quantity of soil and mud kept running down the hill along Pokfulam Road, through Hill Road and Des Voeux Road West to Sheng Wan and Western District, where the drainage inlets were subsequently blocked by the fallen debris. A team had already been sent to the

affected area at 6 am that day. In fact, I saw the pictures taken upon their arrival at 6 am but there was no sign of flooding at the time. The rainstorm came very swiftly at 8 am and instantly caused serious flooding in the area. In retrospect, we still cannot make a judgement as to whether such serious flooding could have been prevented even if an additional team of workers had been sent there.

What I can tell Miss CHOY is that in fact, we have adopted a three-pronged approach in our flood prevention works. Firstly, ongoing efforts are made to upgrade and improve the infrastructure and this is why I have taken up Members' time just now explaining the infrastructure projects in detail. Secondly, about prevention works, they require the concerted efforts of the Government, business operators and also residents in nearby areas. For example, we should not allow too much refuse to block drainage inlets. When I inspected the area on Sunday, I saw a lot of grease inside the drains after the covers were opened. Perhaps improper stuff had been dumped into the drains, causing obstruction to their draining capacity. Thirdly, we will certainly review our ability to respond to crisis, and I have introduced some new measures in this connection. I hope that we can make continuous efforts in these three areas so as to reduce the impact of flooding on business operators.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary did not answer my question about what the two additional teams of workers will do when she sends them to the affected area next time during a flooding.*

SECRETARY FOR DEVELOPMENT (in Cantonese): As I already pointed out in the main reply, these emergency teams comprising Inspectors of Works of the DSD, together with five workers each, will mainly clear the drainage inlets with pumping tools and high-pressure water jets, in order to reduce the occurrence of flooding. Although yesterday's situation under typhoon signal no. 8 and Red rainstorm warning was certainly not as bad as it was on 7 June, we followed the new guidelines and sent two DSD teams to the affected area. I am glad to say that no flooding occurred at Wing Lok Street yesterday.

MR JASPER TSANG (in Cantonese): *President, the Secretary visited the business operators at Wing Lok Street in person the next day following the flooding incident to understand how they were affected by the flooding and listen*

to their views. Can the Secretary tell us what views the operators have expressed? For example, do they agree that the DSD has taken measures to minimize the impact of flooding on the district, as the Secretary said in the main reply?

SECRETARY FOR DEVELOPMENT (in Cantonese): I think Mr TSANG understands that under such circumstances, officials would indeed hear a lot of grievances when visiting a disaster area. First, many operators told us that the interception work was ineffective, as they still had to face flooding of such a serious extent. Second, they considered that the alert mechanism did not seem to be not functioning properly and as a result, they could not receive warning messages in time. Third, as I said earlier, although we have conclusive evidence to prove that an emergency team was sent to the district, some operators said that they saw no emergency team there.

All in all, we do appreciate that when their business has been so much affected, the operators will still feel bad although most of them have taken out insurance. We fully understand how they feel. Therefore, we hope that we can respond to all of their views. For example, in order to prevent disputes over whether any emergency team has been sent to the flooded area, an engineering truck will be stationed at a particular place during exceptionally heavy rainstorms and when Black rainstorm warning has been issued. We will notify all business operators of the location of the truck, so that they can come out immediately to tell the engineers on the truck where instant assistance is needed.

PROF PATRICK LAU (in Cantonese): *President, from the main reply we can see that in fact, this district has long been troubled by its low-lying geographical location. The Government has also spent a lot of money carrying out a diversity of works and yet, it appears that the problem cannot be solved fundamentally yet. Will the Secretary, in the context of urban renewal, consider raising the ground of this district to a higher level? In fact, the shops in many buildings there have already raised their platforms. Will this be included as a consideration of urban renewal in the district?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Firstly, with regard to the many projects being implemented now, in order to truly solve the problem

fundamentally, the three major projects which I have mentioned must be completed before the flood conveyance capacity in the entire Northern Hong Kong Island can be improved. Prof LAU's observation is correct. Indeed, when I visited the area on the day, I also saw that in the Wing Lok Street area some new buildings have had their platforms raised, and even the pavements have been raised. Therefore, in order to completely solve the problem of flooding caused by the low-lying geographical feature of the district, perhaps it is really necessary to start from planning. In the long term, we must consider this carefully because urban renewal is already a very difficult task and if this would become a reason for carrying out acquisition and urban renewal, I think any government would have to consider it very carefully.

DR YEUNG SUM (in Cantonese): *President, the flooding problem at Wing Lok Street in the C&W District has a long history. Apart from the reason that it is a low-lying area, many buildings are constructed along the hillside. Moreover, the drainage system in the district was developed a decade or two ago and so, it has become old and dilapidated. Added to this is an increasing population in the C&W District. I very much support the three projects of the Government. That is, other than the pumping station project, works have been carried out to intercept and discharge the stormwater from the upstream catchments between Tai Hang and Pokfulam into the sea, and there is also the western lower catchment works project. I fully support these three projects. However, given that all these major projects, such as the pumping station and catchment works projects, cannot be completed until the end of 2012, can the Government consider doing everything it can to double the resources provided for these projects in order to advance their completion dates for the benefit of the residents there?*

SECRETARY FOR DEVELOPMENT (in Cantonese): First of all, I very much thank Dr YEUNG for supporting our drainage infrastructure projects. In fact, over the past two years, the Legislative Council Public Works Subcommittee has been very supportive of our drainage and water works infrastructure projects. I can tell Dr YEUNG here that we will do our utmost to speed up work with our engineering departments, with a view to completing these projects early.

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

MR HOWARD YOUNG (in Cantonese): *President, prevention of disasters requires long-term resource commitment. But sometimes, if it is impossible to prevent disasters, the provision of disaster relief will be an issue, and the Government will have to make certain strategic arrangements. From the recent earthquake in the Mainland, we can see that a lot of battlefield hospital equipment and tents can be deployed from places all over the country.*

My question is: The Secretary said that five workers were sent and that they were equipped with tools such as high-pressure water jets and pumps. Has she conducted studies on whether this so-called relief team can effectively deal with the flooding problem in Hong Kong? I ask this question because apart from Central and Sheung Wan, I notice that flooding sometimes occurs in New Territories North, Yuen Long and West Kowloon, too. Has her team made any assessment as to whether they are sufficiently equipped to do what they should?

SECRETARY FOR DEVELOPMENT (in Cantonese): In fact, after the particularly heavy rainstorm on 7 June, the various public works departments will conduct a review of our resources, the adequacy of the supporting equipment and contingency plans in relation to flooding, water supplies and slope management, with the hope that we can do a better job in the provision of emergency relief and follow-up measures. I thank Mr YOUNG for his suggestion.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Registration Fees for Small Volume Exemption for Prepackaged Food

7. **MR VINCENT FANG** (in Chinese): *President, the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 (the Amendment Regulation) provides for*

a small volume exemption scheme for food products with annual sales volume not exceeding 30 000 units. The registration fees for small volume items are \$345 (for new application) and \$335 (for renewal of exemption). The authorities have indicated that the fees are set on a full-cost recovery basis. In this connection, will the Government inform this Council:

- (a) of the details regarding the handling of the above applications by the authorities, including whether or not capital investment is involved and whether or not designated persons are required to handle these applications, as well as the estimated operation cost per year;*
- (b) how the authorities arrived at the above fee levels, and whether they have projected the number of types of prepackaged food for which the food trade will apply for small volume exemption each year; if they have, of the information or criteria based on which the projection is made;*
- (c) given that the above fees are set on a full-cost recovery basis, whether the authorities will raise the fees when the number of applications is lower than their projection, which will lead to the situation of "expenditure exceeding revenue", or lower the fees when the number of applications is higher than their projection, which will lead to an increase in revenue; and whether the authorities have drawn up a mechanism for reviewing the fees; and*
- (d) whether the authorities will make reference to the current application system for certain commercial documents, such as the Certificate of Origin for textile products, and consider handing over the registration work on small volume exemption to those trade associations which can undertake the work at a lower cost, so as to reduce the Government's administrative expenses?*

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

- (a) First, we would like to extend sincere gratitude to the Honourable Vincent FANG and the trade for their valuable views and contribution towards the nutrition labelling scheme. The Honourable Vincent FANG and the trade suggested earlier that the

Administration should issue the Technical Guidance Notes on the nutrition labelling scheme as soon as possible to help the trade make active preparation for the new requirements, which will come into effect on 1 July 2010. After several rounds of consultation with the trade on the specific contents of the Technical Guidance Notes, the Centre for Food Safety (CFS) issued the draft Technical Guidance Notes and uploaded it onto the CFS website for reference and comments by the trade when the Amendment Regulation was gazetted in April 2008.

Following the passage of the Amendment Regulation, the CFS further discussed and confirmed the contents of the Technical Guidance Notes with the trade at the technical meeting on 18 June 2008. We will finalize the draft Guideline Notes by July 2008. The CFS will, through various channels (for example, workshops), help the trade adapt quickly to the changes, so as to ensure compliance with the legal requirements on nutrition labeling when the grace period ends.

According to the Amendment Regulation, importers and manufacturers may apply to the Director of Food and Environmental Hygiene for an exemption from the nutrition labelling requirements set out in the Amendment Regulation in respect of any prepackaged food with annual sales volume not exceeding 30 000 units and for which no nutrition claim is made. Applications can be made by sending duly completed application forms to the Food and Environmental Hygiene Department (FEHD) by post, by fax or in person or through the web-based platform. FEHD staff will check the information submitted, including the applicant's particulars, the company information, and details of the food product such as the brand name, name of the food product, net weight/volume/count, country of origin, particulars of the manufacturer or packer, names and addresses of the distributors/retailers, label, photos and bar code of the product, and so on. When vetting an application, FEHD staff will also look into the past records of the applicant to verify, *inter alia*, whether other importers have been granted exemption for the product and the remaining quota. Applicants will be notified by the FEHD within 14 working days on whether additional information is required, or

whether the application is approved. Successful applicants will be notified to pay the fee before a specified date for the issuance of the formal approval letter. Upon receipt of payment from the successful applicant, formal exemption will be granted by the FEHD within seven working days.

No capital costs will be incurred by the FEHD for processing the applications and the vetting of applications will be conducted by FEHD staff responsible for food labelling. The estimated cost for processing applications is about \$3 million a year.

- (b) In estimating the number of applications for exemption each year, the FEHD will consider a variety of factors, including the number of food products on the market, number of importers/ manufacturers involved, the definition of food products of the "same version", information provided by the trade, and so on. The FEHD has adopted the established costing principles and the cost recovery principle in setting the level of fees. The fees cover mainly the staff costs, departmental expenses and administrative overhead involved in processing and vetting the applications. Based on the number of applications received, the Administration will deploy the necessary manpower to process the applications. The greater the number of applications, the greater will be the amount of resources deployed. Therefore the average cost of processing each application remains largely unchanged. The changes in the number of applications will have little impact on the fee level of each application. Upon the implementation of the scheme, we will know the actual number of applications, and will keep the costs and fees of the service under regular review in line with the usual practice.
- (c) Since the number of applications will have little impact on the level of fees, there is no need to adjust the fees based on the varying number of applications. In line with the usual practice, the FEHD will keep the costs and fees of the service under regular review.
- (d) Since the vetting of applications for small volume exemption directly involves the checking of whether the food concerned meets

the legal requirements for exemption, and future enforcement has to be based on the accurate information received during application, it would be proper for the Government to monitor and approve such applications. The certificate of origin system implemented in Hong Kong is to facilitate the export of local goods to overseas markets. It is not a mandatory system. Depending on the requirements of importers or the importing countries, exporters can decide by themselves whether to apply for a certificate of origin for their products. The authorization given to some local trade associations for issuing the certificates of origin mainly aims to facilitate the trade in applying for such certificates for their products. It is different by nature from the above statutory exemption.

Disaster Relief Work of Government

8. **MR TAM YIU-CHUNG** (in Chinese): *President, it has been reported that due to the rainstorm on the seventh of this month, water and electricity supply to as well as external communication in a number of places on Lantau, such as Tai O, were suspended several days on end, resulting in members of the public criticizing the Government's relief efforts as ineffective. In this connection, will the Government inform this Council:*

- (a) *why it did not activate the operation of the Emergency Monitoring and Support Centre (EMSC) that day;*
- (b) *why members of the Civil Aid Service (CAS) were not sent to Tai O to commence relief work until two days later;*
- (c) *given that the National Emergency Plan for the Relief of Disasters on the Mainland provides that the departments under the Ministry of Civil Affairs at county level shall report the preliminary situation of a disaster to their superiors within two hours after its occurrence, whether the Government of the Hong Kong Special Administrative Region has a similar requirement, for example, all District Offices are required to report the situation of a disaster to the Government Secretariat within a specific time after its occurrence; if it has, of the details; if not, how it ensures that the Government knows about the*

situation of a disaster at once, as well as the immediate and actual needs of victims of the disasters; and

- (d) *whether it has plans to conduct a comprehensive review in the light of the public criticisms about the Government's performance in relief work on this occasion, including the problems of lack of co-ordination among the government departments concerned, delay in activating the emergency co-ordination mechanism, and so on, and make reference to the experiences of other regions in the operation of their emergency disaster relief mechanism, in order to perfect the existing mode; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) Immediately after the Hong Kong Observatory (HKO) issued the Black Rainstorm Warning at 6.40 am on 7 June, the EMSC of the Government Secretariat, and the emergency co-ordination or control centres of various emergency service departments had activated the emergency response mechanism in accordance with the "Contingency Plan for Natural Disasters" to assume overall monitoring of the situations as well as the provisions of the required emergency services.

In fact, when the EMSC of the Government Secretariat started operation, the Home Affairs Department (HAD), Civil Engineering and Development Department (CEDD), Lands Department (LandsD), and so on, had already activated their emergency co-ordination or control centres in accordance with their departmental contingency plans when the HKO issued the Landslip Warning at an earlier time.

The HKO cancelled the Black Rainstorm Warning at 11 am on 7 June and replaced it by a Red Rainstorm Warning, which was later replaced by an Amber Rainstorm Warning at 11.30 am. During the period, the EMSC of the Government Secretariat received many reports on flooding and landslide in different districts, among which

the more severe incidents included the search and rescue operation carried out by the Fire Services Department (FSD) at the scene of the landslide at Cafeteria Old Beach, and the urgent handling of serious flooding and road closure arrangement by the Highways Department at North Lantau Expressway. The EMSC had co-ordinated the emergency actions taken by the responsible departments. Having confirmed that appropriate follow-up actions had already been taken by relevant departments, the EMSC ceased operation at 1.45 pm and the emergency co-ordination or control centres of the relevant departments continued to provide the required emergency services.

- (b) The landslip, road closure and disruption to communication and water supply in Tai O came to the notice of government departments in the morning of 7 June, and the departments concerned immediately commenced relief works under the co-ordination mechanism. The Water Supplies Department (WSD) assigned a vessel to provide water to the residents in Tai O at about 4 pm on the same day. The police deployed additional officers to the Tai O Pier and Lung Tin Police Post by sea to provide the Tai O residents with emergency support. Through the officers on site and the use of police communication equipment, the Government maintained close contact with the Tai O Rural Committee and the residents to ascertain their condition and needs and provide them with relief information. Moreover, the Transport Department implemented temporary transportation arrangements starting from that day, and provided extra ferry services between Tai O and Tung Chung. In response to the demand of the residents, the frequencies of special ferry services on usual days and holidays were increased to 14 and 17 sailings respectively. The Office of the Telecommunications Authority (OFTA) and the telecommunication company were also informed to carry out emergency repair of the communication facilities. Meanwhile, after assessing the overall situation in Tai O and the needs of the residents, the government enlisted the service of the CAS to reinforce the relief works. The CAS sent officers to Tai O and the neighbouring villages on 9 June to assist in removing the debris from the residents' houses, clearing blocked paths and village walkways and distributing emergency supplies.

- (c) The HAD will activate the Emergency Co-ordination Centres (ECC) of the Headquarters and the 18 District Offices in accordance with its contingency plan when a Landslip Warning, a Red or Black Rainstorm Warning, or a Tropical Cyclone Warning Signal No. 8 or above is issued by the HKO. The departmental emergency co-ordination mechanism can be activated within 15 minutes if an emergency arises during office hours and within 1.5 hours if an emergency arises outside office hours. During its operation, the ECC at district level are required to report to its headquarters hourly on the emergency incidents and the follow-up actions in their districts. The emergency hotlines of their Headquarters will be manned round the clock during the operation of the ECC.

The other emergency services have also put in place their respective contingency plans. When there is a natural disaster or severe weather condition, they will activate their departmental emergency co-ordination or control centres in accordance with the contingency mechanism to co-ordinate their emergency efforts and services. For example, when a Tropical Cyclone Warning Signal No. 8 or above, a Red or Black Rainstorm Warning or a Landslip Warning is issued by the HKO, the CEDD, LandsD, Drainage Services Department, WSD, OFTA, and so on, will promptly activate their departmental emergency co-ordination or control centres to carry out emergency work in a co-ordinated manner and update each other of the situation every hour or as and when the situation requires. These reports together with the reports of HAD will also be uploaded onto the Government's emergency Bulletin Board System so that other departments will be fully apprised of the situation.

Also, whenever there is severe weather condition, for example, when a Tropical Warning Signal No. 8 or above, a Black Rainstorm Warning Signal or a Tsunami Warning is issued by the HKO, the EMSC of the Government Secretariat will be activated. It will monitor the emergency incident reports supplied by the departments and their work progress, and provide offices of principal officials with the latest situation reports at regular intervals. If necessary, the EMSC will co-ordinate and give support to the relevant bureaux and departments to ensure that necessary emergency relief will be provided to the residents affected as soon as possible.

- (d) The Government is aware that the provision of prompt and effective emergency service is vital for the residents to restore their normal lives. The situation on 7 June was rare as heavy rainstorm triggered extensive flooding and landslips, causing serious disruption to traffic in many districts, while suspension of telecommunication network, transportation, and water supply occurred at the same time in a single community.

The Government will learn from the incident and conduct a review on the ways to further improve its emergency response system. Besides enhancing the collation of situation reports and impact assessment at district level, consideration will also be given to improve the communication and co-ordination among departments. In doing so, the Government will be able to grasp more accurately the situation of individual districts and improve the emergency response and relief systems, so as to ensure that prompt and effective assistance will be provided to the affected residents.

Nuisance Caused by Piling Works of Hong Kong Housing Authority

9. **MISS CHAN YUEN-HAN** (in Chinese): *President, a person who is in charge of a school has relayed to me that because the construction of a public housing estate (PHE) of the Hong Kong Housing Authority (HA) at a site near the school is in progress, the school premises tremble whenever piling works are carried out every day at noon and in the evening. The noise of the works has also affected students attending classes. In this connection, will the Government inform this Council:*

- (a) *whether at present, HA has adopted hydraulic jack piling across the board, which is more environmentally-friendly and can comparatively reduce the level of disturbances brought by the works, in the construction of its PHEs; if not, of the reasons for that and the HA works projects in which percussive piling is still in use;*
- (b) *in the past three years, whether HA had adopted mitigation measures to abate the nuisance caused to the residents and communities nearby when piling works were carried out at its PHE sites, and whether it had regularly exchanged views with the affected*

residents and communities on the nuisance caused by the works, so that improvements could be made; and

- (c) *whether at present, the Education Bureau has set out clear guidelines stipulating that if the noise and nuisance caused to a school premises by piling works have reached a certain level, the school premises will be rendered unsuitable for classes and the authorities and school concerned are required to find alternative venues for students to attend classes; if not, whether the authorities will consider formulating such guidelines?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the three-part question is as follows:

- (a) The HA has adopted hydraulic jack piling in a pilot project. Yet, hydraulic jack piling is more suitable for use in sites with specific geological and ground conditions (for example, in a stratum of largely homogeneous completely decomposed granite) and can only be applied to the construction of buildings with fewer storeys. As such, the HA has not widely adopted hydraulic jack piling for foundation works.

Percussive piling works are now proceeding at the HA's two projects at Tung Tau Estate Phase 9 and Shek Kip Mei Estate Phase 2. Ground investigation reveals that the ground conditions of these two sites, comprising of scattered boulders, render it unsuitable for hydraulic jack piling. Therefore, percussive piling is used instead for these two projects.

- (b) Construction noise is subject to control under the Noise Control Ordinance. According to the Ordinance, the carrying out of percussive piling is only allowed during the daytime (that is, between 7 am and 7 pm) on non-public holidays and a Construction Noise Permit issued by the Environmental Protection Department (EPD) is required. It will be a violation of law if a contractor does not hold a valid Construction Noise Permit or fails to comply with the conditions of the permit.

Having regard to the works method of the contractor, the EPD will specify conditions in the permit, including the types and number of percussive piling equipment to be used and the periods of time allowed for percussive piling. In general, the EPD will only allow percussive piling for a duration of three hours each day in urban areas. If the site of piling works is nearby school premises, the EPD will liaise with the school concerned and avoid granting approval to piling works during classes and examinations as far as possible. Depending on individual circumstances, the piling works are normally arranged to be carried out at periods around noon or towards the evening so as to minimize the noise nuisance.

When carrying out piling works, the HA, in compliance with the statutory requirements, will ask the contractors concerned to obtain a Construction Noise Permit from the EPD before commencing the works. Besides, to reduce the impact of the works to residents, schools and communities in the vicinity, the HA has included clauses in the foundation works contracts requiring contractors to use appropriate mitigation measures such as noise barrier if necessary and not to carry out piling works during school examinations.

Consultation with the District Councils concerned starts from the design stage of every new development project. While the construction works are in progress, the HA will also maintain contact with residents and local people in the vicinity to ensure the introduction of timely measures for minimizing the nuisance caused by the works to them.

- (c) Apart from providing control over the above-mentioned piling works, the Noise Control Ordinance also regulates noise nuisance generated by other construction, industrial and commercial activities as well as from neighbours. As with domestic premises, hotels, libraries, hospitals, and so on, schools are similarly regarded as Noise Sensitive Receivers where the EPD would need to consider when assessing the impact of construction noise. Therefore, the authority concerned considers that the existing ordinance and the aforementioned measures should be able to effectively handle noise problems affecting schools.

Protection of Wild Birds

10. **MR LEUNG KWOK-HUNG** (in Chinese): *President, some members of the public have relayed to me that the existing Wild Animals Protection Ordinance (Cap. 170) (the Ordinance) protects wild birds only by banning illegal hunting and possession of hunting appliances, and it does not prohibit the importation and sale of wild birds. At present, with the growing worldwide awareness of wildlife conservation and the emphasis on biodiversity and ecological balance, legislative control and public education in this regard have increasingly been strengthened. For example, in addition to endangered species and valuable and rare species of wild animals, conserved species of wild animals are also included in the conservation projects; the scope of conservation is also expanding continuously, including protecting the wild animals' habitats, prohibiting activities which disturb, abuse, kill, hunt, slaughter, trade, display wild animals, and so on, and imposing control over the import/export, feeding and breeding of wild animals. In this connection, will the Government inform this Council:*

- (a) *in each of the past three years, of the number of cases in which the Agriculture, Fisheries and Conservation Department (AFCD) instituted prosecutions by invoking the Ordinance and the number of convictions among them, the respective numbers of wild birds imported to and traded in Hong Kong, as well as the number of such wild birds which had been inspected by AFCD;*
- (b) *whether it will follow the practice of the European Union to impose a total ban on the sale of wild birds; and*
- (c) *whether the authorities will review and amend the Ordinance, and launch public education to promote protection for wild birds, call on the public to respect the way of life and behaviour of wild birds, cut back on activities such as "releasing birds to the wild", and so on, which encourage the trading of wild birds?*

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

- (a) *Wild birds in Hong Kong are protected by the Wild Animals Protection Ordinance (Cap. 170), which governs both their*

possession and sale. For birds protected under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586), their import and export, and possession are also subject to control. From 2006 to 2008 (up to May), there was one case of illegal hunting of local wild birds leading to the prosecution and conviction under the Wild Animals Protection Ordinance. In addition, there were eight cases of prosecution and conviction for illegal import of endangered birds under the Protection of Endangered Species of Animals and Plants Ordinance.

Moreover, the import of both wild and captive-bred birds into Hong Kong is also governed by the Public Health (Animals and Birds) Regulations (Cap. 139A). All birds have to go through inspection and quarantine procedures.

The table below shows the records of the import of birds (both wild and captive-bred) for the past three years:

| <i>Year</i> | <i>Total number of birds imported</i> |
|--------------------------|---------------------------------------|
| 2006 | 76 927 |
| 2007 | 39 105 |
| 2008 (January to May) | 6 126 |

We do not separately keep record on the import of wild birds alone.

Prior to July 2007, the AFCD did not keep statistics on the trading of imported birds. From July 2007, however, all licensed bird traders are required to record every bird trading transaction. Between July 2007 and May 2008, licensed bird traders imported and sold about 14 320 and 13 500 birds respectively, including wild and captive-bred ones.

(b) and (c)

Currently, the Public Health (Animals and Birds) Ordinance and the Protection of Endangered Species of Animals and Plants Ordinance have provided appropriate control over the sale of birds. The Government has no plans to amend the Wild Animals Protection Ordinance or impose a total ban on the sale of wild birds.

Regarding publicity and education, the AFCD has launched an announcement of public interest to urge the public not to release birds to the wild. In addition, the AFCD conducts various types of education and promotion activities such as exhibitions, talks, competitions and advertisements to enhance public awareness of protecting endangered wildlife species.

Management of Sick Leave Taken by Civil Servants

11. **MR ANDREW CHENG** (in Chinese): *President, under Civil Service Regulation (CSR) 1291, if a Head of Department (HoD) considers that an officer is abusing sick leave, he may require the officer to attend a specified government clinic or a clinic of the Hospital Authority (HA) or a designated medical officer at these clinics and to obtain a valid sick leave certificate on each occasion the officer wishes to take sick leave, and the sick leave certificates issued by other medical practitioners are not accepted. In this connection, will the Government inform this Council:*

- (a) *of the criteria it has adopted for classifying cases where an individual officer "takes sick leave on specific working days frequently", "attends several different medical practitioners for the same illness", "takes sick leave continually or frequently because of a relatively minor illness", and so on, as indications of abuse of sick leave by the officer; if there is no criterion, of its justifications for classifying the above cases as indications of abuse of sick leave by the officer; whether it has consulted the relevant medical organizations before establishing these indications of abuse of sick leave; if not, its justifications for not accepting the sick leave certificates which are issued based on professional diagnosis by the medical practitioners not designated by the Government;*
- (b) *whether it has established a mechanism for officers subject to the Regulation to lodge appeals; if so, of the details of its operation; if not, the reasons for that, and whether there are other channels for reviewing the decisions of HoDs; and*
- (c) *as the departmental management concerned is required to review the cases subject to the Regulation on a quarterly basis, of the details of such reviews, including whether and when the outcome of the completed reviews will be made known to the civil servants subject*

to the Regulation; if the outcome will not be made known to them, whether the Government will consider so doing to let the officers who have been informed that they are subject to the Regulation know if they are still subject to it?

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, sick leave is generally granted to civil servants on production of medical certificates issued by registered medical practitioners. Where there are indications of abuse of sick leave by a civil servant, CSR 1291 provides that the HoD concerned may require the staff concerned to attend before a government or HA doctor(s), or a particular government or HA clinic(s), on each occasion he wishes to take sick leave. The Civil Service Bureau has issued a set of guidelines on the administration of sick leave to all bureaux/departments, reminding the departmental management of the need to monitor sick leave taken by staff, and where necessary, consider taking appropriate follow-up action, such as interviewing staff to better understand their reasons for taking frequent sick leave; reviewing whether some staff are more prone to sickness due to the nature and arrangements of their work; and where there is suspected abuse of sick leave, requiring the staff concerned to produce a medical certificate for sick leave irrespective of the duration, or subjecting the staff concerned to the requirement under CSR 1291.

Regarding part (a) of the question, as the circumstances of each case could be different, there are no hard and fast rules under CSR 1291 on what constitutes abuse of sick leave. HoDs will take into full consideration the merits of individual case and will only invoke the Regulation and require the civil servant concerned to attend a specified government or HA clinic when there are indications of abuse of sick leave. To ensure proper administration of CSR 1291, each case has to be considered by an officer of a rank not lower than Assistant HoD or by a Departmental/Office Secretary, who should also be at least two ranks above the staff whose sick leave is in question, before a decision to impose the requirement under the Regulation can be made.

We understand that it would normally put the departmental management on the alert for possible abuses of sick leave by civil servants in the occurrence of different circumstances such as sick leave being taken frequently on specific working days (for example, during peak work period or preceding/following scheduled rest days), consultation from different medical practitioners for the same illness, sick leave being taken continually or frequently on account of a

relatively minor illness, and so on. If such indications are found, the departmental management will consider whether CSR 1291 should be invoked for closer monitoring of any further sick leave to be taken by the staff concerned. The decision of the departmental management to invoke CSR 1291 on a civil servant is a human resource management measure to ensure the proper use of public resources. The civil servant subject to the Regulation can still obtain proper treatment through the Government or HA medical services which are provided by the Government as the employer and are of a consistent standard. As invoking CSR 1291 does not involve medical professional judgement, we do not consider it necessary to consult medical organizations on such an administrative measure. Where the departmental management has doubt on the professional conduct of individual medical practitioners, it will make an enquiry or complaint with the independent statutory body responsible for overseeing the professional conduct of medical practitioners, that is, the Medical Council.

Regarding part (b) of the question, there are established channels for civil servants to voice their complaints on staff-management related issues, including application of CSR 1291, and for different levels of management to deal with such complaints. Civil servants aggrieved by the requirement under CSR 1291 may approach the relevant departmental management for enquiry or complaint and it is incumbent on the departmental management to take follow-up action and reply to the staff. Complaints against a decision made by an officer of the rank of Assistant HoD should be reviewed by an officer of a higher rank in the department. Decisions made by a HoD will be reviewed by the Civil Service Bureau. Under the established mechanism, the departmental management should review all cases of staff subject to CSR 1291 on a quarterly basis, irrespective of whether the staff concerned have raised any objection.

As for part (c) of the question, the departmental management will explain the relevant arrangements, including the effective date on which the restrictions will commence, to the staff concerned before subjecting him to the requirement under CSR 1291. Also, the departmental management will review each of these cases on a quarterly basis by monitoring the sick leave taken by the civil servant concerned during the period. On being satisfied that there is no further concern of abuse of sick leave by the staff concerned, the departmental management will lift the requirement and will inform him of the decision. But before that, the staff concerned remains subject to the restrictions imposed on him under CSR 1291.

Banning Sale of Birds

12. **MS AUDREY EU** (in Chinese): *President, some members of the public have relayed to me that the sale of pet birds is against animal rights. In this connection, will the Government inform this Council whether:*

- (a) *it has compiled statistics on the annual number of pet birds imported into Hong Kong for sale; if it has, of a breakdown of such birds imported last year by bird type; and*
- (b) *it will consider making legislative amendments to ban the commercial sale of pet birds; if it will, of the details; if not, the reasons for that?*

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

- (a) At present, there are about 60 bird traders holding animal trader licences in Hong Kong. Between July 2007 and May 2008, a total of 14 320 birds were imported into Hong Kong and about 13 500 of them were sold by licensed bird traders. A table showing the species and numbers of imported birds is at Annex.
- (b) There are divergent views in the community about keeping birds. However, as reflected by the sale of over 10 000 birds by licensed bird traders last year, quite a number of people like to keep birds.

The Administration will continue to promote protection of animal rights through law enforcement, promotion and education. Under the Prevention of Cruelty to Animals Ordinance (Cap. 169), anyone who commits acts of cruelty to animals, such as causing needless suffering to animals and improper confinement of animals, shall be liable on conviction to a maximum fine of \$200,000 and three years' imprisonment. In recent months, the court has, for the first time, imposed a sentence of six months' imprisonment under the Ordinance. All local licensed bird traders and pet bird owners are required to strictly comply with the Ordinance.

Moreover, under the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B), any person who engages in the

commercial trading of birds is required to obtain an animal trader licence. Licensees must observe the additional conditions and the Code of Standards attached to the licence, including ensuring that the enclosures used to confine birds and the sanitary standards meet the licensing standards.

The Agriculture, Fisheries and Conservation Department conducts regular inspections on licensed bird traders and institutes prosecutions against bird traders found contravening the licensing conditions. Since 2006, a total of five bird traders were prosecuted for contravening the licensing conditions.

Bird trading activities and animal rights are already properly regulated in Hong Kong. We have no intention to introduce legislative amendments to ban the commercial trading of birds. The Administration will continue to strictly enforce animal rights legislation.

Annex

Numbers of Imported Birds

| <i>Species</i> | <i>July 2007 to May 2008</i> |
|--------------------|------------------------------|
| Canary | 7 415 |
| Grey Singing Finch | 2 400 |
| Magpie Robin | 1 910 |
| Parrot | 1 111 |
| Pigeon | 32 |
| Others | 1 452 |
| Total | 14 320 |

Funding Matters Relating to Community Colleges or Continuing Education Arms of Institutions Funded by UGC

13. **MR CHEUNG MAN-KWONG** (in Chinese): *President, will the Government inform this Council if it knows:*

- (a) *the respective amounts of subsidies or loans provided by each University Grants Committee (UGC)-funded institution for its*

community college or continuing education arm (CC/CEA) to operate self-financing sub-degree programmes in each of the past three years; the specific usages of the subsidies or loans, the administrative costs and the interest payable for the loans;

- (b) in each of the past three years, the respective amounts of money handed over (hand-over payments) to the UGC-funded institutions by their CCs/CEAs operating such programmes, the amounts of the administrative costs therein, the percentages of hand-over payments among the total tuition incomes of the CCs/CEAs for the relevant year, and percentages of the hand-over payments among the profits or losses for the relevant year;*
- (c) how UGC-funded institutions utilize the hand-over payments mentioned in (b);*
- (d) the criteria adopted by UGC-funded institutions for deciding whether subsidies or loans will be provided to their CCs/CEAs, whether prior approval from UGC is required for such decisions and whether upper limits have been set for the annual amounts of subsidies or loans; and*
- (e) whether UGC has monitored the provision of subsidies or loans by UGC-funded institutions for their CCs/CEAs to operate self-financing sub-degree programmes; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

For (a), (d) and (e)

Funding provided by the Administration to the UGC-funded institutions through the UGC should only be used for supporting UGC-funded programmes and activities. Accordingly, UGC-funded institutions can only make use of their non-UGC funds to provide subsidy or loan to their community colleges or continuing education departments for the purpose of operating self-financing sub-degree programmes. Apart from ensuring that funds provided by the UGC are only used for supporting UGC-funded programmes

and activities, UGC-funded institutions may decide on their own how to put available resources to best use. The Administration and the UGC fully respect the autonomy of the institutions in this regard.

According to information provided by UGC-funded institutions, none of them have provided subsidy or loan to their community colleges or continuing education departments for operating self-financing sub-degree programmes in the past three academic years from 2005-2006 to 2007-2008. The UGC-funded institutions have not laid down any criteria in this regard.

For (b) and (c),

According to information provided by UGC-funded institutions, their community colleges or continuing education departments have not remitted profit, if any, to the institution proper. Details of administrative fee levied on the community colleges or continuing education departments that operate self-financing sub-degree programmes are set out at Annex. The administrative fees are generally used to cover the cost of various administrative units of the institutions in providing ongoing administration and academic support for the provision of such self-financing sub-degree programmes.

Annex

Administrative fee levied by the UGC-funded institutions* on their departments that operate self-financing sub-degree programmes#

2005-2006 academic year:

| | <i>City University of Hong Kong</i> | <i>Hong Kong Baptist University</i> | <i>Lingnan University</i> | <i>The Chinese University of Hong Kong</i> | <i>The Hong Kong Institute of Education</i> | <i>The Hong Kong Polytechnic University</i> | <i>University of Hong Kong</i> |
|--|---|-------------------------------------|---------------------------|--|---|---|--------------------------------|
| Administrative fee levied (\$ million) | 53 | 16 (Note 1) | 19 | 29 | 3 | 15 | (Note 2) |
| As % of tuition fee of community colleges/continuing education departments | 14% | 6% (Note 1) | 20% | 13% | 5% | 10% | |
| As % of surplus/deficit of community colleges/continuing education departments | The institutions have not provided the information. | | | | | | |

2006-2007 academic year:

| | <i>City University of Hong Kong</i> | <i>Hong Kong Baptist University</i> | <i>Lingnan University</i> | <i>The Chinese University of Hong Kong</i> | <i>The Hong Kong Institute of Education</i> | <i>The Hong Kong Polytechnic University</i> | <i>University of Hong Kong</i> |
|--|---|---|-------------------------------|--|---|---|--|
| Administrative fee levied (\$ million) | 72 | 18 (Note 1) | 16 | 43 | 4 | 16 | (Note 2) |
| As % of tuition fee of community colleges/continuing education departments | 14% | 6% (Note 1) | 20% | 16% | 7% | 10% | |
| As % of surplus/deficit of community colleges/continuing education departments | The institutions have not provided the information. | | | | | | |

2007-2008 academic year (tentative estimation based on latest available financial information):

| | <i>City University of Hong Kong</i> | <i>Hong Kong Baptist University</i> | <i>Lingnan University</i> | <i>The Chinese University of Hong Kong</i> | <i>The Hong Kong Institute of Education</i> | <i>The Hong Kong Polytechnic University</i> | <i>University of Hong Kong</i> |
|--|---|---|-------------------------------|--|---|---|--|
| Administrative fee levied (\$ million) | 75 | 19 (Note 1) | 17 | 45 | 5 | 16 | (Note 2) |
| As % of tuition fee of community colleges/continuing education departments | 14% | 7% (Note 1) | 20% | 14% | 7% | 8% | |
| As % of surplus/deficit of community colleges/continuing education departments | The institutions have not provided the information. | | | | | | |

* The Hong Kong University of Science and Technology does not provide any self-financing sub-degree programmes.

The institutions may differ in the manner in which they collect and classify financial information.

Note 1: Hong Kong Baptist University is not able to segregate the portion of Administrative Fee payable to the University for its sub-degree programmes. The above figures (including tuition information) thus cover the entire operation of the School of Continuing Education.

Note 2: The HKU SPACE Community College employs its own staff and has its own facilities. It makes no contribution to the University of Hong Kong.

Fare Concessions Provided by Bus Companies

14. **MR CHEUNG HOK-MING** (in Chinese): *President, will the Government inform this Council of the following information concerning the concessionary bus fare schemes provided by various franchised bus companies, in the form of the following tables:*

- (a) *concessionary Bus-Bus Interchange (BBI) schemes provided in 2006, 2007 and 2008 (up to 31 March) respectively:*

| <i>Name of franchised bus company</i> | <i>Combination of route interchanges</i> | <i>Fare concession</i> | <i>Average daily number of trips made by passengers benefited from the concession</i> |
|---------------------------------------|--|------------------------|---|
| | | | |
| | | | |

- (b) *the Same Day Return Discount (SDRD) provided in 2006, 2007 and 2008 (up to 31 March) respectively to passengers using Octopus cards:*

| <i>Name of franchised bus company</i> | <i>Bus routes for which SDRD is available with the use of Octopus cards</i> | <i>Fare concession</i> | <i>Average daily number of trips made by passengers benefited from the concession</i> |
|---------------------------------------|---|------------------------|---|
| | | | |
| | | | |

and

- (c) *information on the total amount of fare reduction borne by various franchised bus companies as a result of the above concessions?*

| <i>Name of franchised bus company</i> | <i>Total amount of fare reduction</i> | | | |
|---------------------------------------|--|-------------|---|-------------|
| | <i>Concessionary interchange schemes</i> | | <i>SDRD with the use of Octopus cards</i> | |
| | <i>2006</i> | <i>2007</i> | <i>2006</i> | <i>2007</i> |
| | | | | |

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

- (a) On the concessionary BBI schemes provided by the franchised bus companies, respective information for 2006, 2007 and 2008 (as at 31 March) is as follows:

| <i>Franchised bus company*</i> | <i>Number of BBI schemes#</i> | <i>Fare concession# (\$)</i> | <i>Average daily patronage benefited ^</i> |
|--------------------------------|-------------------------------|------------------------------|--|
| <i>2006</i> | | | |
| KMB | 95 | 1.5 - 23.6 | 102 500 |
| NWFB | 69 | 1 - 13 | 3 600 |
| Citybus (F1) | 65 | 0.1 - 20.7 | 3 900 |
| Citybus (F2) | 43 | 1 - 24 | 1 800 |
| LW | 7 | 1 - 28 | 4 100 |
| NLB | 1 | 1 | 1 200 |
| Total | 216 @ | 0.1 - 28 | 117 100 |
| <i>2007</i> | | | |
| KMB | 104 | 1.5 - 23.6 | 106 300 |
| NWFB | 71 | 1 - 13 | 4 100 |
| Citybus (F1) | 67 | 0.1 - 20.7 | 4 200 |
| Citybus (F2) | 44 | 1 - 24 | 2 000 |
| LW | 8 | 1 - 28 | 4 400 |
| NLB | 1 | 1 | 1 400 |
| Total | 228 @ | 0.1 - 28 | 122 400 |
| <i>2008 (as at 31 March)</i> | | | |
| KMB | 104 | 1.5 - 23.6 | 106 900 |
| NWFB | 69 | 1 - 13 | 4 200 |
| Citybus (F1) | 68 | 0.1 - 20.7 | 4 100 |
| Citybus (F2) | 45 | 1 - 24 | 1 900 |
| LW | 8 | 1 - 28 | 4 400 |
| NLB | 1 | 1 | 1 400 |
| Total | 226 @ | 0.1 - 28 | 122 900 |

* The abbreviated names of the franchised bus companies are as follows:

- KMB : Kowloon Motor Bus Company (1933) Limited
 NWFB : New World First Bus Services Limited
 Citybus (F1) : Citybus Limited (Franchise for Hong Kong Island and Cross-harbour Routes)
 Citybus (F2) : Citybus Limited (Franchise for North Lantau and Chek Lap Kok Airport Routes)
 LW : Long Win Bus Company Limited
 NLB : New Lantao Bus Company (1973) Limited

The number of BBI schemes and fare concessions provided as at 31 December 2006, 31 December 2007 and 31 March 2008.

@ Some BBI schemes are jointly provided by two or more bus companies.

^ Patronage benefited is counted once only if a passenger uses a BBI scheme jointly provided by two or more bus companies.

- (b) On the SDRD provided by various franchised bus companies to passengers using Octopus cards, respective information for 2006, 2007 and 2008 (as at 31 March) is as follows:

| <i>Franchised bus company</i> | <i>Bus routes for which SDRD is available with the use of Octopus cards#</i> | <i>Fare concession# (\$)</i> | <i>Average daily patronage benefited ^</i> |
|-------------------------------|--|------------------------------|--|
| <i>2006</i> | | | |
| KMB | 67 | 1 - 6.2 | 109 000 |
| NWFB | 13 | 1 - 4.9 | 11 000 |
| Citybus (F1) | 23 | 1 - 6.2 | 25 000 |
| Citybus (F2) | 11 | 1.4 - 6.2 | 10 500 |
| LW | 10 | 1 - 5.6 | 20 500 |
| Total | 100 @ | 1 - 6.2 | 176 000 |
| <i>2007</i> | | | |
| KMB | 68 | 1 - 6.2 | 135 000 |
| NWFB | 13 | 1 - 4.9 | 14 500 |
| Citybus (F1) | 23 | 1 - 6.2 | 36 000 |
| Citybus (F2) | 11 | 1.4 - 6.2 | 11 500 |
| LW | 10 | 1 - 5.6 | 24 500 |
| NLB* | 1 | 1.1 | 500 |
| <i>2008 (as at 31 March)</i> | | | |
| Total | 103 @ | 1 - 6.2 | 222 000 |
| KMB | 68 | 1 - 6.2 | 139 000 |
| NWFB | 13 | 1 - 4.9 | 15 000 |
| Citybus (F1) | 23 | 1 - 6.2 | 37 500 |
| Citybus (F2) | 11 | 1.4 - 6.2 | 11 000 |
| LW | 10 | 1 - 5.6 | 25 000 |
| NLB* | 1 | 1.1 | 500 |
| Total | 103 @ | 1 - 6.2 | 228 000 |

The number of routes offering SDRD and fare concessions provided as at 31 December 2006, 31 December 2007 and 31 March 2008.

@ Some routes are jointly operated by two bus companies.

* NLB Route No. B2 (Yuen Long Station — Shenzhen Bay) started to operate in July 2007 and it offers SDRD.

^ Patronage benefited is counted once only if a passenger enjoys SDRD on a route jointly operated by two bus companies.

- (c) On the total amount of fare reduction borne by various franchised bus companies as a result of the above concessions, details are as follows:

| <i>Franchised bus company</i> | <i>Total amount of fare reduction</i> | | | |
|---------------------------------------|---------------------------------------|-------------------------|---|-------------------------|
| | <i>Concessionary BBI schemes</i> | | <i>SDRD with the use of Octopus cards</i> | |
| | <i>2006 (\$million)</i> | <i>2007 (\$million)</i> | <i>2006 (\$million)</i> | <i>2007 (\$million)</i> |
| KMB | 192 | 197.4 | 38.6 | 46.7 |
| NWFB | 3.2 | 4.0 | 4.0 | 5.4 |
| Citybus (F1) | 6.8 | 7.3 | 14.4 | 19.3 |
| Citybus (F2) | 1.5 | 1.8 | 5.9 | 6.5 |
| LW | 7.2 | 7.7 | 4.5 | 5.4 |
| NLB | 0.4 | 0.5 | - | 0.1 |
| Total | 211.1 | 218.7 | 67.4 | 83.4 |

Supply of Pork from the Mainland

15. **MR FRED LI** (in Chinese): *President, it has been reported that when the Hong Kong Agriculture Special Area Corporation (the Corporation), formed by pig farmers in Hong Kong, was appointed as the third agent for live pig supply to Hong Kong by the Ministry of Commerce (MoC) last October, it had undertaken to set up pig farms on the Mainland to raise pigs for supply to Hong Kong. However, to date, the Corporation has yet to honour its undertaking and has only adopted the same practice as that of the other two agents, that is, acquiring pigs from farms for supply to Hong Kong. In this connection, will the Government inform this Council whether:*

- (a) *it has approached MoC to ascertain how the latter will deal with the Corporation's failure to supply live pigs raised at its own farms to Hong Kong as undertaken so far;*
- (b) *it knows the reasons why the Corporation has not yet supplied live pigs raised at its own farms to Hong Kong;*
- (c) *it has provided assistance to the Corporation in setting up pig farms on the Mainland; if so, of the details; if not, the reasons for that; and*

- (d) *it has studied whether that the wholesale price of pigs supplied to Hong Kong has not dropped since the introduction of the third live pig agent is attributable to the Corporation's failure to supply to Hong Kong live pigs raised at its own farms; if the study result is in the affirmative, of the solutions in place; if the study result is in the negative, the justifications for that?*

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

- (a) In July last year, the MoC and the Government of the Hong Kong Special Administrative Region agreed to open up the market for supply of live pigs to Hong Kong. Guangnan Hong Company Limited was appointed as the second live pig agent in addition to the existing one, that is, Ng Fung Hong Limited. It was also agreed in principle that a third agent be appointed. The objective of opening up the market was to increase the number of live pig agents, so as to provide additional channels through which live pigs could be supplied to Hong Kong. Whether the newly appointed agent would set up pig farms in the Mainland has no relation with the opening up of the market.

In fact, when the China Chamber of Commerce for Import/Export of Foodstuffs, Native Produce and Animal By-products gave notice to invite application for appointment as the third agent to import live pigs to Hong Kong in last August, the setting up of pig farms in the Mainland by the relevant agent was not included in the specified application requirements.

In October last year, on the recommendation of the China Chamber of Commerce of Import/Export of Foodstuffs, Native Produce and Animal By-Products, the MoC decided to appoint the Hong Kong Agriculture Special Zone Limited (ASZ) as an agent to import live pigs to Hong Kong.

- (b) Prior to being appointed as the third live pig agent, ASZ has already set up pig farms in Shaoguan of Guangdong Province. These pig farms have started to produce live pigs.

According to our understanding, the production scale of these pig farms is being expanded to meet the eligibility criteria for being registered farms for the supply of live pig to Hong Kong (annual production capacity be over 10 000 heads). Whether ASZ will export the live pigs raised in its Mainland pig farms to Hong Kong in future is simply a commercial decision.

- (c) In September last year, the Agriculture, Fisheries and Conservation Department (AFCD) arranged an exchange session between the Guangdong Entry-Exit Inspection and Quarantine Bureau of the State General Administration of Quality Supervision, Inspection and Quarantine and Hong Kong pig farmers. During the session, the farmers were briefed on the requirements that must be met for setting up pig farms in the Mainland, including those for food safety, production scale, bio-security and environmental requirements. In April this year, AFCD officers also joined the trade in a visit to the Mainland to learn more about the progress on the setting up of pig farms in the Mainland by ASZ, and to exchange views with local municipal officials on setting up pig farms in the Mainland by Hong Kong pig farmers.
- (d) The supply of live pig remained stable recently. In May, the number of live pigs supplied to the market was around 4 200 a day and the average auction price was about \$1,400 per 100 catty. The live pigs are imported from the registered farms for supplying live pigs to Hong Kong located in different Mainland provinces. The price of live pigs is affected by factors such as supply and demand, production costs, the wholesale price of live pigs in the Mainland and transportation costs. It is not necessarily related to whether agents have set up pig farms in the Mainland.

Hawker Management and Control

16. **MR JAMES TO** (in Chinese): *President, regarding hawker management and control, will the Government inform this Council:*

- (a) *of the number of complaints relating to "Dai Pai Tongs" received by the authorities in the past three years, with a breakdown by*

categories of complaints, such as air pollution, noise nuisance, obstruction to public passage, unauthorized expansion of business areas, impact on environmental hygiene, and so on; and among them, the number of substantiated cases, the locations of the "Dai Pai Tongs" involved in such cases and the penalty imposed on the licensees concerned;

- (b) given that in reply to my question at the Council meeting on 4 July last year, the Government indicated that it would study how to improve the design of stalls and business environment of the Tung Choi Street Hawker Permitted Places (Women's Street), of the improvement measures put in place so far;*
- (c) given that it has been reported that the Food and Environmental Hygiene Department (FEHD) admitted that it had reached a consensus with the hawkers at Women's Street that it would, prior to the fire drills conducted by the Fire Services Department (FSD) at Women's Street, notify the hawkers to remove the objects there, whether FEHD has cancelled such notification arrangement; and*
- (d) given that in its paper recently submitted to this Council's Panel on Food Safety and Environmental Hygiene, the Government has indicated that it is reviewing the policy on hawker licensing, including giving consideration to whether new fixed-pitch hawker licences (including licences for stalls of open-air hawker bazaars and "Dai Pai Tongs") should be re-issued, and it will consult hawker associations and District Councils (DCs) shortly on its preliminary ideas, of the anticipated time for launching and completing such consultation, whether shop owners or residents affected by Hawker Permitted Places or "Dai Pai Tongs" will be consulted, and when a conclusion will be reached from the review?*

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

- (a) At present, there are a total of 28 "Dai Pai Tongs", located respectively in Wan Chai District (3), Central and Western District (10), Islands District (1) and Sham Shui Po District (14). In the past three years, the FEHD received a total of 308 complaints about

the operation of "Dai Pai Tongs" relating to issues such as noise nuisance, street obstruction, unauthorized expansion of business areas and environmental hygiene problems. After investigation, 211 summonses were issued. Details are at Annex.

- (b) FEHD has held several discussions with hawker representatives of the Tung Choi Street Hawker Permitted Area (HPA) (or commonly known as "Women's Street") on how to improve the design of their stalls and display of commodities so as to improve the streetscape and overall business environment of the HPA. A consensus was reached between FEHD and the hawkers' associations that the design of the hawker stalls:
- (i) should not pose fire hazard nor obstruct fire engine access to the HPA;
 - (ii) should not cause environmental hygiene nuisance, obstruct air circulation nor cause serious blockage of natural light;
 - (iii) should allow adequate space for pedestrian access, so as to prevent causing adverse impact to the business environment of the stalls and shops in the neighbourhood; and
 - (iv) should be standardized as much as possible, so as to improve the overall streetscape.

Through concerted efforts, the design of the hawker stalls in the HPA has been improved. There is now no serious obstruction to the emergency vehicular access. The tests on fire engine access to the HPA conducted by the FSD recently revealed satisfactory results. FEHD will continue to hold discussions with the relevant hawker associations, with a view to further improving the business environment of "Women's Street".

- (c) Before July 2007, when FSD sent fire engines to "Women's Street" for access testing, it would notify FEHD in advance on the same day of the test, so that FEHD could help maintain order in the HPA.

This notification arrangement was cancelled by FSD in July 2007. In addition, FEHD has repeatedly reminded the hawkers at "Women's Street" that if fire engines have to enter the HPA for operational or test purposes, they should promptly remove any frames and objects of their stalls that may cause obstruction. FSD considers the recent test results of fire engine access to "Women's Street" satisfactory.

- (d) The Administration will shortly consult the DCs and stakeholders (including hawker associations) on the preliminary proposals for the review on hawker licensing policy. As stated in our paper submitted to the Legislative Council earlier this month, in view of the close impact that may be caused by hawker policy to districts and the fact that DCs have better understanding of the local situation and the needs of residents in that district, we propose to strengthen the role of DCs in terms of hawker licensing and hawker bazaar management at the district level. The relevant DCs could advise the Administration after having regard to the specific circumstances of the district and the residents' aspirations.

After consulting DCs and the relevant organizations, we will collate and summarize all the views received. The review is expected to complete by the end of the 2008-2009 financial year.

Annex

Complaints against "Dai Pai Tongs" and the Number of Summonses Issued

| <i>District</i> | <i>Number of Existing "Dai Pai Tongs"</i> | <i>Number of Complaints about Environmental Hygiene Nuisance Caused by "Dai Pai Tongs" in the Past Three Years</i> | <i>Number of Summonses Issued¹ and Penalties</i> |
|---------------------|---|--|--|
| Wan Chai | 3 | 17 | - 10 summonses issued for street obstruction - Fines of \$450 to \$1,800 |
| Central and Western | 10 | 19 | - 41 summonses issued, including 40 for street obstruction and one for environmental hygiene nuisance - Fines of \$200 to \$2,300 |
| Islands | 1 | Nil | - Nil |

¹ As one complaint case may involve several summonses, and one summons may involve several complaint cases, the number of complaints may not tally with that of summonses issued.

| <i>District</i> | <i>Number of Existing "Dai Pai Tongs"</i> | <i>Number of Complaints about Environmental Hygiene Nuisance Caused by "Dai Pai Tongs" in the Past Three Years</i> | <i>Number of Summonses Issued¹ and Penalties</i> |
|-----------------|---|--|---|
| Sham Shui Po | 14 | 272 | <ul style="list-style-type: none"> - 160 summonses issued, including 135 for street obstruction and 25 for environmental hygiene nuisance - Fines of \$300 to \$2,000 - Seven-day suspension of licence was imposed in 11 cases (six stalls involved) - 14-day suspension of licence was imposed in two cases (two stalls involved) |
| Total | | 308 | <ul style="list-style-type: none"> - 211 summonses issued, including 185 for street obstruction and 26 for environmental hygiene nuisance |

Assistance to Relief Work Undertaken by NGOs

17. **DR DAVID LI:** *President, Hong Kong has raised over \$2 billion to date for relief work following the Sichuan earthquake. According to news reports, reconstruction work will be a multi-year effort and require over RMB 540 billion yuan, indicating that Hong Kong will need to put in place a sustainable infrastructure to support the relief and reconstruction work. In this connection, will the Government inform this Council:*

- (a) *whether it has provided assistance to the relief work relating to the Sichuan earthquake that is being undertaken by the non-governmental organizations (NGOs) in Hong Kong that are active on the Mainland; if it has, of the details; and*
- (b) *given the expectation of the Hong Kong community, whether it has plans to facilitate the long-term involvement of the above NGOs in the above reconstruction work on the Mainland, such as helping them to establish contacts with the relevant local communities on the Mainland and mainland government departments; if it has, of the details?*

CHIEF SECRETARY FOR ADMINISTRATION: President,

- (a) The Government is very concerned about the catastrophic earthquake which occurred in Sichuan province on 12 May 2008, and has since been in close contact with the Central People's Government to render all possible assistance to help with the disaster relief work for the victims. Apart from the assistance provided direct to various mainland authorities, we have, as at 19 June 2008, made six grants from the Disaster Relief Fund totalling \$27.25 million to NGOs in Hong Kong to support their emergency relief work in the mainland provinces affected by the earthquake. Details are as follows:

| <i>Relief organization</i> | <i>Date of approval</i> | <i>Beneficiary province(s)</i> | <i>Amount of grant approved (\$ million)</i> |
|----------------------------|-------------------------|--------------------------------|--|
| The Amity Foundation | 15 May 2008 | Sichuan | 3.5 |
| Cedar Fund | 10 June 2008 | Gansu | 0.74 |
| Hong Kong Red Cross | 15 May 2008 | Sichuan | 7.5 |
| Oxfam Hong Kong | 10 June 2008 | Sichuan and Shaanxi | 3.51 |
| World Vision Hong Kong | 20 May 2008 | Sichuan | 5 |
| World Vision Hong Kong | 27 May 2008 | Sichuan, Shaanxi and Gansu | 7 |

- (b) The Government has been in close contact with voluntary agencies and organizations in Hong Kong on matters relating to the disaster relief work for Sichuan earthquake victims. We have conveyed to the Central Government the earnest desire of the Hong Kong community to actively participate in the reconstruction work in Sichuan province. The Chief Executive will lead a government delegation to visit the Sichuan disaster areas from 27 to 29 June and discuss with the Sichuan authorities the mechanism and arrangements for Hong Kong to participate in the reconstruction work.

Detection of H5N1 Avian Influenza Virus at Poultry Stalls

18. **MS EMILY LAU** (in Chinese): *President, following the announcement on 7 June that some samples taken from the poultry stalls in Po On Road Market in Sham Shui Po were tested positive of the H5N1 avian influenza virus, the authorities still allowed the sale of live chickens in the remaining markets throughout the territory, and the number of live chickens involved was about 100 000. The authorities took 63 environmental samples from a number of markets on the same day for laboratory tests, and confirmed on 11 June that eight of the chicken faecal samples were tested positive of the H5N1 avian influenza virus. It was not until then that the authorities destroyed all live chickens in markets throughout the territory. The Agriculture, Fisheries and Conservation Department (AFCD) cannot locate the source of the infected chickens in question or rule out the possibility that some of them were smuggled into the territory. In this connection, will the executive authorities inform this Council:*

- (a) *given that it has taken as long as five days before the results of the avian influenza virus tests carried out by AFCD were available, and during this period, members of the public might have been infected with the avian influenza virus as a result of consuming chickens carrying the virus but showing no symptom, or exposure to the market environment, whether the authorities will consider carrying out regularly the avian influenza virus rapid tests with results available in just one day, so as to detect the virus as soon as possible and thereby reduce the chance of the public being infected with the virus; if not, of the reasons for that;*
- (b) *of the new measures to intercept the smuggling of chickens into the territory; and whether the Food and Environmental Hygiene Department (FEHD) will carry out surprise inspections on live poultry stalls in markets, so as to curb these smuggling activities; if so, of the details; if not, the reasons for that;*
- (c) *given that AFCD has adopted measures in various areas to monitor avian influenza, and yet some samples taken from the poultry stalls in markets were tested positive of the H5N1 avian influenza virus, whether the authorities will review if there is any loophole in the mechanism for monitoring avian influenza; if they will not, of the reasons for that; and*

- (d) *given that the Food and Health Bureau advised in November last year that to implement the proposal of central slaughtering of poultry, the authorities were preparing the tendering documentation for the poultry slaughtering and processing plant (the Plant), conducting the environmental impact assessment concerned and exploring how to reduce the impact of the implementation of central slaughtering on the trade, and they planned to submit the legislative proposal concerned to this Council in early 2008, and as the H5N1 avian influenza virus was recently detected in a number of poultry stalls, of the latest progress of the above work and the timetable concerned?*

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

- (a) Performing viral genetic analysis by the use of the Reverse Transcription Polymerase Chain Reaction techniques (RT-PCR) is commonly known as the rapid method to detect the H5N1 virus genomes and it requires a processing time of about four to eight hours. However, according to the suggestions given by the World Animal Health Organization (OIE), the application of direct RT-PCR tests is to confirm if a disease is spreading following an outbreak, where infection is known or suspected. All positive specimens must be tested by the use of embryonated egg inoculation for further confirmation.

Currently, virus isolation by embryonated egg inoculation is the worldwide recognized accurate method for avian influenza virus detection and confirmation. According to the OIE guidelines on avian influenza testing, the specific pathogen free eggs must be incubated for at least four to seven days, with its allantoic fluid harvested for virus detection. Allantoic fluid showing negative reaction is then passaged into another batch of egg for virus detection. This method is generally applicable in an environmental surveillance system, so as to ascertain more accurately whether H5 and other viruses are present in the environment. Therefore, the method of virus isolation by embryonated egg inoculation is applied in testing environmental swabs. This is in line with OIE guidelines.

The Veterinary Laboratory of the AFCD has been accredited by the National Association of Testing Authorities, Australia (NATA) to provide animal disease surveillance and diagnostic services consistent with international standards. All avian influenza testing is performed according to the diagnostic methods recommended by OIE.

- (b) Relevant government departments, including the Customs and Excise Department (C&ED), AFCD, as well as FEHD, have maintained close liaison and exchanged intelligence relating to smuggling of poultry. Joint operations are also carried out at various land boundary control points from time to time to intercept poultry smuggling activities. Besides, the C&ED has stepped up vigilance by increasing cargo inspection at all land boundary control points and during sea patrols, so as to combat poultry smuggling activities. The C&ED has also strengthened co-operation with the Mainland Customs Authorities, including intelligence sharing and carrying out of joint anti-smuggling operations.

Customs and police officers will inform the AFCD of any poultry smuggling activities detected. The AFCD will then take appropriate prosecution actions against the offenders. As part of its publicity and educational efforts, the AFCD also distributes publicity leaflets at various smuggling black spots from time to time. To strengthen its efforts in combating smuggling, the AFCD regularly distributes or sends by post the "Illegal Import of Animals/Birds Information Envelope" to traders so as to gather intelligence on smuggling activities.

The FEHD officers conduct inspections on chicken stalls twice a day and check the receipts to ascertain the sources of live chickens kept in the chicken stalls from time to time. Upon receipt of complaints or intelligence concerning chicken stalls involved in chicken smuggling activities, the FEHD will carry out investigation. Over the past year (as at 10 June), a total of 78 investigative actions were conducted by the FEHD intelligence team and no irregularities were found.

Regarding the recent detection of avian influenza virus in the chicken faecal samples collected from the retail markets, the C&ED has conducted a special investigation with the AFCD and the FEHD to find out whether the incident is related to smuggled chickens and to step up anti-smuggling efforts. C&ED officers have visited the markets and contacted the chicken traders to collect information, and distributed publicity leaflets calling on the trade and the public to provide information on poultry smuggling.

In order to further combat poultry smuggling activities more effectively, the co-operation of the trade is of utmost importance. If the trade can provide us with intelligence and information, this will greatly facilitate our anti smuggling efforts.

- (c) We have completed the review and announced the new measures on 24 June 2008.
- (d) We have originally been preparing for the setting up of the Plant. We have also identified a site in Sheung Shui for the development of the Plant.

Nevertheless, the Administration has decided to introduce legislative amendments to prohibit overnight stocking of live chickens at retail level. The live poultry trade has also approached us at the same time on the *ex gratia* payments for surrender of licences. Implementation of central slaughtering is to achieve the objective of separating live poultry from humans so as to reduce risks posed by avian influenza. We therefore need to review the necessity of developing the Plant, taking into account the situation after the implementation of the new measures and also the progress of the discussion with the trade on the buyout package.

Provision of Water Dispensers in Public Facilities Under LCSD

19. **MR FREDERICK FUNG** (in Chinese): *President, some members of the public have recently relayed to me that some of the large parks and leisure grounds (for example, the West Kowloon Waterfront Promenade (the*

Promenade), and so on) under the Leisure and Cultural Services Department (LCSD) currently do not have water dispensers installed, and only provide drinks vending machines, causing inconvenience to users of these facilities. On the other hand, earlier on an investigation has found that the bacteria levels in the drinking water from the water dispensers at the parks and sports grounds under LCSD are higher than the standard set by the World Health Organization (WHO) and the United States for safe drinking water. In this connection, will the Government inform this Council:

- (a) of the current percentage of parks and leisure grounds under LCSD at which water dispensers are provided, the factors of consideration for deciding whether or not water dispensers are to be provided at a particular venue, whether it will provide water dispensers at venues such as the Promenade, and so on; and*
- (b) whether last year, the authorities regularly collected water samples for laboratory tests from the water dispensers at the venues under their management; if so, of the test results; if not, the reasons for that; and whether the authorities will, focusing on the results of the above investigation, take measures to safeguard the health of users of the water dispensers (including enhancing sanitization and sterilization of water dispensers, replacing the existing water dispensers with safer new models, educating members of the public on how to use water dispensers correctly, and so on)?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, my reply to the question is as follows:

- (a) Drinking fountains are provided at about one-fifth of the leisure venues managed by the LCSD. In light of the fact that members of the public will be sweating a lot after exercise and replenishment of water is instantly needed, drinking fountains have been mainly installed in active recreational facilities such as squash courts, badminton courts and soccer pitches.

As the Promenade is mainly a passive leisure facility for members of the public to spend their leisure time, the LCSD has not provided

any drinking fountains at the Promenade. However, for the visitors' convenience, the Department has arranged for the provision of vending machines for sale of drinks by contractors at the venue.

- (b) All drinking fountains at LCSD venues are connected to the water pipes managed by the Water Supplies Department for provision of drinking water. The water quality not only meets the sanitary standard laid down by the WHO, but all the drinking fountains have also been installed with a filter cartridge/an ultra-violet sterilizer to ensure the purity of the water. The LCSD has all along carried out maintenance and regular cleansing of the drinking fountains according to the guidelines provided by the drinking fountain manufacturers. The venue staff have also frequently monitored the operation of the drinking fountains and the amount of water dispensed, cleansed the surface of the basins and water outlets, and so on.

As it takes time to test the water samples and the hygienic condition of the drinking fountains may have already changed upon the completion of the water examination report, the LCSD has not collected any water samples from the drinking fountains for laboratory tests. According to the guidelines issued by the Department of Health in April this year, the most important point for ensuring the hygienic condition of the drinking fountains is that users should know how to keep the drinking fountains clean. If a user does not use the drinking fountain in a proper or hygienic way, such as letting his/her mouth touch the mouthpiece of the drinking fountain when drinking water from it or spitting into the fountain, the fountain will be contaminated instantly. Therefore, the LCSD has, apart from stepping up efforts to cleanse and disinfect the drinking fountains, displayed next to all drinking fountains a copy of the advice and notice issued by the Department of Health on the hygienic use of drinking fountains to educate the public on the proper and hygienic use of the drinking fountains.

Public Car Parks Managed by The Link Management

20. **MR LAU KONG-WAH** (in Chinese): *President, regarding the public car parks in public housing estates managed by The Link Management Limited (The Link), will the Government inform this Council if it knows:*

- (a) *the average number of staff at each car park, and whether the authorities concerned have examined if all of the car parks have sufficient manpower to undertake security duties; and*
- (b) *as drivers using the hourly parking spaces in these car parks are required to pay by Octopus card, causing much inconvenience to professional drivers (particularly taxi drivers) who do not have Octopus cards with them, whether The Link has received any such complaints over the past year, and of the ways to address the problem?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): *President, my reply to the two-part question is as follows:*

- (a) Upon its public listing on 25 November 2005, The Link Real Estate Investment Trust (The Link REIT) has become a private entity. So long as The Link REIT complies with the relevant legislation, conditions of government lease, requirements under the Deeds of Mutual Covenant and terms of covenants and agreements made between The Link REIT and the Hong Kong Housing Authority (HA), the Government and the HA will not intervene in the day-to-day management and business strategies of The Link REIT. As such, as with other commercial institutions, we do not need to be apprised of the staff employment situation in the estate car parks managed by The Link REIT and will not look into matters concerning the day-to-day business management of The Link REIT.
- (b) As mentioned above, The Link REIT is a private entity and we do not have any information concerning complaints received by The Link REIT or how these complaints were handled.

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

PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Prevention of Bribery (Amendment) Bill 2007.

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007**Resumption of debate on Second Reading which was moved on 11 July 2007**

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

MR JASPER TSANG (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Prevention of Bribery (Amendment) Bill 2007 (the Bills Committee), I report the main deliberations of the Bills Committee.

The Prevention of Bribery (Amendment) Bill 2007 (the Bill) seeks to amend the Prevention of Bribery Ordinance (the Ordinance) to provide for the solicitation or acceptance of advantages by the Chief Executive. The Bill also seeks to add a new section 31AA to enable the Commission of the Independent Commission Against Corruption to refer the matter to the Secretary for Justice when he has a reason to suspect that Chief Executive may have committed an offence under the Ordinance, who may then further refer the matter to the Legislative Council for it to consider whether to take any action according to the impeachment proceedings under Article 73(9) of the Basic Law.

Some Members considered that in order to safeguard the independence of the Legislative Council in carrying out its constitutional duty under Article 73(9) of the Basic Law

PRESIDENT (in Cantonese): Is this a point of order?

MS MARGARET NG (in Cantonese): My apologies, President, originally I did not want to raise this, but since I realized that Mr Jasper TSANG had already stood up to speak and I had no time to wait, so I could not help but do so.

President, it is like this. About the meeting today, as typhoon signal no. 8 had been hoisted, the President gave notice that should typhoon signal be lowered to no. 3 before 11 am, the meeting would commence at 2.30 pm; and should the signal be changed to no. 3 after 11 am, the meeting would be convened afresh at 9 am tomorrow. Just now, I have taken the opportunity to discuss with the Legal Adviser the question of whether this notice constituted a notification for the Legislative Council meeting to be held at 9 am tomorrow. If it really has such an effect, when the President subsequently exercised her authority and decided that the meeting be held at 2.30 pm, the notice period might not be sufficient. If this was the case, the legal effect of the resolutions we passed at the meeting may be open to doubt. Earlier, it was Question Time and this may not be a problem, but once we are now in the process of enacting legislation, I think we would have to sort this out.

President, I dare not say that this notice is definitely invalid or questionable, but I do not know if I can bring this up for consideration by the President so that there can be a 100% guarantee for the legal effect of the procedures hereafter. Thank you, President.

PRESIDENT (in Cantonese): Fine. Thank you, Ms Margaret NG, for bringing this up

Dr YEUNG Sum.

DR YEUNG SUM (in Cantonese): President, with respect to this point, I share Ms Margaret NG's view. This is because I am very worried that once we are in the process of amending and passing laws, if it turns out that there are problems with the procedures, they may have to start all over again. Quite a number of questions were asked at our party caucus because we had received a notice that the meeting would be held today if there was a change in typhoon signal before 11 am; otherwise the meeting would be held tomorrow. But the change in typhoon signal was at 11.15 am. My view is, 11.15 am was already beyond 11 am and so we did not have to come for the meeting, then our caucus meeting

would have to be postponed. Yet we were again notified by the President that the meeting would be held as scheduled, would this not Of course, the President has the authority to make decisions, but I agree with Ms NG that we have to make the procedures clear; otherwise even if the Prevention of Bribery (Amendment) Bill 2007 is passed, it may be open to queries. Thank you, President.

PRESIDENT (in Cantonese): First, I wish to thank the two Members for bringing up this question. Actually, I have thought about this question myself. When I gave notice to Members yesterday, we had no idea when typhoon Fengshen would pass by Hong Kong. And so I said, if the typhoon signal was still in force at 11 am, the meeting would be postponed to the next day. There was no way for me to judge whether it would have just passed by Hong Kong, be moving over Hong Kong or be leaving Hong Kong at 11 am. However, at about 7 am today I already learned from the weather report that it had left Hong Kong and landed on the Mainland.

I was waiting all the time. Actually, I was back in the Legislative Council Building at 9 am. I was waiting all the time for the typhoon signal to be changed to no. 3 because I could ask Members to come back for the meeting after the change. However, I must give all of you sufficient time to come back to the Legislative Council Building. If I asked you Members to come to the meeting without giving you two hours for the journey, I thought it would be unfair to you.

At the same time, I had to take into consideration the very long agenda for the sitting, so we had to make good use of our time. When I was sitting in my office waiting for the change of typhoon signal, some Members told colleagues of the Secretariat that they hoped the meeting could be held at 2.30 pm today as we all knew that the typhoon was in the course of leaving Hong Kong. Some Members gave me phone calls when I was in my office.

At that stage I had also sought legal advice, which was that if I decided to hold a meeting at that time, it would be totally legal. The notice period I gave was sufficient and the bills which might or might not be passed at the meeting today as well as their legal status in future would not be affected.

Anyway, I am very grateful to the two Members for raising the point so that I can have the chance to explain the entire process to Members. The typhoon signal was changed to no. 3 at 11.15 am by the Hong Kong Observatory. This was unfortunate to me in the sense that had the change of signal been made before 11 am, it would have been much better. But we must respect the professional decision made by the Observatory and the decision should be made by them. What we should do is to make the best use of time to complete our work.

Mr Martin LEE, is that a point of order?

MR MARTIN LEE (in Cantonese): President, allow me to say something please. In fact, I was the Member who gave you the phone call. President, I think I should let everybody know why I called you at that time. I heard that banks had announced that once the typhoon signal was changed from no. 8 to no. 3, their operation would resume within two hours. Even the Disneyland Amusement Park was seen to have opened for business again. I felt that it would be regrettable if the Council meeting was cancelled, especially as we were so busy. Thus, before discussing the issue with the Legal Advisor, I called you as an anxious Member. If anyone says that you have made any mistake, I should somehow be held responsible as well.

PRESIDENT (in Cantonese): Actually, we should not be discussing details of the circumstances here in this Chamber. However, I only wish to explain to you that I have considered the legal issue raised by Ms NG, and I feel that it should not have any effect on the legislative proceedings we are conducting here today. But I am very willing to discuss the matter with Members when you leave the Chamber for a rest in a venue other than the Chamber.

Ms Margaret NG.

MS MARGARET NG (in Cantonese): President, I have no doubt about the fact that we all share the same feeling. In fact, I was also very angry when I learnt of the coming of the typhoon because I knew that we had a long agenda today. President, all of us in fact understand the process involved, but, in legal terms, I think it is preferable to give a reply to the question I raised, that is, in legal

terms, why would that notice not constitute a cancellation of the meeting? If that notice constituted a notice for cancellation of the meeting, and afterwards a new notice was issued to give notice of a meeting to be convened, was the notice period sufficient insofar as the required notice period is concerned. If it is said that the required notice period has been satisfied, what is the justification? Perhaps the President could provide us with an explanation in writing, because not only are we required to work according to the rules, it is also necessary for us to know the basis of the rules. Thank you, President.

MS MIRIAM LAU (in Cantonese): Madam President, under Rule 14(3) of the Rules of Procedure (RoP), the President may, at any time after he has determined the day and hour upon which a meeting is to begin, change the day and hour so determined to a later day or hour, or to an earlier day or hour. Hence, the relevant authority is in the hands of the President. Therefore, the question that I wish to ask you, President, is whether you have considered Rule 14(3) of the RoP at that time?

PRESIDENT (in Cantonese): In fact, when I discussed with the Legal Adviser at that time, we took all these into consideration. But I feel that I should not be wasting the precious time of this meeting to discuss the issue. I have already made my ruling. Ms Margaret NG has requested for my written explanation and I am very willing to do so.

Is that alright? We will continue with our legislative proceedings. Mr Jasper TSANG, please continue.

MR JASPER TSANG (in Cantonese): President, I will continue to report the deliberation of the Bills Committee to this Council.

I would like to point out again that some members of the Bills Committee consider that in order to safeguard the independence of the Legislative Council in carrying out its constitutional duty under Article 73(9) of the Basic Law (BL), the Commissioner of the Independence Commission Against Corruption (ICAC) should directly refer a corruption complaint against the Chief Executive to Legislative Council, or alternatively, the Secretary for Justice should be required to make a report to Legislative Council on the reason(s) for not referring a

corruption complaint against the Chief Executive received from the Commissioner of ICAC to Legislative Council.

In response, the authorities have pointed out that the new section 31AA does not have the effect of excluding any person from making a complaint to Legislative Council. Subject to the restriction under section 30(1) of the Prevention of Bribery Ordinance (POBO), any person may refer information involving a corruption complaint against the Chief Executive to Legislative Council for it to consider whether to take any action under BL 73(9). The prohibition on disclosure under section 30(1) only exists when the investigation is still in a covert stage in order to protect the integrity of the investigation and the reputation of the subject person.

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

The authorities have further pointed out that the duties of ICAC and the Secretary for Justice are set out in section 12 of the ICAC Ordinance and BL 63 respectively. Section 12 of the ICAC Ordinance sets out the duties of ICAC, which include, among others, the duty to investigate any alleged or suspected offences under POBO, receive and consider complaints alleging corrupt practices and investigate those complaints that the Commissioner of ICAC considers practicable. However, the power to prosecute after completion of investigations is vested with the Secretary for Justice by virtue of BL 63.

The authorities have assured members that there is no question of any corruption complaint involving the Chief Executive being covered up. Any decision by ICAC to close the file and any decision by the Department of Justice not to prosecute will be reported fully and discussed at the Operations Review Committee (ORC) of ICAC. If the investigation involves the Chief Executive, the question of whether the Secretary for Justice should refer the case to Legislative Council will arise in the ORC discussion. Secondly, there is no prohibition against a complainant to ICAC also making an identical complaint to Legislative Council provided he does not reveal ICAC's investigation.

To address members' general concern, the authorities will add a new section 31AB to the Bill to provide immunity for disclosure of information contained in the Secretary for Justice's referral for Legislative Council Members and staff members of Legislative Council Secretariat. As the operation of the

new section 31AB involves Legislative Council President, the Secretary General and staff members of Legislative Council Secretariat, the Bills Committee has asked the authorities to seek their views on the new provision. In his reply, the Secretary General of Legislative Council has suggested that a provision should be added to this section to stipulate clearly that the point of time when the motion to charge the Chief Executive with serious breach of law or dereliction of duty is considered to have been initiated should be that as provided in Legislative Council Rules of Procedures (RoP). The authorities consider this unnecessary as according to BL 75(2), Legislative Council RoP shall be made by the Council on its own, provided that they do not contravene BL. In response to the Secretary General's request, the authorities have agreed to explain the policy intent for the new section 31AB(4) and its operation in relation to RoP (that is, the point of time when an initiating motion is considered to have been initiated jointly by one-fourth of all Legislative Council Members under BL 73(9)) at the resumption of Second Reading debate on the Bill or Committee stage.

Some members are also concerned about the possible public perception that ICAC may not conduct its investigation of corruption complaints against the Chief Executive independently and impartially, given that BL 57 stipulates that ICAC shall be accountable to the Chief Executive. The Law Society of Hong Kong and the Hong Kong Bar Association have also expressed concern on this issue and consider that there is a need to establish an independent body to investigate into corruption complaints against the Chief Executive.

The authorities have pointed out that both BL 57 and section 5(2) of the ICAC Ordinance actually underpin the independence of ICAC and the Commissioner of ICAC is accountable to the office of the Chief Executive but not to the post holder per se. ORC has also provided structural safeguards to ensure the independence and integrity of ICAC's investigation. Besides, the authorities have pointed out that a special regime for the investigation and impeachment of the Chief Executive in respect of complaints about his serious breach of law or dereliction of duty is also provided under BL 73(9).

Section 8(1) of POBO provides that if a person offers an advantage to a prescribed officer while having dealings of any kind with the Government through any department, office or establishment of the Government in which the prescribed officer is employed, the offeror will commit an offence unless he can establish the defence of lawful authority or reasonable excuse. Some members consider that it should be equally an offence for members of the public offering advantages to the Chief Executive as to prescribed officers. Therefore, a

provision binding any person who offers any advantage to the Chief Executive in line with section 8(1) should be introduced in the Bill, or else it will be double standard.

In response, the authorities have advised that in view of the broad meaning of the term "dealings of any kind" given in the Court of Final Appeal judgment in a case, and having regard to the fact that the Chief Executive is head of the Hong Kong Special Administrative Region (SAR) Government, to introduce a new provision binding any person who offers any advantage to the Chief Executive in line with section 8(1) of POBO could have the effect of subjecting any person having dealings of any kind with any government department to an offence whenever he offers an advantage to the Chief Executive. The scope of the new offence will be much wider than the scope of the offence created by the existing section 8(1). The authorities have pointed out that for example, a person offering a small gift to the Chief Executive during a district visit will commit an offence if he applies for renewal of driving licence. This could be too onerous on well-meaning citizens offering souvenirs to the Chief Executive out of courtesy or respect. Nevertheless, if a gift is offered to the Chief Executive for a corrupt purpose, this should fall within the scope of proposed section 4(2A) in the Bill, which provides that if a person, whether in Hong Kong or elsewhere, offers an advantage to the Chief Executive without lawful authority or reasonable excuse, he will commit an offence. In addition, a person offering a bribe to the Chief Executive will also be caught by the common law offence of bribery.

Deputy President, the Bills Committee supports the resumption of the Second Reading debate on the Bill today and notes that the Bill, if enacted, will come into operation upon its publication in the Gazette.

Deputy President, please allow me to continue with my speech to clearly express my views and the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) on the Bill.

The fact that it has taken many years, indeed a long time, for this Bill to be introduced since the undertaking by the SAR Government to extend the application of certain POBO provisions to the Chief Executive has caused dissatisfaction among many Members of this Council. Over the years, Members have also expressed their views on this issue at a number of different meetings.

The DAB considers that the Chief Executive of the SAR has a special constitutional position. As a result of this special constitutional position, we have to restrain and regulate the Chief Executive by way of local legislation, or exercise additional care in specifying certain offences. We are aware of the practice of providing criminal liability exemption for heads of States in many places. The Chief Executive of the SAR is of course not a head of State, but there are obvious differences between his position and that of heads of local governments in general. For example, when a governor or a mayor has broken the law, the law enforcement and judiciary bodies of a country can naturally handle the case. However, with the existence of "one country, two systems", SAR itself is a jurisdiction in which the Chief Executive holds the highest position. Judges are appointed and removed by the Chief Executive; principal officials, including the Commissioner of ICAC and the Secretary for Justice, are nominated by the Chief Executive and appointed by the Central People's Government.

Under such circumstances, a problem has emerged during our scrutiny of the Bill: how can an investigatory or law-enforcement body which is originally under the leadership of, as well as reporting and accountable to, the Chief Executive carry out investigations or law-enforcement work independently and be seen to be so by the public? This is a question which would not be faced by heads of local governments in general. However, Deputy President, at the same time, the Chief Executive of the SAR is appointed and removed by the Central People's Government, and only the Central People's Government has the power to appoint him to or remove him from office. What is more, under the provisions of the BL, the Chief Executive shall be the head of the SAR and accountable to the Central People's Government and the SAR. He has such a constitutional position. Therefore, when we consider carrying out law enforcement and investigations against the Chief Executive, we cannot disregard the Chief Executive's relationship with the Central Authorities of the state and the unique constitutional position of the Chief Executive in the relationship between the Central Authorities of the state and the SAR.

Deputy President, I am aware that quite a number of colleagues in this Council have expressed dissatisfaction with various aspects of this Bill introduced by the Government, be it during the long process of forming the Subcommittee to discuss this issue or during our scrutiny of this Bill. There are a few aspects which have been given more discussion and are considered controversial. One of them is to what extent should the original POBO be

applied to the Chief Executive. As this mainly involves three provisions, namely sections 4 and 5 on the regulation of the Chief Executive for accepting and soliciting benefits, one of which involves how he applies his powers and the other involves making of contracts, and section 10, which is about the possession of unexplained property. These three sections are to be extended to cover the Chief Executive. However, during the scrutiny of the Bill, a number of Honourable colleagues have mentioned that section 3 of POBO provides that any prescribed officer, that is, the relevant public officer or government official, who accepts any advantage without special permission of the Chief Executive, shall be guilty of an offence. They have queried why this provision shall not apply to the Chief Executive, while the power of granting permission has to be vested with an independent body instead. Another example is section 8 of the original POBO on restraining members of the public — I have also mentioned this just now in my report of the deliberation — a member of the public commits an offence if he has any dealing with a certain government department and offers some advantages to officers employed in the department. They have queried why the offering of advantages to the Chief Executive by members of the public is not subject to section 8(1). During the discussion, more views have been expressed on these aspects, and I have noticed that the Government's responses were unable to fully address Members' concerns, and therefore amendments have been proposed by Members.

Another area of controversy is on the independence of the investigatory body mentioned just now. Given that the Commissioner of ICAC shall be accountable to the Chief Executive under the BL, is it practicable to allow the investigation of alleged corruption of the Chief Executive to be conducted by a body accountable to the Chief Executive? Members have also proposed recommendations on how this problem can be solved.

There is still another area of controversy on the relationship between the current legislation and Legislative Council's initiation of the impeachment procedures against the Chief Executive. How can the relevant information be referred to Legislative Council to enable the smooth initiation of the impeachment procedures, if necessary? During the discussions, Deputy President, we can clearly see that the concerns of Members and those of the organizations and members of the community relayed by them are substantiated. However, we think that, first, as this issue indeed involves the relatively special constitutional position of the Chief Executive mentioned by me just now, we have to make reference to practices adopted elsewhere — some Members have

mentioned practices adopted in other places, such as establishing an independent body, dedicating a prosecutor and so on — but many practices are not completely applicable to our current situation.

What is more, even among Members who disagree with the present Bill introduced by the Government, there are divergent views when it comes to remedies and improvement recommendations. For example, regarding the relationship with the impeachment mechanism, we have at least two different views. Some Members consider that a binding provision should be added in the Bill to prevent the exploitation of the so-called dictatorial power, be it by the Commissioner of ICAC or the Secretary for Justice, to ensure that the information available to them will be served to Legislative Council Members for reference as a procedure to activate the impeachment process. However, other Members consider that this will cause confusion between the political procedures and the legal or judicial procedures, or confusion between the executive function and the legislative function, which is also perturbing. Therefore, what is a more desirable way to handle the situation? Actually, it is not easy to work out an option to the satisfaction of all.

The DAB see that although we maintain that there are inadequacies in the present Bill and as a result, some colleagues in this Council are not fully satisfied, we have followed up the matter for a long time after all. If we pass the Bill introduced by the Government, at least some provisions in POBO can be implemented so that they can immediately apply to the Chief Executive. Besides, we also agree that apart from the current legislative exercise, there are other mechanisms to restrain and prevent bribery on the part of the Chief Executive. Bribery offences are regulated under the common law. BL 47 also requires that the Chief Executive must be a person of integrity and that the Chief Executive shall declare his or her assets to the Chief Justice of the Court of Final Appeal. Of course, there is also the mechanism under which this Council can impeach the Chief Executive.

Therefore, having regard to these two aspects, that is, first, we consider that the remaining issues are still very controversial, and we do not think that we have already come up with a satisfactory solution to all the problems, and to pass the Bill at present is better than doing without these provisions; second, other mechanisms are also available. Therefore, the DAB supports the passage of the Bill. Thank you, Deputy President.

MR CHEUNG MAN-KWONG (in Cantonese): Deputy President, the saying "Hong Kong Our advantage is the ICAC" is well-known among the populace. The Independent Commission Against Corruption (ICAC), on account of its clamp-down on corruption and effective enforcement of the Prevention of Bribery Ordinance (the Ordinance), has won for Hong Kong the reputation of being corruption free. However, the ICAC is only directly accountable to the Chief Executive. As the head of the SAR, the Chief Executive has never been put under the regulation of the Ordinance. This is a loophole in the anti-corruption system, a major vacuum in the laws of the SAR as well as a big irony to Hong Kong, which is known as a graft-free city.

As early as January, 1999, the Legislative Council already raised queries concerning this loophole of the law that the Chief Executive is not subject to the regulation of the Ordinance. Subsequently, this issue was discussed and examined in the Panel on Constitutional Affairs repeatedly. Six years lapsed without the slightest progress being made in the review conducted by the Government. In 2005, the Legislative Council established a Subcommittee to push the Government to expedite the legislative process. In 2006, the legislature again urged the Government to draft a bill as soon as possible to bring the Chief Executive under the coverage of the Ordinance. At that time, the Government promised that it would table a bill in May 2006 or even earlier, with a view to making some of the provisions applicable to the Chief Executive. However, it was very unfortunate that this promise was not honoured. On various occasions in 2006 and 2007, Members expressed extreme dissatisfaction with the authorities' prolonged procrastination in introducing the bill.

The then Director of Administration, Ms Elizabeth TSE Man-yee said that the Government would introduce a bill in either February or March of 2007. At that time, I criticized the slow progress in this piece of legislation and the repeated delays in its legislative timetable, which made it impossible to have the Bill passed before the end of the Chief Executive election, thus making the Chief Executive-elect not subject to the regulation of the Ordinance. The authorities, however, reneged on their promise once more. It was not until July 2007, after the Legislative Council had exerted pressure for eight years and the incumbent Chief Executive had changed from TUNG Chee-hwa to Donald TSANG that this late coming Bill was introduced, with our regrets over and over again.

The Government's administrative style of "going slow" could be clearly seen in this Prevention of Bribery (Amendment) Bill 2007. Whenever the legislature pushed it once, the Government budged a little. However, after taking one step, it went backwards half a step, so the pace was even slower than that of a snail. Now, after almost a decade of discussions and hubbub, the passage of the Bill will be decided amidst controversies today. Causing the delay that spanned nearly a decade is an act that should be given 100 spanks and marked 10 severe faults. But anyway, from now on, if the Chief Executive is involved in corruption, after the ICAC has conducted an investigation and if there is ground to suspect that the Chief Executive may have committed the offences specified in the Ordinance, the Commissioner of the ICAC can refer the matter to the Secretary for Justice, who can refer the matter to the Legislative Council for it to consider whether any action should be taken in accordance with Article 73(9) of the Basic Law.

According to Article 73(9) of the Basic Law, if a motion initiated jointly by one-fourth of all the Members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision.

However, I notice that even before the present legislation has been passed, there are already voices championing the Government. There are voices seeking to generate public opinion with the design of imposing obstacles on the impeachment of the Chief Executive by the Legislative Council, at the expense of undermining the constitutional responsibility and power of the Legislative Council in monitoring the Chief Executive, by proposing that group voting be held on the motion initiated jointly by Members and on the motion of impeachment. In fact, the Basic Law stipulates that it is only necessary for the motion of investigation to be initiated jointly by one-fourth of "all the members of the Legislative Council" and in the end, it is necessary for the motion to be passed by a two-thirds majority of "all its members". The underlying principle of these motions is passage by "all its members", so it is not necessary to

introduce the step of group voting into the process of voting on the joint motion and the motion of impeachment.

Even Prof Johannes CHAN, Dean of Faculty of Law of the University of Hong Kong, believes the Basic Law has stipulated that the process to initiate impeachment is through a motion initiated jointly by Members, in other words, such a motion will not be moved by the Government, so the logic of "voting on a government motion by all Members with a simple majority and group voting for a Member's motion" is not applicable here. A motion in the impeachment process is a special and unusual motion and there is no need to impose obstacles on oneself by conducting group voting.

Deputy President, the political system of Hong Kong is one of mutual checks and balances among the executive, the legislature and the judiciary, with a view to preventing over-concentration of power in the Government and abuse of power by the Government. The original intention of the Basic Law in vesting certain powers in the Legislative Council is to let it perform the function of monitoring and counterbalancing the Government. The Chief Executive has the responsibility to abide by the law and be bound by the Ordinance, in the same way as the general public and civil servants are, to demonstrate his commitment to governing Hong Kong in a corruption-free manner. For this reason, the unique position of the Chief Executive does not accord him the inappropriate privilege of not being bound by legal restrictions comparable to those imposed on the general public, civil servants, public officers and senior officials. In other words, on the issue of corruption prevention and bribery prevention, everyone should be equal before the law.

Although the legislative process has entered the final stage, there are still many loopholes in the Bill. This is due to the long delay in introduction of the Bill, as a result of which we can now only deal with it in a better-than-nothing fashion today. The main component of the Bill is to make sections 4, 5 and 10 of the Ordinance applicable to the Chief Executive, so as to impose restrictions on the Chief Executive in respect of solicitation and acceptance of advantages and possession of unexplained property. Another new gimmick is to add a referral provision to enable the Secretary for Justice to refer to Legislative Council a report of the Chief Executive suspected to have committed corruption offences for possible follow-up.

However, the Legislative Council and the Department of Justice are two independent bodies exercising mutual checks and balances and powers of their own. For this reason, the power of impeachment of the Legislative Council is prescribed separately in Article 73(9) of the Basic Law and the Secretary for Justice does not have any role to play in it. Why is it necessary for the Secretary for Justice to decide the referral of such matters and the relevant information to the Legislative Council even though the ICAC already has grounds to suspect that a Chief Executive has violated the Ordinance? Why can the power of referral of the Secretary for Justice override the power of impeachment of the Legislative Council? Is the Government indirectly holding sway and even curtailing the power of impeachment of the Legislative Council, thus violating the original intention of the Basic Law? The provision on referral makes one doubt if the Secretary for Justice, as a member of the Chief Executive's governing team, can intervene clandestinely by covering up undisclosed complaints cases alleging the Chief Executive of corruption, thus impeding the Legislative Council in activating the investigation and impeachment mechanism, rendering this mechanism virtually non-existent or being compromised?

In order to enable the Legislative Council to fulfil its constitutional responsibilities under Article 73(9) of the Basic Law independently, if the Commissioner of ICAC has grounds to suspect that the Chief Executive may have committed an offence under the Ordinance, he should refer a case complaining about the Chief Executive of corruption to the Legislative Council, instead of relying on the Secretary for Justice to refer it to the Legislative Council, as proposed in the Bill. Another approach is to require the Secretary for Justice to make a report to the Legislative Council to explain why the Commissioner of the ICAC, upon receiving a case complaining about the Chief Executive of corruption, did not refer the case to the Legislative Council. It is only in this way that the Legislative Council will be able to monitor in a forceful, independent and balanced manner the possibility of corruption on the part of the Chief Executive. Of course, this view was not accepted by the Government when it was discussed.

Moreover, in accordance with the Basic Law, the ICAC is accountable to the Chief Executive. For this reason, when the ICAC carries out an investigation on the Chief Executive, this may give rise to a conflict of roles. This is a flaw in the political system and will inevitably arouse public concern.

People may query whether a subordinate investigating his superior will pull punches or be subjected to pressure. In view of this, the Democratic Party suggests that the independent investigation committee be composed of retired judges to take charge of complaints about corruption on the part of the Chief Executive. The committee can also second officers of the ICAC to carry out investigation, so as to ensure that the public can see that such investigations are carried out independently and fairly, and the world will also find that Hong Kong's political system is graft-free, with the criminal codes applicable to the Chief Executive and members of the public alike.

Deputy President, I so submit.

MS MARGARET NG (in Cantonese): Deputy President, the Prevention of Bribery (Amendment) Bill 2007 (the Bill) under discussion today is certainly a very important step. However, let us look at this Bill. It is very simple indeed. The Bill has only six clauses, which seek to amend four provisions of the Prevention of Bribery Ordinance (the Ordinance). In fact, each of them merely involves very minor amendments. For instance, regarding an amendment to the offence of bribery provided in section 4 of the Ordinance, it is currently an offence to offer any advantage to public servants as an inducement to them for performing or abstaining from performing certain acts. Likewise, it is an offence for any public servant to solicit or accept any advantage as an inducement to them for performing or abstaining from performing certain acts.

What makes our amendments so important today? Firstly, the term "public officers" will be substituted by the "Chief Executive", and that is all. Secondly, section 5 concerning assistance in respect of contracts will be amended. Likewise, it only involves a replacement of the term "public officers" with the "Chief Executive", and that is it. With regard to section 10, it is about unexplained property. What is the difference of public servants and the Chief Executive in this regard? The requirement is less stringent on the Chief Executive because only the assets that he previously declared to the Chief Justice would be used as the basis of comparison, and nothing else. Other amendments pertaining to section 30 relate to impeachment.

Deputy President, that is all for the amendments, and the so-called technical problem that has aroused the greatest controversy is clause 4(3).

According to existing provisions, it is not an offence for a non-prescribed officer to accept advantage with the permission of the public body of which he is an employee. The provision, after amendment, will then give rise to serious problems as the Chief Executive does not have a supervisor, and there is no one to give the permission. Is it not simpler at present? The Bill merely proposed to delete the provision, and it is not at all difficult. Neither do I see any technical difficulties that caused the matter to drag on for a decade.

As Members may recall, the subcommittee gave a report on 20 February 2006 about the application of certain provisions of the Ordinance to the Chief Executive. As we can see from the report, well before 1999, Legislative Council Members had questioned why the Chief Executive was not subject to the regulation of the Ordinance, and the Administration reported time and again to the relevant Panel in 1999, 2000, 2001 and 2002. What big deal is it that needs pursuing for as long as a decade?

If we take a look at the relevant reports, we may discover that the big issue mentioned by officials and the Government in the past is the unique constitutional role of the Chief Executive. Just now, Mr Jasper TSANG has also said a lot about the Chief Executive's unique constitutional role, saying that he is subject to the common law and has a relationship with the Central Authorities. So, which complicated specific provisions in the Bill can address this unique constitutional issue? None at all. So, just make a simple comparison of the relevant provisions and Members will know that the mission is not impossible at all; it is not difficult to accomplish. It is only that the authorities do not have the will or the intention to do so for they consider it inappropriate to subject the Chief Executive to the Ordinance. Under undue pressure and realizing that the arguments were far-fetched, the Government finally proposed this Bill, which is neither special, complicated nor lengthy.

Deputy President, I really regret to see the development of events to this very stage for this has given the public a very negative impression, in terms of both the SAR Government's regard towards the acts of the Chief Executive and our ability and effectiveness in making legislation.

Earlier on, Mr Jasper TSANG has expressed his personal views and that of the Democratic Alliance for the Betterment and Progress of Hong Kong, where the difficulties to be considered have been mentioned. In addition to saying that the unique constitutional role of the Chief Executive must be considered, he also

highlighted the fact that the Chief Executive is appointed by the Central Authorities, as well as his relationship with the Central Government. Yet, Members must not forget that anyone in Hong Kong must comply with the laws of Hong Kong. Everyone is equal before the law. This is the fundamental spirit of ours and the most essential spirit to be upheld by the Basic Law. Being the head of the SAR Government, should the Chief Executive not set an example with his own acts to regard such spirit as a matter of course?

During TUNG Chee-hwa's term of office as the Chief Executive, he made a remark which everyone gave their thumbs up but I considered unpleasant to my ear. He said that he was willing to be subject to the law. This is simply a technical rather than policy issue, but we apparently do not see any technical problem at all. Despite that much has been said by Mr Jasper TSANG and I know what his points are, I fail to understand why they would exempt the Chief Executive from the obligation of the Ordinance (Cap 201). I do not see where the problem is. The question that I faintly heard is whether the person appointed by the Central Authorities has greater power than the law and is not allowed to be subject to the laws of Hong Kong. This has dealt a serious blow to the image of the SAR.

If all these concerns are justified, the ordinances involved will definitely exceed Cap 201; so will other ones. After all, it is obvious that the Chief Executive must be subject to the laws of Hong Kong. I wonder if he would be issued a fixed penalty ticket for unauthorized parking or assault in a fight — our Chief Executive will certainly not do so, but let us assume he did — can he still be exempted from the law? This is impossible, and neither would anyone think this way. Why would this Ordinance alone be so difficult?

Looking from another perspective, there is nothing special about the prevention of bribery as no one has ever queried. Even the authorities have mentioned time and again that the Chief Executive must be subject to the offence of bribery under the common law. In other words, if the Chief Executive commits an offence of bribery under the common law, he will still become the subject of an investigation by ICAC. In fact, ICAC is required to conduct investigations in accordance with the law. With substantiated evidence, he would definitely be prosecuted. In case he were prosecuted, he should be tried in the Court according to the common law standard. If he were found guilty of the offence, he would be convicted by the Court according to common law principles. What has this to do with his special constitutional relationship with

the Central Authorities? What is the difficulty? While it is permissible to subject him to the offence of bribery under the common law, why is it not permissible to subject him to the Ordinance (Cap 201)? Such an explanation is really unacceptable.

Deputy President, Mr Jasper TSANG just pointed out that many Members are dissatisfied with the present Bill. I have a lot of discontents, too. One of them relates to section 30. It is an amendment to the offence concerning the disclosure of information about the subject person's identity. This provision has provided a specific procedure whereby the Commissioner of ICAC may refer the matter to the Secretary for Justice when he suspects that the Chief Executive commits an offence, and the Secretary for Justice will subsequently refer the matter to the Legislative Council for it to consider if the impeachment proceedings have to be invoked. Insofar as such proceedings are concerned, reference can be made to paragraph 23 of the report submitted by the subcommittee at that time. It stated that upon receipt of complaints, the Secretary for Justice may refer those cases with *prima facie* and the findings of ICAC's preliminary investigation to the Legislative Council. Should the Legislative Council decide to proceed with the procedures under Article 73(9) of the Basic Law, the Secretary for Justice may exercise discretion and allow the Legislative Council to complete the necessary investigation and impeachment proceedings, before he may exercise his power of criminal prosecution or require ICAC to conduct further investigation.

The reason for my opposition is very simple because either the Chief Executive or an ordinary person should enjoy the right to judicial fairness. All suspects are tried in court. If ICAC has sufficient evidence, it will proceed with the prosecution. According to ordinary criminal proceedings, he regains his innocence if the evidence is not substantiated. These are the proceedings which everyone is entitled to.

However, upon referral to the Legislative Council, the case will subsequently go through political processes and undergo open deliberations and discussions. Can the person concerned still have a fair trial? I think that all defense counsels would say that it is impossible for him to have a fair trial. So, what will happen? Either the person is wronged for the rest of his life, or judging from a comparatively more negative angle, the motion on impeachment would fail to get passed upon political scrutiny after securing a majority of votes in the Legislative Council, and that he would be freed from prosecution in the

absence of a fair trial because of the problem with judicial fairness. Will the person concerned escape the punishment of the law then?

The authorities explain to the Bills Committee that this is not the case. They now propose an amendment to section 30 by adding a new section 31AA. As I have said, law is law and politics is politics. As the impeachment proceeding is a political process, the decision should be made by the Legislative Council itself. The authorities have nonetheless said that without this provision, it would be an offence for the Secretary of Justice to provide the relevant information to the Legislative Council. Deputy President, I am really puzzled because section 30 reads, "a person who, knowing or suspecting that an investigation in respect of a Prevention of Bribery Ordinance offence alleged or suspected to have been committed under Part II of the Ordinance was taking place, without lawful authority or reasonable excuse", and disclosing the details of the investigation will be an offence. I really cannot figure out why it can happen that the Secretary for Justice has sufficient reason to provide information to the Legislative Council to enable it to exercise the authority conferred by the Basic Law, but this does not constitute a lawful authority or reasonable excuse. Why was the provision written this way? I think this is absolutely unconvincing.

If there is genuine ambiguity and safeguard is necessary, we can simply add something to the provision, just like the amendments that I am going to propose, stating that it is not unlawful for the Secretary of Justice to provide information to the Legislative Council in connection with the impeachment proceedings. Is this much simpler? Why should they be making such an unnecessary move? This is what I feel discontented.

Deputy President, I will in fact propose many amendments today, particularly the one concerning the deletion of a provision that intervenes in the impeachment proceedings to be invoked by the legislature. I will further elaborate in the Committee stage later on.

Thank you.

MS EMILY LAU (in Cantonese): Deputy President, next Tuesday will mark the 11th year of the Hong Kong Special Administrative Region. And today, just like what Mr Jasper TSANG, the Chairman of the Bills Committee has said,

amidst all the controversies, we are still trying to pass a Bill that will regulate the prevention of bribery offences involving the Chief Executive. Don't we feel that this really brings great shame to us?

Many organizations, no matter whether they are Mainland organizations or organizations from other places, have come to Hong Kong to pay visits to the Independent Commission Against Corruption (ICAC) because they believe that the system of ICAC is admirable. I believe the Administration has not told them that although the system of ICAC is admirable, it does not regulate our Chief Executive. If this were told, everyone would be shocked. It turns out that the Chief Executive is not subject to the regulation of this admirable system. Deputy President, Article 25 of the Basic Law has provided that all Hong Kong residents shall be equal before the law. However, such equality does not apply to the Chief Executive. We are told by the Administration that the Chief Executive is subject to the regulation of some provisions under the Prevention of Bribery Ordinance (POBO), and has all along been subject to the regulation. This refers to the provisions that govern "any person", but does not refer to the provisions that govern prescribed officers and public servants.

I believe the Administration has not informed our visitors of matters in this respect. The Administration can tell us information in this regard later in the meeting. Currently many people are lining up to visit the ICAC. Has the Administration explained to visitors that the Chief Executive is actually not subject to the regulation of the POBO? There have been arguments about the relevant provision for 11 years. It is still being argued in the Legislation Council. It is not until now that the wide gap between the differences is drawn a little closer. This situation is similar to the circumstance when visitors come to visit us only to find that 12 Members of the Legislative Council are unable to return to the Mainland. It is a shame that we have been boasting of ours a place of much freedom while all these are going on. Deputy President, I do feel very regrettable about this.

I think Mr Jasper TSANG has given us an overall description just now. Many aspects of the subject are controversial. He said that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) shared the same view. Sometimes we feel that we are forced to vote on the Prevention of Bribery (Amendment) Bill 2007 (the Bill) as the issue has been discussed for 11 years without any result. If we insist on objecting to its passage, there will be

no chance for us to put forward the issue of regulation. It turns out that after 11 years, we are still unable to achieve any results. After all these have happened, the subject has now become an urgent matter. I agree with Ms Margaret NG's view that the matter is not complicated. What are all these talks about the constitutional status? With respect to this issue, it cannot be said that there is a certain constitutional status of the Chief Executive which enables him not to abide by the law. If there were such a status, Mr Jasper TSANG would have highlighted it for discussion just now. According to Article 25, all Hong Kong residents shall be equal before the law.

If it is considered that many provisions of the POBO are not applicable, or it is difficult to apply the provisions to relevant circumstances, the proposal of the Law Society is the best solution to address the concern. The Society proposes not to amend the POBO, but recommends the enactment of a separate ordinance for the regulation of the Chief Executive. In other words, there should be legal provisions to provide that the Chief Executive is prohibited from solicitation and acceptance of bribes. However, the Administration is unwilling to do that. Since this is the case, I have found the current situation very difficult.

Although many colleagues have mentioned this just now, it is still necessary for me to talk about it briefly. As a matter of fact, under what circumstances is the Chief Executive not guilty of the POBO offence? Under the circumstances provided in section 4 of the POBO which refer to any person who offers bribes to the Chief Executive, or the Chief Executive solicits or accepts any advantages, the Chief Executive is not guilty of the offence. I hope that such circumstances have never occurred before. But Deputy President, even if they have occurred, we can do nothing about it. Under the circumstances provided in section 5 of the POBO which refer to any person who offers bribes to the Chief Executive in respect of public sector contracts, the Chief Executive is not guilty of the POBO offence. As for section 10, that is, the powerful provision related to the Chief Executive's possession of unexplained property, if the Chief Executive maintains a standard of living incommensurate with his official emoluments, he is not guilty of the offence. Don't you think this has gone too far? And we have been under the POBO for so many years.

Our colleagues have also mentioned two other provisions, section 3 and section 8. Both of them are very severe corruption prevention measures.

However, the Administration is also unwilling to amend the provisions. The severity of the provisions is such that if someone is prosecuted, it does not require the prosecution to prove that the advantage is offered to the prescribed officer with an intention of bribery or for any purpose related to the duties of the prescribed officer. In other words, it does not require a motivation. Once the advantage is offered, it is categorized as bribery. Nevertheless, the Administration still refuses to amend them. Does this not give an impression that some matters are still not tidied up?

Mr Jasper TSANG has mentioned a laughable example just now. While everyone is just performing his duty, a person who is successful in the application for renewal of his driving licence meets the Chief Executive during a district visit and is adamant in offering a gift to the Chief Executive. If those provisions of the POBO are implemented, does this mean that the person shall be arrested? Is this how we handle the case? If it is, why is the Chief Executive not subject to the regulation of the POBO while other public servants are? Thus, during the meetings of the Bills Committee, some members considered it necessary to ask whether double standard had been adopted by the Administration. If we think that public servants should not accept advantages while performing their duties, but believe that such a regulation will be too severe when it applies to the Chief Executive, then why do we subject the public servants to such a regulation in the first place? Deputy President, this argument fails to offer a reasonable explanation to us.

If we allow the Bill to pass with all these loopholes, irrespective of whether the loopholes are found in section 3 or section 8, when something happens in the future, the responsibility will be shirked to the Legislative Council. I really do not want to repeat myself, but it is outrageous for the Deputy Directors of Bureau and Political Assistants to make excuses everyday. They have always said that the legislation has been passed by us. With respect to the current Bill, they will certainly make excuses in the future, and claim that the practice has been transparent, and that the legislation has been passed by us.

Fortunately we have now listed all the loopholes in the POBO, otherwise, in the future they will claim that the Bill has been passed by the Legislative Council. Should something have happened but we had no evidence to prove our views at that time, the Administration would be able to claim that the Bill had been passed on 25 June 2009 by the Legislative Council. As Mr Jasper TSANG was also unable to explain just now, I believe they themselves know that there

are flaws in the POBO. However, the Administration refuses to admit the flaws. It has all along insisted that the existing mechanism is effective, and that even if we do not take legislative action, the existing mechanism operates effectively. Deputy President, the Administration and we are holding different views.

In response to the views of the Administration on the acceptance of advantages by the Chief Executive, the Bar Association raised the query on the approval procedure being conducted by the Chief Executive himself. The Bar Association proposed to establish an independent organization to approve the amount of advantages that could be accepted by the Chief Executive. However, the Administration was unwilling to accept the proposal. Whenever someone puts forward a proposal on the related mechanism with a view to moving a step forward, the Administration refuses to accept it. It insists that the Register of gifts is already in place. How can we put the Register on a par with a mechanism established by legislation? Furthermore, if a mechanism with publicly accepted credibility is established, whenever the Chief Executive wishes to accept advantages, he can do so once he has the approval of this organization. The proposal has all along been refused by the Administration. Frankly speaking, I do not understand the reason for the refusal. Someone has suggested that the Administration does not wish to subject the Chief Executive to regulatory legislation. Is it really the case? If so, although it has not reached the point that the Chief Executive can take as much as he likes, it gives the impression that he overrides the law. Deputy President, this is something we absolutely cannot accept.

Some colleagues have also mentioned that although the ICAC is able to conduct an investigation on the Chief Executive, the ICAC is accountable to the Chief Executive. Doesn't this give an impression that something is wrong? When the ICAC commences its investigation, it has to be accountable to the Chief Executive at the same time. And we do not know how many times the ICAC meets with the Chief Executive every year. Since there is a direct line of command between the Chief Executive and the ICAC, will the ICAC inform the Chief Executive that, among other things, he is under its investigation?

Someone then asks whether it is possible to establish a separate mechanism. I agree that the ICAC is brilliant in its investigation of corruption and that the ICAC officers can continue to conduct their investigations. However, it has to be accountable to a separate mechanism or committee. The

Administration has responded that this is out of the question. In other words, whenever proposals are put forward with the aim of strengthening independence and credibility of the mechanism, the Administration will say no. It has refused to accept any changes. Everyone has to act according to the existing practice, that is, the ICAC conducts the investigation while it is accountable to the Chief Executive. It is really outrageous that the Administration still insists there is nothing wrong with this arrangement.

Mr Jasper TSANG has also mentioned the experience of overseas countries. Our Secretariat is excellent in that it has prepared several papers from which we can find out whether agencies independent of anti-corruption mechanisms have been put in place in certain places to investigate corruption allegations against the heads of states. This paper provides the information of the State of New South Wales of Australia. The Chairman of the Bills Committee should be most happy with it, because, as he has pointed out, Hong Kong is not a country, so the information on a country does not conform to our situation. It is revealed here that no agencies independent of the anti-corruption mechanism have been put in place in the State of New South Wales. However, Deputy President, both Houses of the Parliament, including the Lower House and the Upper House may, by resolution of each House, refer any matter, including allegations of corruption against the head of state, to the Independent Commission Against Corruption for investigation. After investigation, the Independent Commission Against Corruption must report to the Parliament on the relevant investigation. This is a system that ensures more independence.

However, we do not have this system in place. The system we have is the controversial new section 31AA, which provides that upon the outcome of the investigation, a decision of whether the matter should be referred to the Legislative Council will be made. I believe that the Administration either deliberately pretends not to understand, or does not wish to know that the public has a desire for a clean system, in which an independent mechanism is put in place to investigate all corruption cases, including those that involve the highest level of the Government. During the operation of this mechanism, it should not be under any pressure or influence so that it can conduct its investigation independently. When this agency is conducting an investigation on the Chief Executive, it must sever its relationship with the Chief Executive. It should then be accountable to another agency empowered by legislation and with the same credibility. With this mechanism in place, we will be truly convinced.

Deputy President, the current situation is nothing like this. And they have no idea how to clear up the mess. If the relevant provision is voted down, nothing will be left. However, many people may be happier with this outcome. If this is the case, the work of the past 11 years will vanish into thin air. We will be back to square one, with the Chief Executive continues to stay above the majority of the provisions of the anti-corruption legislation. We will continue to maintain the clean reputation of Hong Kong in this way. Is this the inevitable outcome of the matter?

Deputy President, I really feel helpless with this stubbornness of the Administration. It is reluctant to listen to or put into practice what we consider acceptable in terms of drafting and policy, as well as matters that can be perceived to be fair and totally unlike the existing mechanism. The Bar Association has also pointed out that although the Basic Law has stipulated that the Department of Justice is responsible for prosecution, it is part of the Administration. In the end, the Bar Association has indicated that it will accept the mechanism of whether prosecution will be made rests with the Department of Justice. However, if more efforts are put here in establishing an independent agency for monitoring, the credibility of this mechanism will be strengthened. How can credibility be ensured? The key is that the mechanism has to be independent so as to avoid the impression that it is under pressure. It is really unfortunate that the Administration has refused to put in place such a mechanism.

As for section 31AA mentioned by the Chief Secretary for Administration, I understand that this will not obstruct the Legislative Council from acting in accordance with Article 73(9) of the Basic Law (BL 73(9)). Even if we do not do anything now, even if all the amendments are voted down today, if someone wishes to take action, it only requires a motion initiated jointly by one-fourth of all Members of the Legislative Council, and he can invoke the impeachment procedure under BL 73(9). However, is it necessary to adopt this practice?

That is why I support the amendment proposed by Dr YEUNG Sum. Some people may say that the amendment of Dr YEUNG Sum has duplicated BL 73(9). But it is just because we are now bounded all over that we have no other option. If you believe that there is a need to investigate into a certain matter, you will surely wish to have an agency with credibility to conduct the investigation, instead of adopting the existing practice to conduct the investigation. Will the ICAC be under pressure in the future? Will this be the

cause of our worry? The Administration has indicated that there is no need to worry at all as there is a committee under the ICAC which monitors everything.

Deputy President, as you know, legislation is needed in respect of conducting investigations of complaints against the police now. The committee under the ICAC is not even a statutory organization. It is obvious that the Administration cannot justify itself in many aspects of the issue. If the mechanism of that committee is so desirable, please provide us with the relevant legislation on which it is based; or stipulate by legislation the committees responsible for monitoring certain issues on behalf of the public. Surely this is not the case now. Since it is necessary to legislate on investigation of complaints against the police, why don't we legislate on the mechanism of the ICAC? This being the case, it gives the impression that there are flaws in the mechanism itself.

I so submit.

DR YEUNG SUM (in Cantonese): Deputy President, I rise to speak in support of the resumption of the Second Reading of the Prevention of Bribery (Amendment) Bill 2007 (the Bill). However, this support is principally built on a sense of deep regret. Since 1999, in order to maintain the rule of law in Hong Kong so that all residents shall be equal before the law, the Democratic Party has been continuously urging the Government to bring acts of corruption of the Chief Executive under regulatory control of the Prevention of Bribery Ordinance (POBO).

Deputy President, as a matter of fact, there are two means to handle this. Firstly, we can introduce a specific piece of legislation to deal with the Chief Executive's suspected acts of corruption. There have been arguments over this proposal for a number of years. The Government has been reluctant to do so. It does not wish to introduce a specific piece of legislation tailor-made for regulating the Chief Executive's suspected acts of corruption. The second method is to extend the existing POBO to the Chief Executive. Deputy President, there have also been arguments over this proposal for a number of years. The Government undertook to introduce a Bill in the 2006-2007 session. However, the Government went back on its words. It failed to comply with its undertaking. Not until July 2007 did the Government submit this Bill, which

aims at extending the regulations of the POBO to the Chief Executive, to the Legislative Council for scrutiny.

Deputy President, as a matter of fact, the Bill under scrutiny today is a shame to Hong Kong as well as a shame to the people of Hong Kong. According to our perception, all Hong Kong residents are equal before the law. But it turns out that we have an overlord that is above the law, and this person is the Chief Executive. The Government has claimed that the Chief Executive is neither an ordinary prescribed officer nor an ordinary public servant. He has a special identity, that is, he is appointed by the Central Authorities, so he enjoys a very unique status. Thus, the handling of the Chief Executive should be different from that of general public servants or prescribed officers.

Deputy President, I absolutely cannot accept this argument. I can't understand why aren't all residents in Hong Kong — irrespective of whether he is poor or rich, with a high standing or low standing — equal before the law. Why isn't it the case that all people are subject to the same fair or equal treatment before the law, but some people can be above the law instead? Although I support the resumption of the Second Reading of the Bill on behalf of the Democratic Party this time, I feel very regrettable about this. If the Bill still fails to be passed and take effect to become our law this time, I believe the shame of having the Chief Executive above the law will be recorded in the record of proceedings. This is absolutely something we cannot face.

Deputy President, I wish to point out, however, that according to the current practice, when a member of the public lodges a complaint or suspects that the Chief Executive has committed a corruption offence, the case will be eventually investigated by the Independent Commission Against Corruption (ICAC). Of course, the Commissioner of the ICAC is a professional independent person, and I think his past record has been quite good. But all the same, this Commissioner is appointed by the Chief Executive to whom he is accountable. Thus, the Democratic Party has proposed an amendment to set up an independent ad hoc committee to be chaired by a retired judge. I will put forward the details of this amendment during the Committee stage.

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

MR RONNY TONG (in Cantonese): Deputy President, I believe that it is difficult to find such a Government in this world. Whenever we discuss the core values of the society, or matters people with thinking would agree, particularly the subjects related to the principle of the rule of law, and ask the Government to introduce legislation on them, the Government will introduce some legislation that are tasteless to the tongue but a bit of waste to throw away. Members are faced with the dilemma of whether to vote in favour or against it. This Bill put us into this position. The same is bound to happen when we discuss the Race Discrimination Bill in two weeks' time.

Deputy President, Ms Margaret NG has put it correctly just now — why has it taken ten years to consider such a simple subject? And why is the Bill still afflicted with all kinds of ills when its final version is submitted? The most disturbing thing about this Bill is that three major flaws can be found. Deputy President, I would like to briefly explain the three major flaws which we have found so very disturbing and even heartbreaking.

Deputy President, firstly, according to the Basic Law (BL), our Chief Executive has to abide by the law. Apart from that, BL 47 specially provides that the Chief Executive must be a person of integrity, dedicated to his or her duties. Furthermore, BL 47(2) stipulates that the Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal. Why does it provide that he shall declare his assets? Deputy President, this obviously indicates a wish that the Chief Executive will not be related to corruption.

Although the BL does not specially provide that the Chief Executive should abide by the law, it has obviously prepared for the possibility that the Chief Executive might accept bribes. I believe this is also the utmost concern of the BL. Surprisingly, we have waited for 10 years but the related legislation has not been enacted yet.

The passage of a piece of legislation to implement the spirit of BL 47 involves two related but different principles. First, there should be a piece of legislation with which the Chief Executive can comply. We should have one that provides clearly under what circumstances his acts will not be regarded as accepting bribes, that is, under what circumstances he will not be regarded as accepting bribes when he receives gifts or other advantages. Thus, having the

law to comply with is an important requirement. The second requirement is equally important or even more important, and that is, the Chief Executive must show to the public of Hong Kong or even the international society that he is not above the law.

(THE PRESIDENT resumed the Chair)

It is important that the Chief Executive should be under the regulation of this basic principle. As this is the case, it is not only necessary to convince the public of Hong Kong or the international society that the Chief Executive does not enjoy a unique status, it can also indicate clearly that the Chief Executive is subject to the regulation of the law, and that like any other person, he may be prosecuted when he has committed offences stipulated in the law.

We have argued for a long time over the role of the Independent Commission Against Corruption (ICAC) in the entire case just now. Mr Jasper TSANG, the Chairman of the Bills Committee, has just mentioned that the ICAC has sufficient capabilities and credibility to conduct investigations. There is no doubt about that. However, this is not the crux of the problem. The problem lies in that under the BL, the ICAC is accountable to the Chief Executive. As this is the case, how can it convince the public of Hong Kong or the international society that the ICAC should be the agency discharged with the responsibility of investigating the Chief Executive? Since this agency is at the same time accountable to the Chief Executive, will this give an impression that the Chief Executive is able to make use of his position to influence the investigation?

If someone has doubts in this respect, it will be impossible for us to comply with the very important principle I have just mentioned, and that is, it should be clearly shown to the public that the Chief Executive is absolutely subject to the regulation of the law. In this connection, the Bar Association has put forward its view, while Dr YEUNG Sum has also proposed an amendment, to which I give my absolute support. However, I can see that the chance of this amendment being passed is extremely slim. Nevertheless, I hope that other colleagues listening attentively to the debate of this Bill will think more deeply — as a matter of fact, with this amendment, the credibility of the rule of law in the entire Special Administrative Region will be increased.

President, I must give more details with regard to the second issue, that is, the relationship between the Prevention of Bribery Ordinance (POBO) and the impeachment of the Chief Executive prescribed in the BL. President, right from the first day, I have clearly pointed out that there is not much incidental relationship between the two. Why do I say that? President, we are talking about the impeachment mechanism of the Chief Executive under BL 73(9). This mechanism is obviously a political mechanism and not a legal proceeding.

We must pay attention to another point, and that is, BL 73(9) has only prescribed the condition under which "if a motion initiated jointly by one fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign". President, the BL has not stated that if the Chief Executive commits an offence of POBO or accepts bribes, he will be subject to this regulatory proceeding. In other words, under this political proceeding, if the Chief Executive commits an offence, he has to go through this proceeding for the Legislative Council to decide whether he should be impeached. However, the legislation under which he has committed an offence for the Legislative Council to trigger this proceeding is up to the Legislative Council to decide. President, for example, Legislative Council Members may think that the Chief Executive should be subject to political impeachment for illegal parking; or they may not wish to subject him to political impeachment even if he accepts bribes. Therefore, President, there is a difference between the two. We believe that it is very dangerous for legal proceedings to be mingled with political proceedings, with the danger being that the spirit of the rule of law is subject to politics.

If we respect the spirit of the rule of law, we will deal with the case of the Chief Executive accepting bribes as any other case when an ordinary person commits the offence. He will be prosecuted in accordance with the POBO, and the court will decide whether he has committed the offence. When he is convicted of the offence by the court, and if our colleagues of the Legislative Council think that he should receive further political punishment, we will then come back to BL 73(9), and deal with it in accordance with the political proceeding prescribed in the provision. This practice will demonstrate a genuine respect of the spirit of the rule of law in Hong Kong, that is, like any other person in Hong Kong, the Chief Executive will be subject to the same regulatory regime of the law. Otherwise, the Chief Executive will be able to make use of his political power to circumvent the sanction of the law. This is absolutely not the spirit of the BL; neither is it the spirit of the rule of law.

Thus, right from the outset, I have opined that the Government's mingling of the two will give an impression that the Government is attempting to pardon the Chief Executive for an offence through political tricks and political proceedings. If, unfortunately, the Chief Executive accepts bribes in the future, this can be used to pardon his crime. President, in my opinion, to provide the Chief Executive with this means of escapes is very dangerous. Therefore, I absolutely object to the handling approach adopted in the Bill.

President, the third major flaw is also related to this provision. It is because the Government is mingling legal proceedings with political proceedings that we have encountered difficulties. As mentioned by some colleagues just now, if Members initiate a motion in accordance with BL 73(9), it will be put to separate voting of the two groups of Members. I think this is the most absurd thing in the world. If the Chief Executive has really accepted bribes, Members may not even be able to initiate a motion. So what kind of spirit of the rule of law is this? What kind of ordinance is this? In this connection, the majority of our colleagues have indicated that putting to separate voting of the two groups of Members is prescribed in the BL, so why shouldn't it be put to separate voting?

President, I fully object to this. Let us look at Section II in Annex II of the BL regarding the procedures for voting on bills and motions in the Legislative Council. It stipulates that unless otherwise provided for in the BL, the Legislative Council of the Hong Kong Special Administrative Region shall adopt the following procedures for voting on bills and motions: the passage of bills introduced by the government shall require at least a simple majority vote of the Members of the Legislative Council present. The passage of motions introduced by individual Members of the Legislative Council shall require a simple majority vote of each of the two groups of Members present.

President, I would like to ask a very simple question. Is the motion mentioned in BL 73(9) a motion introduced by individual Members or by groups? I'm sorry, the motion mentioned in BL 73 is not a motion introduced by individual Members of the Legislative Council. It is a motion initiated jointly by one fourth of all Members of the Legislative Council. No other equivalent provision in the BL has mentioned this jointly-initiated motion. I do not believe that this jointly-initiated motion should be subject to separate voting of the two groups of Members as prescribed in Annex II of the BL because the result derived from this will be ridiculous. President, if the motion jointly initiated by one fourth of all Members is put to separate voting, 15 Members

only will be able to obstruct the passage of the motion. President, this is because it is put to separate voting, so only 15 Members will be able to do that.

Let us think again carefully. If the Chief Executive is found to have committed an offence as the final outcome of the investigation, and it has been passed by the investigation committee headed by the Chief Justice to impeach him, it will take a majority vote of two thirds of all Members to pass the impeachment. President, two thirds means 41 Members. Yes, 41 Members. President, if my calculation is correct — President, my figures may not be exact, but it does not matter. President, I believe all of you understand the rationale put forward by me, that is, at the stage of initiating a motion, it only requires 15 Members to obstruct the motion. But at the final stage, if he is really found to have accepted bribes, and if the evidence is proven, it requires 19 Members to obstruct the motion. So how can we agree to such a ridiculous method of initiating a motion? I think this interpretation is absolutely an immense insult to the wisdom of everyone.

President, finally, after all, how should we vote? Should we vote against this Bill? President, fortunately we do not have enough votes to vote against the Bill. If we have enough votes to vote against it, we will probably consider more clearly. But we do not have enough votes to do so. However, even if we secure enough votes to vote against it, I believe the success of voting against it will send a very negative message to the public of Hong Kong as well as the international community. By then, whenever the Chief Executive or Secretary Stephen LAM attends the meetings of the Legislative Council, he will mention the voting result, in the same way as he mentions the constitutional development package now. He will only say that our colleagues of the Legislative Council have agreed not to legislate on the regulation of the Chief Executive, in the same way as he mentions the fact that our colleagues in 2005 voted against the constitutional development package in 2005 whenever he comes to the Council to talk about constitutional development. He repeats the same sentence each time he comes to speak to us. In the future, he will surely say that it is not his wish to see something like this happens; nor does the Chief Executive wish to evade the regulation of the law; it is only you Members who are willing to let him go; and it is you Members who are willing to let him override the law. President, this is a very negative message.

Finally, President, I believe our colleagues will probably be forced to vote in favour of the Bill. Even if we can vote against it to reflect our anger, I

believe the Bill will finally be passed. Nevertheless, the passage of the Bill does not mean that the Bill is correct. When we have a Government elected by universal suffrage in the future, this Ordinance will probably be handed back to the Legislative Council for detailed amendments, so that it will conform to the BL and the spirit of the rule of law more.

Thank you, President.

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

MR HOWARD YOUNG (in Cantonese): Madam President, since the reunification, there have been requests from members of the public to bring the Chief Executive under the regulatory regime of the Prevention of Bribery Ordinance (POBO), so that there is legislation for the Chief Executive's conduct in this regard to follow. We are of the view that the status of the Chief Executive should not be above the law. Since the POBO applies to all civil servants, there is no reason for it not to apply to the Chief Executive. Therefore, the Liberal Party is supportive of the Bill introduced by the Government this time around.

In a Bills Committee meeting, colleagues have raised the issue of whether the Independent Commission Against Corruption (ICAC) should bear the responsibility of investigating into corruption complaints against the Chief Executive. As there is theoretically a direct line of command between the Chief Executive and the ICAC, will this kind of investigation lead to unfairness? Regarding this issue, Dr YEUNG Sum has also introduced an amendment to propose cases relating to the Chief Executive suspected of committing corruption offences should be investigated by an independent committee instead. The Liberal Party objects to this amendment.

All of us know that since its establishment, the ICAC's investigations have all along been conducted impartially and independently. There have not been any records of partiality or unfairness. Furthermore, any decision by the ICAC to close the file or not to prosecute in relation to a corruption complaint will be reported fully and discussed at the Operations Review Committee (ORC). Members of the ORC comprise non-officials. Thus, I think this mechanism of checks and balances is more desirable.

Furthermore, in many cases, it requires professional investigation teams to investigate into corruption cases. There will be difficulties for committees temporarily established to execute investigative work with a higher complexity.

With respect to Ms Margaret NG's amendment of permitting the Secretary for Justice and the ICAC to provide information on the findings of investigations or cases of corruption complaints against the Chief Executive to the Legislative Council, we think this is not necessary. This is because the principal duties of the ICAC is to conduct investigation on cases, while the Secretary for Justice has all along been responsible for considering matters of whether prosecution should be instituted.

The Liberal Party hopes that the passage of the Bill will raise the image of Hong Kong as an international metropolis that is committed to maintaining a clean society and complying strictly with the rule of law.

I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, the phrase "getting away from the law" has been frequently used by me. It is extremely unfair that the Chief Executive is not subject to the regulation of the Prevention of Bribery Ordinance, and is not held liable for the offence.

Now the weird cycle is again repeated. Since the legislative power of this Council is equivalent to nothing, the Government is handling everything by itself. Well, this is actually very simple. According to the simplest principle of political checks and balances, there are surely many problems when your own acts are regulated by yourself. We cannot say that the possibility of having problems reaches 100%, but the opportunity of having problems is largely enhanced.

Now we are back to the weird cycle. If Members of this Council are not satisfied with the proposal of the Government, amendments will be introduced, right? However, with the unreasonable regulations of the Basic Law, it is very difficult for us to introduce amendments — I was defeated in the court case — we can neither cause the Government to spend more money, nor can we change the policy of the Government. Even if the amendment is fortunate enough to be passed, will it be able to secure enough votes? Here comes the weird cycle

again. Since 30 Members, that is, half of the total number of Members, are not returned by general elections, just like the Chief Executive, they do not have to be accountable to the public. The weird thing is that it is not necessary for the Chief Executive to be accountable to his political party. Now this weird cycle has emerged once again.

Donald TSANG whatever he likes because he need not be accountable to his constituents; nor to his political party. Although his scores in public opinion surveys have nose-dived, nothing happens to him because there is no political party at his back. However, things do happen. The Communist Party of China is at his back. If his performance is too poor, he will be sanctioned by the Communist Party of China, just like our former Chief Executive "Uncle TUNG". The Communist Party of China had to replace him because his performance was too poor. It was said that he suffered from pain in the leg. But in fact, he had made too many mistakes.

How does this weird cycle operate these days? First of all, the power of our legislature is really minimal. Its power to monitor the Chief Executive in this democratic political system is minimal. Of course, someone may ask "Don't we have Article 73(9) of the Basic Law (BL 73(9)) already"? But does the parliament — the Legislative Council is like a parliament — have the power to investigate the Chief Executive? The answer is no. If we wish to appoint a subcommittee that exercises powers and privileges, we have to ask whether we can secure enough votes first. The current situation is already like this — when we encounter some trivialities that are related to the Chief Executive's credibility, even if they are not involved with corruption and bribery offences committed by the Chief Executive, we have to make a request to him and ask him to come here to speak. He is even unwilling to attend an additional Question and Answer Session. We have already been "disabled" in this regard as we are not entitled to the powers enjoyed by other parliaments in investigating unlawful or unconstitutional acts of the Executive Authorities.

If the system of separation of powers is intact, after investigation, we will naturally go to the stage when we can invoke BL 73(9). Unfortunately, as we cannot conduct our investigation, the existing BL 73(9) is equivalent to something non-existent. All are rumoured evidence. When we ask him to answer questions, he will become invisible. Our dispute today has arisen because we lack the power of investigation. Thus, when we cite an example, we must not cite a simile but lose the real meaning. If we had the independent

investigation power, should his reputation hit the rock bottom, it would be a serious matter. He would be prosecuted immediately after his resignation. The situation would be like what "Ah Bian", the former President of Taiwan, is facing now, right? Well, you simply know too little.

If this does not work, we have to rely on the law enforcement agencies to exercise checks and balances on him. But law enforcement agencies are arms of his Administration. Will it happen that the Chief Executive has no influence at all on the Independent Commission Against Corruption (ICAC)? How did corruption start in the ICAC? What I am saying now will possibly cause the ICAC staff to feel deep hatred for me and may subject me to their investigation in the future. Nevertheless, I have to speak out. When the British were involved in extensive corruption, the university students took to the streets and initiated a movement to "oppose corruption and apprehend GODBER". I believe many of our Members of the Legislative Council experienced these outbursts of righteous indignation when they were young, and took part in these movements.

What are the reasons for establishing the ICAC which is independent of the Government? The reason for this is to allow the ICAC to be independent of the bureaucratic system. First of all, the officers of the ICAC will not return to the system of civil officials. Secondly, after they have got certain amounts of money, they will be able to go to some distant places, buy themselves houses for the purpose of hiding in some faraway places so that it will be difficult to locate them for revenge. But now the situation is not like this at all. To what extent has the official system been corrupted? Those who claim to be independent officers are seconded from the system of civil officials. When their terms of office are completed, they will return to the system of civil officials again. So how can it be said to be independent? As a matter of fact, it has the name but not the substance. I have no intention of insulting the ICAC officers who have the aspiration of combating corruption. But it has already collapsed as a system.

With officers seconded from the system of civil officials to the ICAC to investigate the Chief Executive, the first question to ask is whether you think they would behave like Hai Rui, who dared to criticize the emperor and got removed from office. It will be fatal for them if their investigation fails. This is already a mistake. If nobody institutes a prosecution against him, or the prosecution fails altogether, how can the court exercise its monitoring power?

We can see that in the system of separation of powers, the role of the court as a notary has failed due to the collapse of the system of the ICAC. Being one of the principal officials, the Secretary for Justice is appointed by the Chief Executive, and is directly accountable to him. Frankly speaking, when a case is handed to him, he will face struggles to decide whether he should go ahead with the case or not. With such a system, we can see easily that it does not work at all, can't we?

Regarding public opinion, my friend, it is practically impossible to disclose information. Let me cite an example. Somebody has pointed out that it is totally unnecessary for the Department of Justice and the ICAC to hand over the complaint cases to the Legislative Council for the Council to exercise its power. Access of information is possible even without the investigation power. Why is it not necessary in foreign countries? This is because when the Chief Executive is investigated and summoned — just like when Secretary TANG is summoned, he is required to speak and take an oath. It is a really serious matter if he has spoken the wrong thing. Nixon only told some lies and faced disastrous results. He had instructed recorders to be installed at his home and office to record the words of Kissinger. We do not know whether he had forgotten about this or did not want to talk about it, but the recorders proved to be fatal for him. This is related to independent investigation power.

The legislature has no independent investigation power, its executive investigation power has also collapsed, and the court sits on top of it. So we can only watch sunset every day. What can we do? Theoretically, the court is blind, so how can it take evidence? When the Department of Justice and the ICAC come to know something, they are not able to hand over the case to the legislature for it to exercise the investigation power inherent in other parliaments. Since we do not have investigation power, we are deprived of our inherent power. When compared to other Members of the Legislative Council and me, the Apple Daily probably knows more than we do. Why is that so? The Government officials like to leak information to the media, particularly the pro-government media. What dignity is left for the Legislative Council to hold on to? How can it represent the public of Hong Kong to monitor whether the Chief Executive has committed corruption offences? The collapse of the system has violated the common sense in political studies. Among the four authorities, three of them are bounded all over.

According to one of our colleagues, since Hong Kong is not a sovereign state, the Chief Executive has a unique constitutional status, so we cannot maintain checks and balances on him in the same way as other countries. This is "bullshit". The Basic Law has prescribed that except for defence and foreign affairs, we enjoy a high degree of autonomy. I do not want to pinpoint on when universal suffrage will be implemented. I am now talking about a very minor issue. If there is an opportunity for the Chief Executive to involve himself in corruption and offering bribes to others — I am not joking, he actually can offer bribes to other people. Given that they are implementing small-circle elections, besides accepting bribes, he can offer bribes to other people to elect him. Once the system has collapsed, anything can happen in a "stinking" system.

We often talk about the acceptance of bribes by the Chief Executive. But why can't the Chief Executive offer bribes? Why can't he offer bribes by means of providing political bribes? Why can't he say to certain property developer or consortium, "If you vote for me or canvass votes for me, you will be able to get that site. If you are not satisfied with the plot ratio, I can make sure that you will get what you want, so that you can alter the original plan of building 36 floors to a new plan of building 136 floors." Why can't he offer bribes? Indeed, we are placing too much faith in the character of the Chief Executive. How is the character of a person developed? It is developed from the environment.

When we discuss problems in our society, we propose to provide assistance to people in poverty, so that they will not be tortured by the environment. The Government has indicated that there is no need to do so. Now we are only hoping that the Chief Executive will not be influenced by the corrupted system. So what is wrong with subjecting him to more stringent regulations? If we can develop within the autonomous scope of Hong Kong an anti-corruption method or mechanism which is the simplest, proven to be effective and rich in experience — irrespective of whether it is copied from western countries or other places — for catching the rat, we can then deliver the rat to the Central Government, for it to decide whether the rat should be poisoned, burnt or thrown into boiling water. This is an issue for the Central Government.

But the Central Government will certainly not connive at corruption. As we can see, CHEN Liangyu has been sentenced to imprisonment for 18 years.

We have been unable to identify a system to deal with constitutional problems when they emerge. For example, when the Chief Executive is involved in accepting or offering bribes, we will need an effective system, no matter whether it is an investigation conducted by the Legislative Council through exercising its investigation power — it is regrettable that right now this Council does not have this power — or an investigation conducted by an independent agency, not the ICAC, and irrespective of whether he will be impeached or sentenced by the court on conviction, this is alternative. What kind of unique constitutional status does he enjoy that safeguards him from not being "dismissed"? Surely it does not mean that it is something like the system of the Communist Party of China, with the nine Standing Committee members of the Central enjoying the status of "scholar-officials" who are immune from penalty? The Communist Party of China has already made some progress these days. Even the politically appointed committee members are not immune from penalty. As CHEN Xitong had offended DENG Xiaoping, the precedent of not being immune was set. So what kind of unique constitutional status does the Chief Executive enjoy? Surely it does not mean that the latest development of our country has to revert to the worst situation of our ancestors — "scholar-officials" being immune from penalty. I really cannot see any reasons for doing this.

What is the reality we are facing today? The Government is like a powerful bookmaker of illegal football bets inviting others to bet. It has fixed the results. When it has fixed a victory for Holland, Holland will win the match. When it fancies Romania to win, Romania will win the match. We are all tokens. When the bookmaker has fixed high numbers to win in certain games, betting on high numbers will win. When he has fixed low numbers to win in other games, betting on low numbers will win. It claims that it is doing something good. If we do not agree to certain minor points, we are obstructing it from doing something good. And as a result, we have to go to hell. I will argue that I have done a lot of good things, why should I go to hell? Why shouldn't those who have done minor good things but boasted of having done a lot go to hell? Why are the Hong Kong people so naive? This is precisely what the weird cycle is about.

This Legislative Council is bounded all over by a rotten system. There have been continuous ugly farces in the deliberation of various issues, with the issue of universal suffrage being one of them. We have proposed to implement dual universal suffrage. The Administration has introduced the half-baked regression package, and has indicated that if we do not support the package, we

will be doing a disservice to Hong Kong people. How can we accept such a system? As a matter of fact, this system is even worse than the system of the ancient dynasties. How did the system of the ancient dynasties work? Even the emperor was taught by the teacher in the palace. Someone was discharged with the responsibility of teaching the emperor to read and write. When he was attending classes in the palace, the teacher might hit him on the head. With a comment of "bad boy", the teacher would hit a rod on his head. Now who takes up the role as the teacher? The teacher of the palace is the Communist Party of China. If the teacher of the palace (the Communist Party of China) does not hit his head, the whole system is finished. There is the same repetition today with respect to this issue. Again we have no other option but to settle for the second best. This is going to happen again and again until our system is more and more corrupted.

Therefore, I hope that all of us understand clearly about today's voting those who believe that too much authority in monitoring or exercising checks and balances on the Chief Executive will result in a constitutional issue, or this or that, are just talking stuff and nonsense, nonsense and stuff (*The buzzer sounded*)

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 Chief Secretary for Administration to reply.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the Hong Kong Government has all along been committed to maintaining a clean society in Hong Kong through adopting a stringent anti-corruption regime, and the results are obvious. In order to put into thorough practice its determination to maintain Hong Kong's integrity, the Administration has drafted the Prevention of Bribery (Amendment) Bill 2007 (the Bill) to proscribe even more stringent anti-corruption stipulations to govern the office of the Chief Executive within the framework of the Basic Law.

I would like to express my heart-felt gratitude to Mr Jasper TSANG, Chairman of the Bills Committee and members of the Bills Committee, for their meticulous scrutiny of the Bill during the past year and for the valuable opinions they put forward on the contents of the Bill. Moreover, I would also like to thank the organizations which had given their views to the Bills Committee. Their views had facilitated the discussions of the Bills Committee.

Now I will briefly introduce the objective, the major contents, and the amendments of the Bill, and focus my response to the views given by various Members just now. I will later propose amendments to certain provisions of the Bill during the Committee stage. All these amendments have been discussed in details by the Bills Committee.

At present, the Chief Executive is prohibited from offering or accepting bribes under the common law offence of bribery. Likewise, any person who offers bribes to the Chief Executive will also commit an offence. Under Article 47 of the Basic Law (BL), the Chief Executive must be a person of integrity, and shall declare his or her assets to the Chief Justice of the Court of Final Appeal. An impeachment mechanism is provided under BL 73(9) to handle charges of serious breach of law or dereliction of duty by the Chief Executive. Notwithstanding the existing anti-corruption regime, the Chief Executive has agreed to take the extra step of extending the application of certain provisions of the Prevention of Bribery Ordinance (POBO) to the office of the Chief Executive within the framework of the BL. The objective of the Bill is to further strengthen the anti-corruption regime of the office of the Chief Executive, while taking into account the unique constitutional status of the Chief Executive under the BL.

I will now give an account of the specific proposals of the Bill.

Firstly, the Bill proposes to amend section 4 of the POBO to the effect that the Chief Executive commits an offence if he, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his acting in his capacity as the Chief Executive. Anyone who offers any bribe to the Chief Executive in the foregoing circumstances also commits an offence.

Secondly, the Bill proposes to amend section 5 of the POBO to the effect that the Chief Executive commits an offence if he, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or

reward for or otherwise on account of his giving assistance in regard to public sector contracts. Anyone who offers any bribe to the Chief Executive in the foregoing circumstances also commits an offence.

Thirdly, the Bill proposes to amend section 10 of the POBO so that it applies to the Chief Executive. If there is sufficient evidence to prove that any Chief Executive or former Chief Executive maintains a standard of living above that which is commensurate with his present or past official emoluments; or that he is in control of pecuniary resources or property disproportionate to his present or past emoluments, and he is unable to give a satisfactory explanation to the court, the Chief Executive or former Chief Executive will be guilty of an offence. Clause 10 is a highly effective anti-corruption measure that puts in place the most comprehensive safeguards against the acceptance of any advantage by the Chief Executive.

Pursuant to BL 47(2), the Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal. The Chief Executive is the only person in the Hong Kong Special Administration Region (HKSAR) who is required by the BL to make a formal declaration of his assets. This declaration requirement under the BL will provide useful information in determining whether the Chief Executive or the former Chief Executive is maintaining a standard of living or controlling property disproportionate to his emoluments. The Bill, therefore, specifies that should any Chief Executive or former Chief Executive be accused of having committed an offence under section 10, the court shall take into account the assets declared by the Chief Executive or former Chief Executive when he assumes office.

Just now, some Members have asked why section 8(1) of the POBO does not apply to the Chief Executive. I would like to take this opportunity to explain the background related to this provision. Section 8(1) of the POBO makes it an offence for any person, who, without lawful authority or reasonable excuse, offers an advantage to a prescribed officer while having dealings of any kind with the Government through any department, office or establishment in which the prescribed officer is employed. For example, if a person, while having a contract with the Transport Department, offers a gift to a prescribed officer of the Transport Department, he will commit an offence under section 8(1) unless the offer is made with lawful authority or reasonable excuse. Section 8(1) is a stringent corruption prevention measure. It creates an offence that does not require the prosecution to prove that the advantage was offered to

the prescribed officer with an intention of bribery or for any purpose related to his duties.

We have considered providing a provision similar to section 8 to bind persons offering advantages to the Chief Executive by adapting "having dealings of any kind with the Government through any department, office or establishment" to "having dealings of any kind with the Government". However, given that the Chief Executive is the head of the HKSAR Government, such an adaptation could have the effect of subjecting any person having dealings of any kind with any government department, even if he does not have the intention of bribery, and with no conflict of interest with the Chief Executive, to an offence when he offers a gift or a souvenir to the Chief Executive. The person has to establish that he has lawful authority or reasonable excuse to offer such an advantage to the Chief Executive. This could be too onerous on well-meaning citizens offering souvenirs to the Chief Executive out of courtesy or respect. The existing section 8(1) covers only the department in which the prescribed officer is employed. If section 8(1) is to apply to the Chief Executive, the scope of the proposed offence would be much wider than the scope of the existing provision. In other words, section 8 is unsuitable for application to offering gifts to the Chief Executive.

However, I have to emphasize that this does not mean that bribes can be offered to the Chief Executive. Under the amended section 4 of the POBO, if a person offers an advantage to the Chief Executive for a corrupt purpose, he will commit an offence.

Section 3 of the POBO provides that a prescribed officer will commit an offence if he solicits or accepts an advantage without the general or special permission of the Chief Executive. Even if the prescribed officer has not carried out practices of corruption, impropriety or lapse of integrity, he will commit an offence so long as he solicits or accepts an advantage without the general or special permission of the Chief Executive.

Under section 3, prescribed officers have to seek the Chief Executive's permission for the solicitation or acceptance of advantages. Obviously section 3 only applies to persons over whom the Chief Executive has authority. However, the Chief Executive cannot grant permission to himself for accepting advantages. This, therefore, poses structural difficulties in fitting the Chief Executive within the framework of section 3. In addition, section 3 is premised

upon the existence of a principal-agent relationship. The Chief Executive is not an agent of the HKSAR Government and has no equivalent principal within the Government. In view of this, section 3 cannot apply to the Chief Executive.

We have examined the need for creating a new offence provision to deal with the acceptance of advantages by the Chief Executive for a non-corrupt purpose. The Bill already provides comprehensive controls and sanctions against the Chief Executive committing bribery or corruption offences. The application of sections 4, 5 and 10 of the POBO to the Chief Executive would impose stringent restrictions on him in respect of any bribery acts of solicitation and acceptance of advantages and possession of unexplained property. The proposed Bill represents a significant augmentation of legal sanctions against any possible corrupt practice of the Chief Executive. In addition to the proposed statutory anti-corruption measures, the Chief Executive will continuously be bound by the common law offence of bribery. Furthermore, Article 47 of the BL stipulates that the Chief Executive must be a person of integrity. The Chief Executive is subject to very tight public scrutiny and his acts will be closely monitored by the media and the public. These provide effective and powerful measures to safeguard the integrity of the Chief Executive and prevent any possible abuse in view of the Chief Executive's unique constitutional status. As such, we do not consider that there is a need to create a new offence provision to handle the acceptance of advantages by the Chief Executive for a non-corrupt purpose.

Furthermore, there is already a defined mechanism for handling of gifts presented to the Chief Executive to ensure transparency in relation to the acceptance and disposal of gifts to the Chief Executive. The Chief Executive's Office (CEO) has since 1997 established a Register of gifts presented to the Chief Executive in his official capacity. The Register is available for public inspection. Since July 2007, the public is also able to inspect the Register through the Chief Executive's website. The Register records all gifts of an estimated value exceeding HK\$400 received by the Chief Executive in the Chief Executive's official capacity. The Register includes two lists, one covering items for government disposal and another one items for the Chief Executive's personal retention. Should the Chief Executive wish to retain any gift on the Register, CEO would invite the Government Logistics Department to arrange valuation in a professional manner and the Chief Executive may purchase the gift at the valued price. The Register is updated on a monthly basis.

In response to the requests of members of the Bills Committee, upon the passage of the Bill, the Administration will issue a press release explaining to members of the public the new measures to tackle bribery acts involving the Chief Executive as well as the Register, so that the putting in place of a Register that records all gifts presented to the Chief Executive in his official capacity will be known to more members of the public.

We have considered the propriety of creating an independent body to monitor or approve requests from the Chief Executive to accept or solicit advantages. We do not consider this appropriate because the Chief Executive is the head of the HKSAR and the HKSAR Government, and there could be no principal-agent relationship between the Chief Executive and any independent body set up for this purpose.

Under section 30(1) of the POBO, a person, while knowing or suspecting that an investigation in respect of an offence committed under Part II (including sections 4, 5 and 10) is taking place, discloses the identity of the person who is the subject of the investigation or any details of such investigation commits an offence; unless he has lawful authority or reasonable excuse, or he has committed the act under any of the circumstances provided in section 30(2), such as the subject person has been arrested. The purpose of the prohibition on disclosure under section 30 is to protect the integrity of the investigation when it is in its covert stage and also to protect the reputation of the subject person.

In view of the restriction under section 30, the proposed new section 31AA of the Bill provides that when, upon investigation by the Independent Commission Against Corruption (ICAC), there is reason to suspect that the Chief Executive may have committed an offence under the POBO, the Commissioner of the ICAC may refer the matter to the Secretary for Justice; and where, as a result of such a referral, the Secretary for Justice has reason to suspect that the Chief Executive may have committed an offence under the POBO, he may refer the matter to the Legislative Council for it to consider whether to take any action under BL 73(9).

The majority of members of the Bills Committee have agreed that there is a need to provide this provision, so that the Legislative Council will be able to obtain information involving a corruption complaint against the Chief Executive and consider whether to trigger the impeachment mechanism under BL 73(9). In response to the concerns of the Bills Committee, and taking into account the

purpose and effect of the prohibition on disclosure of information under section 30, I will move amendments to clause 5 of the Bill during the Committee stage to add new section 31AB to the POBO so as to provide certain exemption in respect of disclosure of information contained in the Secretary for Justice's referral.

I understand some Members' concern about the proposed section 31AA. The proposed section 31AA is an empowering provision, the purpose of which is to enable the Secretary for Justice to refer a corruption complaint against the Chief Executive to the Legislative Council so that Legislative Council Members may obtain the essential facts for considering whether to trigger the BL 73(9) procedure. The proposed section 31AA will not compromise the Secretary for Justice's constitutional function to control criminal prosecutions free from any interference under BL 63. The Secretary for Justice retains his discretion and power to prosecute. Any prosecution decision will be made in accordance with the established prosecution policy. As the prosecuting authority of the HKSAR, the Secretary for Justice receives information of all criminal investigations of serious offences that could lead to prosecution. Where the information relates to alleged POBO offences involving the Chief Executive, the Secretary for Justice may decide to take prosecution action on the strength of the information. The Secretary for Justice may refer the case to the Legislative Council for it to consider whether to take any action under BL 73(9) if the Secretary for Justice has reason to suspect that the Chief Executive may have committed a breach of the POBO. Which course the Secretary for Justice should take is an important discretion which the Secretary for Justice has to exercise with great care on a case by case basis, and for which the Secretary for Justice is accountable.

Furthermore, section 31AA does not have the effect of excluding any person from making a complaint to the Legislative Council. Any person may refer information that is the substance of a corruption complaint against the Chief Executive to the Legislative Council for it to consider whether to take any action under BL 73(9) so long as he does not reveal that this matter is subject to the ICAC's investigation. Thus, enabling the Secretary for Justice to refer a corruption complaint against the Chief Executive received from the Commissioner of the ICAC will not compromise the right of the Legislative Council to consider invoking the investigation and impeachment procedures under BL 73(9) or the criminal prosecution action initiated by the Secretary for Justice.

As some Members opine that there may be a public perception that the ICAC may not conduct its investigation of the Chief Executive independently and impartially, they have put forward several proposals in respect of handling alleged corruption complaints against the Chief Executive with the aim of bringing changes to the existing effective arrangement. I think these proposals are unnecessary. Since its establishment in 1974, the ICAC's investigations have all along been conducted independently, comprehensively and impartially, without showing favour to anyone. The ICAC has all along been combating corruption offences, achieving a good reputation both in Hong Kong and overseas countries. Some Members have also indicated in the meeting of the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive that they have confidence in the work of the ICAC. I believe the public of Hong Kong share the same view in this respect.

While the public have general confidence in the work of the ICAC, some Members opine that there may be an issue of possible public perception that the ICAC may not conduct its investigation on suspected offences by the Chief Executive independently and impartially because of BL 57. In this respect, I wish to reiterate that BL 57 actually underpins the independence of the ICAC and that the ICAC is accountable to the office of the Chief Executive, not to the post holder per se. BL 57 does not have the effect of empowering an incumbent Chief Executive to interfere with the investigation by the ICAC of a corruption complaint against him. Furthermore, the following robust safeguards, both legislative and structural, have been put in place to ensure the independence and integrity of the ICAC's investigation:

- Firstly, the Commissioner of the ICAC has a mandatory duty under the Independent Commission Against Corruption Ordinance (ICACO) section 12(b)(ii) to investigate any alleged or suspected offence under the POBO. If the Commissioner of the ICAC deliberately curtails or interferes in an investigation of the Chief Executive in order to dishonestly benefit him, he will commit the offence of misconduct in public office;
- Secondly, the ICAC is prohibited by law to disclose to the Chief Executive the presence of, or details about a corruption complaint or investigation against the Chief Executive. If the Commissioner of the ICAC chooses to act to the contrary either upon the Chief Executive's instruction or of his own volition, he will commit an

offence under section 30 of the POBO as it is most unlikely that the Commissioner of the ICAC can establish the defence of "lawful authority or reasonable excuse" as he must have known that the Chief Executive's instruction is unlawful in the first place;

- Thirdly, the Chief Executive is prohibited by law to interfere with the investigation by the ICAC of a corruption complaint against him. Although the ICAC shall be accountable to the Chief Executive under BL 57, it will clearly be unlawful for the Chief Executive to misuse BL 57 to interfere with the investigation of a corruption complaint against him and to conduct himself in a way which constitutes the common law offences of misconduct in public office, perverting the course of public justice, and obstructing ICAC officers in executing their duties, and so on;
- Fourthly, as with all ICAC investigations, any decision by the ICAC to close the file and any decision by the Secretary for Justice not to prosecute in relation to a corruption complaint against the Chief Executive will be reported fully and discussed at the Operations Review Committee (ORC). The ORC comprises non-officials and is tasked to ensure that all corruption complaints, including any against the Chief Executive, will be handled properly. There is no question of any corruption complaint involving the Chief Executive not being properly acted on; and
- Fifthly, when a person makes a corruption complaint to the ICAC against the Chief Executive, he is free to lodge an identical complaint with the Legislative Council before, after or at the same time when the complaint is made to the ICAC, so long as he does not reveal that this matter is subject to the ICAC's investigation. This "parallel" arrangement will effectively deter any cover-up or abuse of powers in the investigation process.

BL 73(9) has already provided for a special regime for the investigation and impeachment of the Chief Executive in respect of a complaint about his serious breach of law or dereliction of duty. If the Legislative Council passes a motion under BL 73(9) and gives a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee, the committee will carry out investigation of the Chief Executive under the

impeachment procedure and consider whether there is sufficient evidence to substantiate the charges of serious breach of law or dereliction of duty.

Thus, there is no case to allege that the ICAC will not and cannot conduct its investigation independently and impartially if the alleged person involved in the bribery offence is the Chief Executive. Likewise, proposals based on these views should not be accepted.

Some Members have also put forward various proposals in the handling of a corruption complaint against the Chief Executive. We consider that such proposals will give rise to the following issues:

- The establishment of another body to conduct the investigation can duplicate or compromise the role of the investigation committee to be chaired by the Chief Justice of the Court of Final Appeal under BL 73(9);
- It is wholly inappropriate to empower an Office of Independent Counsel to make recommendations on whether or not to prosecute. This may undermine the Secretary for Justice's constitutional role as the prosecuting agency, which must be free from any interference as guaranteed under BL 63; and
- ICAC has a mandatory duty under the ICACO to investigate any alleged or suspected offence under the POBO. Establishment of another investigation authority may affect the discharge of the statutory duty by the ICAC.

Since its establishment, the ICAC's investigation has all along been conducted independently, comprehensively and impartially. Given the ICAC's expertise and proven track record, proper interpretation of BL 57, presence of robust legislative and structural safeguards to ensure the independence and integrity of investigation, we remain strongly of the view that the ICAC is the most appropriate authority to investigate a corruption offence suspected to have been committed by the Chief Executive. Such investigation should be subject to the prevailing mechanism, just as in the case of a corruption complaint against any other member of the public.

With respect to clause 6 of the Bill, I will move Committee stage amendments to cover some amendments consequential to the enactment of the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 in December 2007. These are technical amendments supported by members of the Bills Committee. I will further explain the relevant amendments later.

Madam President, the Bill will put in place the most comprehensive prevention and safeguard against corrupt practice suspected to have been committed by the Chief Executive, including prohibiting the Chief Executive from any bribery acts of solicitation and acceptance of advantages, and imposing restrictions on possessing and managing unexplained property. By adopting a three-pronged approach of implementing the BL, the common law and more stringent legislative regulations, we will safeguard the integrity of the office of the Chief Executive, and prevent any corruption from taking place in a more effective manner. The Bill demonstrates clearly the determination of the SAR Government in combating corruption. At the same time, we have also taken into account the unique constitutional status of the Chief Executive under the BL.

I sincerely hope that Members will support the passage of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Prevention of Bribery (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): Prevention of Bribery (Amendment) Bill 2007.

Council went into Committee.

Committee Stage

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

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

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

CLERK (in Cantonese): Clauses 1 to 4.

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

MS MARGARET NG (in Cantonese): Chairman, I support clauses 1 to 4. However, I would like to point out that during the Second Reading debate on the Bill a moment ago, some Members mentioned that the Government had no plans to subject the Chief Executive to the regulation of section 8 of the Prevention of Bribery Ordinance (POBO). Chairman, I was to propose an amendment but the Government claimed that the amendment was outside the scope of the Bill and the President ruled the amendment inadmissible. Chairman, of course I respect the ruling of the President of the Legislative Council, and I have no plans to submit counter arguments. However, I would like to explain that after the passage of this undesirable Bill, reviews will be conducted in the future. It is possible that section 8 will then be incorporated as a provision to regulate the Chief Executive.

Since many Members and the Chief Secretary for Administration have mentioned the contents of section 8 just now, I am not going to repeat them. However, Chairman, I cannot accept the explanation provided by the

Government, which claims that my amendment will hinder members of the public from offering gifts to the Chief Executive. In fact, if the Chief Executive clearly informs everyone in the world that it is important for the Chief Executive to be clean and uncorrupted, and that irrespective of whether someone who presents a gift has the intention of offering bribes, the Chief Executive cannot accept valuable gifts — with the exception of gifts of a value not exceeding HK\$400 or without commercial value — if he can deliver this message, I am sure the entire society will respect this. Nobody has indicated that gifts must be offered to the Chief Executive, irrespective of whether the act will affect his clean and uncorrupted image.

As a matter of fact, during the scrutiny of the Bill, the Government frequently cited an example but never mentioned that some very wealthy people might offer an extensive piece of land or an apartment unit in an overseas country to the Chief Executive. The example they quoted was that if the Chief Executive was offered a woollen jersey knitted by an "auntie" or an elderly lady, the relevant provision would subject them to offences, which would not be appropriate at all. I do not know how to knit woollen jersey, so I asked some Members who know how to knit, including Ms Audrey EU. I asked her if the price of a woollen jersey would exceed HK\$400. Ms EU said that if you insisted on buying very expensive wool, it might be over this amount. Otherwise, an ordinary woollen jersey would not exceed HK\$400. As this is the case, President, the example cited by the Government is not convincing at all.

I would cite an example with respect to section 8. You are discussing a development project with the Lands Department or the Architectural Services Department. During the discussion, a valuable gift is offered by you to the Lands Department but you have not said clearly to the Department, "You can make your own decision. I do not wish to influence you. The gift is offered simply because I think you are nice." Under this circumstance, according to section 8, even if the argument that you have no intention of bribery is sustained, and proof of your intention to offer bribe is not required, you have committed the offence already. The objective of the provision is to eliminate bribery. Is this provision very severe? Yes, it is. Cap. 201 is a very severe piece of legislation. If this very severe legislation applies to public servants, why does it not apply to the Chief Executive? Should there be a situation when all public servants — with the exception of the Chief Executive — have to show the world that they cannot be involved in corruption?

Let me cite an example. If I am having dealings with departments related to planning such as the Lands Department or the Architectural Services Department in which contracts and land grant are involved, I cannot offer gifts to officers of these departments. And if I offer the same valuable gift to the Chief Executive, what will people think? If offering gifts to minor officers is an offence, but offering gifts to officers of higher ranks or the Chief Executive is not an offence, then how do we know what instructions the Chief Executive will give to the relevant officer? This loophole is considerable for the same reason.

Chairman, when I proposed the amendment, the Government claimed that it was outside the scope of the Bill because that aspect was not mentioned in the long title. Probably they are right. However, if we study the objective of the POBO comprehensively, we will find that it has stipulated different offences with different levels of severity as well as different levels of onus of proof. The onus of proof is very simple, that is, whether you are having dealings with the relevant departments — this can be proved easily — and whether you have offered gifts or advantages to the relevant officers.

Why is this regulation able to comply with the requirement of the onus of proof and the principle of innocence presumption? The reason is that it is proportionate to the offence. An ordinary person, in offering a valuable gift to an officer who is having dealings with him or is assessing his contract without a reason, and the advantage is offered without lawful authority or reasonable excuse, commits an offence. As this is the case, should a person who offers an advantage to the Chief Executive without lawful authority or reasonable excuse be considered not to have committed an offence? Thus, Chairman, I believe this is indeed unreasonable.

We can see that there are different levels of the onus of proof. Some proof, as explained by the Chief Secretary for Administration, must be the evidence of the public servant soliciting advantages or someone offering advantages to him for a corrupt purpose. Under these circumstances, the onus of proof is weighty. The onus of proof in section 8 is less weighty. The onus of proof is even less weighty in section 10. It is not necessary to know whether anyone has offered a gift to the relevant public servant, and it is not necessary to identify who made the offer. So long as the relevant public servant maintains a standard of living above that commensurate with his emoluments, he is required to give an explanation. Thus, there is a prescribed order in the Ordinance that stipulates different levels of onus of proof for different crimes. Chairman, I agree that this is a very severe ordinance. As a matter of fact, legal

practitioners have doubts about whether there should be such a severe legislation. However, since everyone is equal before the law, if the legislation is severe to public servants of lower ranks, it should be just as severe to the Chief Executive.

The second explanation of the Government is that they have a Register of gifts which records all advantages received by the Chief Executive. With the exception of gifts of a value under HK\$400, all other gifts have to be declared. However, what consequences will there be if no declaration have been made? Of course, those gifts that are straight forward or can be known to the public will surely be declared. Otherwise, they may not be declared. Will this have any consequences? No, it will not. This is only an administrative guideline. It has no binding effect. When a legally binding regulation under which the Chief Executive and other public servants have to inform the public of the restrictions they are subject to is replaced by an administrative practice with no binding effect, there will be a considerable difference. Chairman, this is not desirable at all.

Chairman, although my amendment is inadmissible due to the long title, I hope that after the passage of this Bill, reviews will be conducted in the future, and clause 8 will be incorporated in the future legislation. Thank you, Chairman.

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

MR MARTIN LEE (in Cantonese): Chairman, as a matter of fact, I support the views given by Ms Margaret NG just now. Although we cannot conduct an official debate on section 8 today, I hope that after the passage of the Bill, reviews will be conducted. When we discussed section 8, the Government had put forward a reason that as the responsibilities of the Chief Executive are not limited to one particular purview, it is difficult to say he is having dealings with any one particular department.

At that time I asked the Administration, "How about the Chief Secretary for Administration?" It was unable to give me an answer. Neither are the responsibilities of the Chief Secretary for Administration limited to one particular purview, but he is under the regulation of the Ordinance. I think it is very unfair. Both of them are of the senior rank. One is of the highest rank while the other is of the second highest. The responsibilities of the person of

the highest rank are not limited to one particular purview while the responsibilities of the second highest rank are not limited to one particular purview either, but the latter is subject to regulation. This explanation is really hard to accept. I hope that the Government will give more consideration to this issue. Otherwise, it is really unconvincing. It will also deliver a message that even the Chief Secretary for Administration is subject to regulation, but the Chief Executive is free from regulation. How can the Administration explain the logic of this Ordinance to a child? Surely you cannot tell him that when he grows up, reaching the high rank of the Chief Secretary for Administration is still not enough, and that he has to be the Chief Executive. This is really unconvincing. So, I hope that the Government will give more consideration to this issue. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Chief Secretary for Administration, do you wish to speak again?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam Chairman, in the speech I delivered just now, I have already mentioned why section 8 did not apply to the Chief Executive. I am not going to repeat now. But I would like to emphasize that section 8 is not directed at the Chief Executive. In respect of the speech Mr Martin LEE delivered just now, the Chief Secretary for Administration, in fact, is subject to the regulation of section 3. In other words, if I accept any advantages, I must seek the approval of the Chief Executive. This is also the objective of the coverage of section 3. But I would like to emphasize, although section 8 does not apply to the Chief Executive, it does not mean that bribes can be offered to the Chief Executive. This is because if advantages are offered to the Chief Executive for a corrupt purpose, the act is an offence under the amended section 4 of the Prevention of Bribery Ordinance.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Can I speak again?

CHAIRMAN (in Cantonese): Mr LEE, as it is now the Committee stage, you may speak again.

MR MARTIN LEE (in Cantonese): The Government has not answered my question. I am talking about section 8 and not section 3 now. If section 3 brings the Secretary for Chief Administration under the regulatory regime, similarly section 8 also regulates the Secretary for Chief Administration. You are unable to give an answer to that. As a matter of fact, Mr McWALTERS was unable to give me an answer at that time. So there is no need for us to debate on that now. Frankly speaking, surely you are not able to give me an answer to that.

MS MARGARET NG (in Cantonese): Chairman, I would like to speak briefly. The Chief Secretary for Administration said just now that it would need to prove that you had the intention of bribery if you offered bribes to the Chief Executive.

If the Chief Executive is being friends with wealthy people only, and the wealthy people say, "We are billionaires. Whenever we offer a gift, we offer a plane. Of course the gift is not a model plane, but a real one. This is our life style. As the Chief Executive travels around the world with 'buddies' like us, we think he should have his own plane. So we have to offer him a plane." If this is the case, how can you prove the people who offered the gift have an intention of bribery? However, Chairman, although the Chief Executive of the Special Administration has become friends with so many people in his daily life, he should not have fallen into a life style of such standard, and with such extravagant and profligate tastes. Public servants should not have this kind of life style.

Therefore, the Chief Secretary for Administration has just now brought the idea home and highlighted the key. That is, if you offer gifts to the Chief Executive, you must avoid being proved to have the intention of bribery. You have committed an offence if you are proved to have the intention of bribery.

But if you are not proved to have the intention of bribery, you will be alright. Thus, Chairman, this is exactly the reason why I think there is an urgent need to subject the Chief Executive to the regulation of section 8 as soon as possible.

Thank you, Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, Ms Margaret NG mentioned about offering a plane as a gift. I would put it in a more simple term — offering a bottle of red wine. This is a field with which the Chief Secretary for Administration is very familiar. If a member of the public offers me a bottle of red wine, I will refuse the gift as I do not drink. If you offer a bottle of expensive red wine valued at \$5,000 to the Chief Secretary for Administration, the wine is not expensive to him at all. I believe none of the red wine in his home is as cheap as this.

However, if the wine is offered to the Chief Executive, it will depend on who the Chief Executive is. A certain person who holds the position of the Chief Executive may think that this bottle of wine is very expensive. But for another person who holds the position of the Chief Executive, he may think that this is not expensive at all. So how can we distinguish?

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, Chief Secretary for Administration, do you wish to speak again?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam Chairman, sections 3 and 8 of the Prevention of Bribery Ordinance apply to the Chief Secretary of the Administration. If Mr Martin LEE wishes to offer me a bottle of red wine valued at \$5,000, in accordance with section 3, I must make a declaration to the Chief Executive. If I decide to retain the gift, I must seek approval of the Chief Executive. Otherwise, I can only thank Mr LEE for his

kindness and offer him a bottle of red wine in return. Thus, under this circumstance, sections 3 and 8 apply to the Chief Secretary for Administration.

I have just said that section 8 did not apply to the Chief Executive. I have also mentioned the contents of the provision many times already. I do not agree to what Ms Margaret NG said. I do not believe someone will offer a real plane — not a model plane — to the Chief Executive without any intention of bribery. That is beyond comprehension. I think this kind of discussion will lead us to nowhere. But I respect the personal opinion of Ms Margaret NG.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the clauses stand part of the Prevention of Bribery (Amendment) Bill 2007. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5.

MS MARGARET NG (in Cantonese): Chairman, may I seek your consent to move that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 4A together with clause 5.

CHAIRMAN (in Cantonese): In accordance with Rule 91 of the Rules of Procedure, only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Ms Margaret NG, you have my consent.

MS MARGARET NG (in Cantonese): I am sorry, President, as I was turning pages of the script too fast, I had wrongly read the next paragraph. I understand that now. President, do I need to repeat the whole procedure?

PRESIDENT (in Cantonese): There is no need to repeat that. I have already added the part you have not read out. Now you only need to read out the part that should be read out.

MS MARGARET NG (in Cantonese): President, I thought I was very clever, but actually I had read too fast. President, may I seek your consent to move that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 4A together with clause 5.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider clause 4A together with clause 5.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 4A Offence to disclose identity etc. of persons being investigated.

CHAIRMAN (in Cantonese): Ms Margaret NG has given notice to move an amendment to clause 5 and the addition of new clause 4A. Dr YEUNG Sum and the Chief Secretary for Administration have also separately given notice to move amendments to clause 5.

CHAIRMAN (in Cantonese): Members may now debate the original clause 5, the respective amendments on clause 5 moved by Ms Margaret NG, Dr YEUNG Sum and the Chief Secretary for Administration thereto as well as the new clause 4A jointly. I will call upon Ms Margaret NG to speak first, to be followed by Dr YEUNG Sum and the Chief Secretary for Administration; but no amendments are to be moved at this stage.

MS MARGARET NG (in Cantonese): Chairman, Clause 5 proposes to add section 31AA to enable the Secretary for Justice to disclose information to the Legislative Council. I move to delete clause 5 to indicate that I think the entire procedure is not correct. I have given my explanation during the Second Reading debate just now, so I am not going to explain in details now. I think it is necessary to delete this provision for technical reason. The Government said that it was necessary to add section 31AA; otherwise, according to the existing

section 30, the Secretary for Justice would have committed an offence if he referred the information to the Legislative Council.

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

Deputy Chairman, this argument is absolutely groundless because the existing section 30 is in order. We can see that he shall commit an offence only if he discloses information without lawful authority or reasonable excuse. If the Legislative Council, in performing a public duty under the Basic Law, asks the Secretary for Justice to disclose any documents or the Secretary for Justice voluntarily discloses such information to the Legislative Council, how can this be considered having committed an offence? Thus, I think there is no need to amend the existing section 30. Regarding the actual execution of the existing section, if the Secretary for Justice institutes a prosecution in accordance with the regulation of section 30, the Secretary has to grant the approval himself. So how can the Secretary of Justice have any misunderstanding to the extent that a precise and reasonable as well as legal act has become illegal so that he has to institute prosecution against himself? This is simply impossible. Even if he is really silly enough to do that, it is absolutely impossible for the court to have misunderstood the legislative intent of section 30. Thus, this is only a fictitious practice, and I think there is no need to add the section at all.

However, to avoid any impression of being not in order or any doubts, I move to add section 4A with a heading "Offence to disclose identity, etc. of persons being investigated". I will read out the Chinese text of the provision: "4A. Offence to disclose identity, etc. of persons being investigated Section 30 is amended by adding — (1B) For the avoidance of doubt, it shall not be unlawful for the Commissioner or the Secretary for Justice to make such appropriate disclosure referred to in subsection (1) to the Legislative Council in connection with the performance of its duty under Article 73(9) of the Basic Law." Now I am going to read it out in English: "4A. Offence to disclose identity, etc. of persons being investigated Section 30 is amended by adding — (1B) For the avoidance of doubt, it shall not be unlawful for the Commissioner or the Secretary for Justice to make such appropriate disclosure referred to in subsection (1) to the Legislative Council in connection with the performance of its duty under Article 73(9) of the Basic Law." I am not praising myself for the

simplicity of my provision, but I think that my provision is really better and simpler than the one proposed by the Government.

Secondly, Deputy Chairman, the existing section 31AA is really not in order. Since the first sentence of the provision reads "Notwithstanding section 30", which means that the regulation of section 30 can be put aside. It is now empowering the Commissioner of the Independent Commission Against Corruption and the Secretary for Justice to make a disclosure to the Legislative Council. However, any legislation with empowering effect has to stipulate clearly how the authority is applied. This is exactly the reason why we translate the term as authority. When shall the Commissioner make a disclosure to the Secretary for Justice? The provision provides that "where the Commissioner has reason to suspect that the Chief Executive may have committed an offence under this Ordinance". In other words, the Commissioner shall make a judgment first. He shall make a disclosure to the Secretary for Justice only when the outcome of his judgment is that he has reason to suspect the Chief Executive may have committed an offence under this Ordinance. If he has found that nothing is wrong after going through the relevant information, he does not have the authority to make a disclosure.

Similarly, under section 31AA(2), when shall the Secretary for Justice make a disclosure? It is required that he shall do so after going through the process of making a judgment. There are two circumstances mentioned here. The first circumstance is that, the Secretary for Justice must make a disclosure in accordance with section 31AA(1), that is, the Commissioner must refer the matter after he has made detailed consideration and thinks that there is reasonable cause to suspect. The circumstance is not that he does not know whether the Chief Executive is guilty or not, and he asks the Secretary for Justice to make judgment himself. This is not correct. Further, the provision requires that the Secretary for Justice makes a disclosure only when he has reason to suspect that the Chief Executive may have committed an offence under this Ordinance. Thus, Deputy Chairman, if he has found that there is no reasonable cause after going through the relevant information, he shall not have any authority to make a disclosure. Under this circumstance, any disclosure made in accordance with section 31AA shall be unlawful.

You may ask, "Hasn't it been mentioned just now that it is in order to make a disclosure in accordance with section 30?" However, since they wish to propose section 31AA, they have to offer the explanation that the objective of

section 31AA is to improve section 30. They claim that section 31AA stipulates the circumstances under which a disclosure must not be made. In other words, it provides what the relevant authority is. In that way, it will not be possible to make a disclosure according to Ms Margaret NG's amendment in the future. Legal disclosure can only be made in accordance with the circumstances stipulated in section 31AA. That is why I think something is very wrong with section 31AA. In my opinion, neither matters of political impeachment are relevant to the Secretary for Justice, nor should the procedure be invoked by him as section 31AA itself is not in order, either.

Deputy Chairman, according to today's arrangement, I will propose my amendment first, to be followed by the respective amendments proposed by Dr YEUNG Sum and the Chief Secretary for Administration. Generally speaking, if Members support my proposal, they will have to support the amendment proposed by Dr YEUNG Sum in their hearts as well. The reason is that once my amendment is passed, Dr YEUNG Sum will not have a chance to propose his amendment. I asked Mr Ronny TONG what we were going to do under that circumstance. Mr Ronny TONG said that I was too naïve, and there was no way that my amendment could be passed. If my amendment is not passed, Members will be able to support Dr YEUNG Sum's amendment without further worry. In my opinion, in principle, this method of thinking leaves much to be desired, but we have no alternative.

Let us come back to Dr YEUNG Sum's amendment. In fact, there is no conflict between his amendment and that of mine. His amendment comprises two parts. This first part only provides that where the Commissioner has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, the Commissioner shall refer the matter to the Secretary for Justice. So what shall the Secretary for Justice do? As this happens during the investigation and research stage, the Secretary shall appoint a retired judge discharged with the duty of setting up and chairing an independent investigation committee. Members of the committee may include the Commissioner. This committee shall be responsible for conducting an investigation and shall deliver its report to the Secretary for Justice. This is a sunlit motion with high transparency. In other words, as the Commissioner is accountable to the Chief Executive, this will prevent the Commissioner from being the only person to know about the matter. If a separate independent committee is responsible for conducting an investigation, even if he tries to hide the facts, there will still be

chances that the information is disclosed. In fact, this is not related to the political impeachment I have referred to. So, if not for being politically realistic, I will certainly say that this method of voting leaves much to be desired. But as this is the fact, I am not going to argue any more. I would only like to point out that I also support Dr YEUNG Sum's amendment. I propose an amendment not because I oppose to this part.

The second part provides that the Secretary for Justice shall refer the report to the Legislative Council for Members of the Legislative Council to consider whether to take any action under Article 73(9) of the Basic law. I have grave doubts with regard to the existing section 31AA, particularly the part linked with the report on the function of the Executive. The reason for my doubts is that the impeachment function should be part of the duty of the legislature. But now the relevant information is referred to the legislature by the Secretary for Justice, a core member of the Executive. In other words, the impeachment procedure is invoked by the Secretary for Justice. I think this is inappropriate. This is a very inappropriate practice in terms of separation of powers. Thus, I think the entire section 5 must be deleted. I know that the Department has said it is not the fact and this is only a procedure for the consideration of Members only. But all the same, I opine that it must be clear and defined.

Deputy Chairman, finally I would like to talk about the amendment proposed by the Chief Secretary for Administration. The amendment proposed by the Chief Secretary for Administration will result in undesirable consequences. It will be an endless task once the issue of how the authority should be exercised in details as prescribed in section 30 is introduced. I also do not know where his amendment should be added. He proposes to add section 31AB in section 30 to provide that a Member of the Legislative Council may disclose information to the Secretary General, and if the Secretary General has reasonable cause to suspect, he may disclose the information to any member of the staff, and then the President of the Legislative Council shall approve such a disclosure if the President has also reasonable cause to suspect. All these levels of approval actually will not enable us to be more secure and lawful when we utilize such information during the impeachment because the authority has to be exercised under a premise. With more premises, there will be more opportunities of failure to meet the requirements of these premises. In turn, the operation of the relevant procedure will be less smooth. As a matter of fact,

there is no need to mention the approval in details. When the Commissioner of the Independent Commission Against Corruption is conducting an investigation, would he be the only person to know about the investigation? Wouldn't another person in the ICAC know about this due to his public duty? Wouldn't his secretary and his assistant know about this? All these staff members will know because this is not something that can be done by one person. It is a task that involves a team. It is obviously legal so long as the staff members do their jobs in accordance with the duties assigned to them under their scope of responsibilities. There is no need for us to impose barriers, putting in place safeguards one after another that result only in queries targeted at each level. Deputy Chairman, when all is well and simple, the introduction of this kind of unnecessary invention will only complicate matters. That is why I do not support the amendment proposed by the Chief Secretary for Administration. I know he has proposed the amendment out of good intention as Members have indicated their wish for this kind of guarantee. But unfortunately, after reading the relevant provision, I do not think this provision will improve the situation. On the contrary, it will only make the situation worse.

Deputy Chairman, if my amendment is not passed, I will support Dr YEUNG Sum's amendment. Thank you, Deputy Chairman.

DR YEUNG SUM (in Cantonese): Deputy Chairman, the Prevention of Bribery (Amendment) Bill 2007 (the Bill), which has been brewed up for quite some time, is finally submitted to Members for scrutiny today. If the Bill is passed, it will become the legislation to restrict or monitor the Chief Executive in respect of whether he has committed a corruption offence. In the past, due to the fact that specific legislation was not put in place to regulate any corrupt practice of the Chief Executive, it was difficult to take prosecution action against the Chief Executive should he have committed a corruption offence.

Over the years, the Democratic Party has all along been urging the Government to incorporate the corrupt practice of the Chief Executive into the Ordinance for the sake of fairness, so that nobody can be above the law.

After studying the amendment proposed by the Government, the Democratic Party agrees with certain parts of the amendment. However, the Government has added a new section 31AA in clause 5 of the Bill. In our

opinion, the original amendment is not the most desirable option. Therefore, on behalf of the Democratic Party, I have proposed an amendment to improve the relevant mechanism.

According to the original amendment, if the Commissioner of the Independent Commission Against Corruption has reason to suspect that the Chief Executive may have committed a corruption offence, he may refer the matter to the Secretary for Justice for him to consider whether to refer the matter to the Legislative Council for it to consider whether to take action under Article 73(9) of the Basic Law and to invoke the investigation and impeachment procedure. In other words, the Commissioner has certain "space" of not reporting the matter involving a corruption offence committed by the Chief Executive to the Secretary for Justice. And the Secretary for Justice has the "freedom" not to report the matter to the Legislative Council, too. In my opinion, if the Commissioner and the Secretary for Justice have discretion to choose whether to report or not, the matter will become delicate and complicated. This arrangement is not desirable at all.

The Independent Commission Against Corruption (ICAC) is an organization of independence and impartiality. On this basis, it can be inferred that the Commissioner of the ICAC should be able to work in an independent environment when he is handling the allegation of the Chief Executive's corruption offence. This is the established view of the Government. However, according to Article 57 of the Basic law, the Commissioner of the ICAC is accountable to the Chief Executive. A provision in the Independent Commission Against Corruption Ordinance also provides that the Commissioner of the ICAC shall not be subject to the direction or control of any person other than the Chief Executive.

To show to the public that a fair system is in place, and to avoid doing things likely to arouse suspicion, it is not sufficient for the Commissioner of the ICAC to conduct the investigation alone. It is doubtful whether he will commence investigation fearlessly on his boss — investigate the illegal acts of the Chief Executive, and whether he will report the illegal acts of the Chief Executive to the Secretary for Justice.

Furthermore, the Secretary for Justice is also under the leadership of the chief Executive. Given that it is for the Secretary for Justice to consider whether to refer the information about the Chief Executive's corrupt practice to

the Legislative Council, the concern of bureaucrats shielding one another in wrongdoings cannot be addressed.

Therefore, I have proposed an amendment to change the proposal of the Government to a liability provision which the Commissioner of the ICAC and the Secretary for Justice must abide by. After the amendment, when the Commissioner of the ICAC has reason to suspect that the Chief Executive may have committed a corruption offence, he shall refer the matter to the Secretary for Justice. And the Secretary for Justice shall appoint a retired judge discharged with the duty of setting up and chairing an independent investigation committee. Members of the committee may include the Commissioner of the ICAC. After the completion of the investigation, the committee shall deliver its report to the Secretary for Justice. On receiving the relevant report, the Secretary for Justice shall refer the report to the Legislative Council for it to consider whether to take action under Article 73(9) of the Basic Law and invoke the investigation and impeachment procedure.

After the amendment, the discretion of the Commissioner and the Secretary for Justice to decide whether to report the matter involving the corrupt practice of the Chief Executive and to refer the matter to the Legislative Council will be changed to a more neutral role. There will no longer be any conflicts of roles for the Commissioner and the Secretary. All they have to do is to report the case to the superior, and hand the matter over to an independent investigation committee, and later to the Legislative Council to consider.

Deputy Chairman, a stringent procedure will be established to handle any corrupt practice of the Chief Executive after my amendment is passed. Whenever the ICAC receives a complaint about the Chief Executive suspected to have committed offences under the Prevention of Bribery Ordinance, once prima facie evidence is substantiated by the Commissioner's preliminary investigation, the stringent procedure will be triggered. This will ensure that the complaint is based on reasonable evidence, and that the investigation is conducted in an impartial manner. Meanwhile, it will lower the chance of the Chief Executive being wrongly accused, while the Chief Executive will not be shielded by his subordinates that may result in the disappearance of a genuine allegation.

The Government argues that the establishment of a body to conduct the investigation will duplicate or compromise the role of the investigation

committee referred under Article 73(9) of the Basic Law, and will also affect ICAC's discharge of its statutory duties. I think the explanation offered by the Government is unconvincing. Even if another independent committee is established to conduct the investigation, it will not compromise the role of the investigation committee set up by the Legislative Council. This is because they are two different bodies. I can cite a very simple example. The confusion in operation during the opening of the new airport resulted in an investigation conducted by the Executive. Meanwhile, the Legislative Council also set up a select committee. Each committee conducted its own investigation. In the end, neither committee was affected nor compromised by the other committee. According to my proposal, the independent committee established under the Secretary for Justice will have its own power of investigation. There is no direct line of command between this committee and the independent committee established by the Legislative Council under Article 73(9) of the Basic Law and chaired by the Chief Justice of the Court of Final Appeal. I have to emphasize that there is no direct line of command between the two. So how can it be said that the former will compromise the role of the latter?

The argument that the committee will affect ICAC's discharge of its statutory duties is even more groundless. If the investigation is conducted by the Commissioner of the ICAC, the public will not be able to see that the investigation is conducted in an impartial manner. If the committee is chaired by a retired judge with the Commissioner being a member, the Commissioner will have a person to whom he can report and be accountable. In this way, the committee will be able to supervise the work of the ICAC in an impartial manner, thus ensuring that the investigation will be conducted with impartiality. Therefore, the mechanism under my proposal is desirable, objective and reasonable. I hope that colleagues of this Council will support this amendment.

Deputy Chairman, I so submit.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Deputy Chairman, the Government opposes the amendments moved by Ms Margaret NG and Dr YEUNG Sum. As I said during the debate on the resumption of the Second Reading, pursuant to section 30 of the Prevention of Bribery Ordinance (the Ordinance), the prohibition on the disclosure of the identity of the subject person and any details of the investigation is designed to protect the integrity of

the investigation and the reputation of the subject person when the investigation is still in a covert stage.

Based on the provisions of section 30, clause 5 of the Bill proposes to add the new section 31AA to provide that when, upon investigation by the Commissioner, ICAC, there is reason to suspect that the Chief Executive may have committed an offence of bribery, the Commissioner, ICAC may refer the matter to the Secretary for Justice. Where, as a result of such a referral, the Secretary for Justice has reason to suspect that the Chief Executive may have committed an offence under the Ordinance, he may refer the case to the Legislative Council for it to consider whether to take any action under Article 73(9) of the Basic Law.

The vast majority of members of the Bills Committee are of the view that this new provision is essential to enable the Legislative Council to obtain facts of a corruption complaint against the Chief Executive, so that Members may consider invoking the impeachment mechanism under Article 73(9) of the Basic Law.

Moreover, to address the Bills Committee's concern about immunity for disclosure of information in the Secretary for Justice's referral, I will move an amendment to clause 5 in the Bill to add the new section 31AB with a view to achieving two purposes. Firstly, it allows, for the purpose of section 30, disclosure of information in the Secretary for Justice's referral by any party once the impeachment proceedings under Article 73(9) of the Basic Law have been initiated, that is, one fourth of all Members of the Legislative Council have initiated a motion jointly to charge the Chief Executive with serious breach of law or dereliction of duty. Secondly, prior to the initiation of the impeachment proceedings, it allows disclosure of information in the Secretary for Justice's referral by a Member of the Legislative Council to the Legislative Council Secretariat for the purpose of enabling Members of the Legislative Council to take or consider whether to take any action under Article 73(9) of the Basic Law. The Secretary General may also disclose the information obtained to the Legislative Council Secretariat under the threshold that he is satisfied that the disclosure is reasonably necessary.

We think that the immunity proposed in the new section 31AB can already strike a balance between ensuring the integrity of the investigation of the Independent Commission Against Corruption (ICAC) and assisting Members of

the Legislative Council in discharging their constitutional duty under Article 73(9) of the Basic Law.

Since Article 73(9) of the Basic Law does not specify when an Initiating Motion is considered to have been initiated, and Article 75(2) of the Basic Law provides that the Rules of Procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene the Basic Law, our legal advice is that the Legislative Council is empowered by Article 75(2) of the Basic Law to make its own Rules of Procedure, including those in relation to the impeachment proceedings under Article 73(9) of the Basic Law. Hence, the point of time when the Initiating Motion is considered to have been jointly initiated should be that as provided in the Rules of Procedure of the Legislative Council.

The CSAs will also make some technical amendments to section 31AA, which is mainly to replace "the Legislative Council" with "Members of the Legislative Council" to provide for greater clarity. The vast majority of the members of the Bills Committee have no objection to the CSAs and I hope Members will support the CSAs I moved to add the new section 31AB about the immunity for disclosure of information in the Secretary for Justice's referral and later, pass clause 5 as amended.

Ms Margaret NG's first amendment proposes to delete clause 5. If Ms Margaret NG's amendment is passed, the proposed empowerment provision of section 31AA cannot remain and as a result, there is no way to ensure that the Secretary for Justice would not be prevented from referring corruption complaints against the Chief Executive and the findings of ICAC's investigation to the Legislative Council due to section 30. Moreover, the Administration cannot add section 31AB as the provision is linked to section 31AA of clause 5, which is on giving Members' or the Legislative Council Secretary General immunity in disclosing the information in the Secretary for Justice's referral. Therefore, Members should oppose Ms Margaret NG's first amendment.

Ms Margaret NG's second amendment proposes to add section 4A. Apparently, the new section 30(1B) as proposed in clause 4A is similar to section 31AA in clause 5. However, they are actually very different. Ms Margaret NG's section 30(1B) will allow the ICAC to bypass the Secretary for Justice in disclosing to the Legislative Council directly all details of the investigations on the offences under the Ordinance involving the Chief Executive. This is totally

inappropriate. This will alter the statutory role and duties of the ICAC under section 12 of the Independent Commission Against Corruption Ordinance (the ICAC Ordinance) and may also interfere with the Secretary for Justice's constitutional function as the prosecuting authority.

The duties of the ICAC as set out in section 12 of the ICAC Ordinance include, among others, the duty to investigate any alleged or suspected offences under the Ordinance and to receive and consider complaints alleging corrupt practices. However, the power to prosecute after completion of investigations is vested with the Secretary for Justice by virtue of Article 63 of the Basic Law. This division of function is also stipulated in the requirement in section 31 of the Ordinance, that is, no prosecution for an offence under Part II of the Ordinance shall be instituted without the consent of the Secretary for Justice. This system of checks and balances has been operating smoothly and effectively over the years and has won the trust of members of the public.

It is indeed reasonable to follow the existing practice under which the ICAC seeks legal advice from the Secretary for Justice in handling any complaint against corruption. The ICAC, being the investigative authority, should not be tasked with deciding whether to institute prosecution or make a referral to the Legislative Council where there is reason to suspect that the Chief Executive may have committed an offence under the Ordinance. The Secretary for Justice, with his independence and impartiality, has already been entrusted with the responsibility to decide whether he will institute prosecution in a particular case. There is no ground to doubt that he is not capable of doing so in the case of making a referral to the Legislative Council.

Furthermore, Ms Margaret NG's section 30(1B) has no linkage with section 31AB, which the Administration proposes to add to clause 5 of the Bill. It is doubtful whether there is any immunity for Members or the Secretary General of the Legislative Council in disclosing the information in the referral of the Secretary for Justice.

Dr YEUNG Sum's amendment mainly proposes to set up an independent committee to conduct the investigation when the Chief Executive is suspected to have committed an offence under the Ordinance and to submit a report to the Secretary for Justice. Members of the committee may include the Commissioner, ICAC. Dr YEUNG's proposal is based on the groundless perception that once the person involved in a suspected corruption complaint is

the Chief Executive, the ICAC may not conduct its investigation independently and impartially. On the contrary, at present, there are robust legislative and structural safeguards to ensure the independence and integrity of the ICAC's investigation. First of all, the Commissioner, ICAC has a mandatory duty under section 12(b)(ii) of the ICAC Ordinance to investigate any suspected or alleged offence under the Ordinance. If the Commissioner, ICAC deliberately curtailed or interfered in an investigation of a corruption complaint against the Chief Executive in order to dishonestly benefit the Chief Executive, he would commit the offence of misconduct in public office.

Secondly, the ICAC is prohibited by law to disclose to the Chief Executive the presence of or details about a corruption complaint or investigation against the Chief Executive. If the Commissioner, ICAC chooses to act to the contrary, either upon the Chief Executive's instruction or of his own volition, he would commit an offence under section 30 of the Ordinance. The Commissioner, ICAC cannot have a defence of lawful authority or reasonable excuse because he should know that the Chief Executive's instruction or his own decision is against the law.

Thirdly, the Chief Executive is prohibited by law to interfere in an investigation conducted by the ICAC on a corruption complaint against him. Although the ICAC is accountable to the Chief Executive under Article 57 of the Basic Law, if the Chief Executive misuses Article 57 of the Basic Law to interfere with the investigation of a corruption complaint against him, conducting himself in such a way may constitute the common law offences of misconduct in public office, perverting the course of public justice, preventing officers of the ICAC from executing their duties, and so on.

Fourthly, as with all ICAC investigations, regarding an suspected corruption complaint against the Chief Executive, any decision by the ICAC to close the file and any decision by the Department of Justice not to prosecute will be reported fully and discussed at the Operations Review Committee (ORC) of the ICAC. The ORC comprises non-officials and is tasked to ensure that all corruption complaints, including any complaint against the Chief Executive, will be handled properly. Therefore, any corruption complaint against the Chief Executive will be handled properly.

Fifthly, when a person makes a corruption complaint to the ICAC against the Chief Executive, he is free to lodge an identical complaint with the

Legislative Council before, after or at the same time when the complaint is made to the ICAC, so long as he does not reveal that this matter is subject to the ICAC's investigation. This "parallel" arrangement would effectively deter any cover-up or abuse of powers in the investigation process.

Since the establishment of the ICAC, it has been conducting its investigations independently and impartially. Given the ICAC's proven track record and expertise, coupled with the presence of robust safeguards, both legislative and structural, to ensure the independence and integrity of the ICAC's investigation, the Administration strongly believes that the ICAC is the most appropriate authority to investigate a corruption offence suspected to have been committed by the Chief Executive.

In fact, some Members have indicated in the meetings of the Subcommittee on Application of Certain Provisions of the Ordinance to the Chief Executive that they had confidence in the work of the ICAC. I believe that the Hong Kong public will also agree on this point.

Members have also indicated that according to Article 57 of the Basic Law, the ICAC is accountable to the office of the Chief Executive, not to the post holder *per se*. The duties of the ICAC set out in section 12 of the ICAC Ordinance are about corruption offences. Dr YEUNG's amendment would mean to provide that the ICAC is obliged to first stop the investigation at the stage of suspecting that someone has committed an offence and make a report to the Secretary for Justice and then the Secretary for Justice will appoint an independent investigation. The above arrangement is in contravention with the statutory duties of the ICAC. Furthermore, the establishment of another body to conduct the investigation could duplicate or compromise the role of the investigation committee to be chaired by the Chief Justice under Article 73(9) of the Basic Law.

Deputy Chairman, based on what I have mentioned just now, I hope that Members can oppose the amendments of Ms Margaret NG and Dr YEUNG Sum. Thank you.

MR JASPER TSANG (in Cantonese): Deputy President, in the debate on the resumption of Second Reading just now, I talked about the special constitutional status of the Chief Executive. In pointing this out, I did not mean that the Chief

Executive has special constitutional status and he is above the law, or that he does not have to abide by the laws of Hong Kong like other ordinary members of the Hong Kong public. Therefore, I think Ms Margaret NG and Dr YEUNG Sum did not address this question when they emphasized that everyone should be equal before the law.

What we have to study now is not whether the special constitutional status of the Chief Executive can enable him not to comply with any law in Hong Kong. As to whether or not the Chief Executive must comply with the Prevention of Bribery Ordinance (the Ordinance), Deputy Chairman, if this Ordinance is not amended in any way, of course, the Chief Executive has to comply strictly with it. Provisions in the Ordinance that are binding to any person will certainly be binding to the Chief Executive too. For example, the Chief Executive cannot offer any gift to any official or any person without any reason. However, since the definition of the term "prescribed officers" in the Ordinance does not include the Chief Executive, the existing Ordinance is not binding to him. Even if he complies fully with the Ordinance, it cannot satisfy our view that he should be bound by laws on bribery and corruption prevention. What we are examining now is how to enact legislation to specifically bind the Chief Executive. What I wish to say is that when we have to enact special legislation, through local legislation in Hong Kong to regulate the Chief Executive or to stipulate offences relating to the Chief Executive's conduct, we cannot but take into consideration his special constitutional status.

Deputy Chairman, the present amendment proposed by Dr YEUNG Sum precisely points out the need relating to the Chief Executive's special constitutional status. Why is it necessary to set up an independent investigation committee when investigating the Chief Executive but not in the case of other people? Just as Mr Martin LEE said earlier on, why couldn't we simply extend the term "prescribed officers" in section 3 to include the Chief Executive? The Chief Secretary for Administration said that if he wanted to accept a bottle of red wine, valued at \$5,000, as a gift from Mr Martin LEE, he has to ask the Chief Executive — is it \$8,000? It is section 8. Sorry, section 8 is about the restriction on members of the public. What the Chief Secretary for Administration said just now is section 3. If the Chief Secretary for Administration wants to accept a gift, he only has to ask the Chief Executive for permission. However, if the Chief Executive wants to accept a gift, whom should he ask?

When scrutinizing this Bill, Members also asked why an independent body would not be established to give permission to the Chief Executive. If this is done, it precisely proves that he cannot exactly follow the procedure laid down for other prescribed officers. The question now is not whether or not everybody is equal before the law but about the need to deal with the special post of the Chief Executive. Since the Chief Executive has his special constitutional status, it is necessary to establish a system to regulate him. This is exactly what we are doing now. We have repeatedly discussed the proposal put forward by Dr YEUNG Sum in the deliberations of the Bills Committee.

In fact, the suggestion to set up an independent organization to conduct an investigation is not without ground, nor am I of the view that it is totally infeasible. However, we should also examine why we should do so. It has to do with the issue of special constitutional status. Since there is no other alternative, even though the Independent Commission Against Corruption (ICAC) is accountable to the Chief Executive we think that this would affect its impartiality. Although Hong Kong is part of China, we cannot let a higher-level organization outside Hong Kong investigate the Chief Executive. Therefore, we can only set up a so-called independent body in Hong Kong. However, we notice that in other places in the world, investigations on the highest head of the government would be carried out by an independent person or independent body. Nevertheless, there should be fairly detailed provisions and obvious and reasonable constraints. It is like this everywhere.

The present proposal proposed by Dr YEUNG Sum is very simple. Members can imagine this: After the passage of the proposal, many problems will remain unsolved. For example, when the ICAC conducts an investigation, it is regulated by the entire Independent Commission Against Corruption Ordinance, including section 30, which we have mentioned many times today. As the Chief Secretary for Administration said earlier on, once the Commissioner, ICAC suspects that a matter involves the Chief Executive, he will wash his hands off the affair and inform the Secretary for Justice — Members have to bear in mind that the Secretary for Justice is also nominated by the Chief Executive — and let the Secretary for Justice himself appoint a retired judge, who will decide whether an investigation committee would be set up.

We have no idea how much power such an investigation committee has. However, we would ask whether the investigation committee is bound by the Independent Commission Against Corruption Ordinance in its investigation.

For example, can they disclose any information? Can a press conference be held to announce the fact that the Chief Executive is under investigation? From this provision, we cannot see if this is allowed, nor do we know whether it is Dr YEUNG Sum's intention that this can be done. Must the identity of the members of the investigation committee, including the appointed chairman, be kept confidential? Until when will they be kept confidential? Must the details of the investigation be made public?

No matter how all these matters are to be stipulated, there will always be grounds to support them. However, they must be clearly set down and must be carefully considered to see if, as Ms Margaret NG suggested, something that is originally judicial would be politicized. Since the Secretary for Justice will have to table the case to the Legislative Council for it to activate the impeachment mechanism and the Chief Justice will consequently be responsible for investigation, what is the relationship between various investigations? I think that it is not impossible to consider this aspect seriously. However, in view of the crudeness of Dr YEUNG Sum's amendment today, I think that a very big problem will arise and it will be very difficult to deal with if the amendment is passed. Therefore, I find that I cannot support this amendment.

I also note that in the speech of the Chief Secretary for Administration delivered just now, he has responded to the requests of the Bills Committee, too. In fact, it also reflects the view of the Legislative Council Secretariat, that is, it confirms that the contents of section 31AB, which the Government proposes to add, have to be formulated by the Legislative Council on its own, that is, pursuant to the power to make its own Rules of Procedure conferred by the Basic Law on the Legislative Council. Therefore, with such an explanation and according to the discussions we had at the Bills Committee, the DAB thinks that we can support the amendment proposed by the Government. Thank you, Deputy Chairman.

MR MARTIN LEE (in Cantonese): Deputy Chairman, I find today's discussion very strange. Why is the Secretary for Justice absent? At first, I thought he was out of town but later, I was informed that when we discuss the motion of "Seeking papers, books, records and documents regarding the salary and fringe benefits of Under Secretaries and Political Assistants" proposed by Mr LEE Wing-tat, the Secretary for Justice would attend the meeting. This being so,

why is he not here now? In fact, today's debate is mainly about the Secretary for Justice, not the Chief Secretary for Administration, but he is nowhere to be seen. This is really perplexing to me.

Just now, Ms Margaret NG said that her approach was much simpler. I also agree that it is much simpler and more desirable. Someone in our Democratic Party also raised the question of whether we must oppose Ms Margaret NG's amendments in order to support Dr YEUNG Sum's amendment. Later, I found that in fact, what I said was the same as Mr Ronny TONG's remarks. — Does anyone mean that Ms Margaret NG's amendment can be passed? Can Dr YEUNG Sum's amendment be passed? Therefore, Members do not have to be worried at all as both amendments will not be passed. However, for the sake of principle, we will still debate them and we will debate them very positively. Therefore, I believe I will not speak just once.

In fact, the Commissioner, ICAC has very great power. Regarding section 30 of the Prevention of Bribery Ordinance, the Hong Kong Bar Association had strong views against it over the years. During the Hong Kong-British era, I voiced a lot of views in the former Legislative Council. Why is it necessary to enact legislation? I think there is such a need. The situation that it wants to prevent is mainly as follows: For example, the Independent Commission Against Corruption (ICAC) has arrested Mr A but Mr A is not the only person being suspected of involvement in bribery. Perhaps Mr A has offered advantages to Mr B, in that case, both of them are suspects. When Mr A was arrested, Mr A or his family has already notified Mr B, so Mr B has fled. Maybe this is actually a conspiracy that involved a group of people. After the arrest of Mr A, he himself cannot say anything but his wife, son, friends or relatives can notify other people and everyone has fled. As a result, the ICAC's investigation was impeded. Therefore, any person who discloses the fact that Mr A has been arrested or is under investigation would be obstructing the ICAC's investigation. Hence, section 30 has its value and need. Section 30(1)(a) is about the disclosure by the subject of the investigation about his situation. This provision prohibits him from making any disclosure. Section 30(1)(b) prohibits other people such as the public, a section of the public or any other person from making any disclosure. This is in fact how it is like. These people are not allowed to make any disclosure. However, the Commissioner, ICAC can choose to make disclosure at any time.

We just have to watch the television to know. Sometimes, there would all of a sudden be a report about a certain company or a certain person's abode being searched by the ICAC. We often see this kind of things on television. I do not believe that it so happened that all the reporters were there. Those reporters will show up in a group instead of just a single person. They would be filming with their video cameras. So, has anyone made any disclosure? Otherwise, why would those reporters be waiting outside the offices concerned? This is in fact very unfair because in the end, they may win the lawsuit. The persons concerned are not allowed to make any disclosure themselves, not even when they may feel being persecuted. They could not tell the reporters that they are under investigation, that it is a false incrimination or that it is unfair. They are not allowed to talk about all these but the Commissioner can do such things. This is grossly unfair.

At present, I think that the authorities are using section 30 as the pretext to give such a power to the Secretary for Justice to let him be the gate-keeper. What I am concerned about is that the Secretary for Justice will be the gate-keeper for his master, that is, the Chief Executive. If he has really done such a thing and the ICAC found that there is a problem upon investigation, then he has committed an offence. The ICAC must make a referral to the Secretary for Justice because according to section 31, the consent of the Secretary for Justice is required to institute prosecution. However, what if, after reading the report, he wants to protect the Chief Executive? No one in the Department who has knowledge of the matter can disclose it. However, can it really not be disclosed? Ms Margaret NG asked if he had the lawful authority — I believe he does not — however, does he have a reasonable excuse? Can he do that?

What we see now is that the amendment proposed by the Chief Secretary for Administration is very complicated, that is, even if the issue is referred to the Legislative Council, even our Clerk cannot disclose it. However, this is actually something that we have to deal with, that is, "999". After all, if the Legislative Council has no knowledge of it, we will not propose any motion because all motions require the support of one fourth of all Members. We must have knowledge of it before we can consider whether or not to propose a motion. Has it ever occurred to him that if one Member among us has knowledge of this matter and sensed that there is a problem after reading the newspaper, we do not have to go through the Secretary for Justice or anybody but only has to seek the support of one fourth of all Members — the support of Members from the

Democratic Party alone is enough — then we can propose a motion? No, the problem is that we do not know. Why is it not possible to let us know? Why should the Administration set up so many hurdles? This is really perplexing.

Therefore, I support Ms Margaret NG in proposing a very simple procedure. We do not need so many troublesome things. We should not cause hindrance to ourselves like this. Why should we Members of the Legislative Council support the present amendment proposed by the Government to curtail our powers? This is really perplexing to me. Of course, the Chief Secretary for Administration tells our Members (that is, the royalist) to oppose the amendments proposed by Ms Margaret NG and Dr YEUNG Sum steadfastly. However, I wish to ask Members to think about this: If you oppose the amendments proposed by Ms Margaret NG and Dr YEUNG Sum and support the amendment of the Chief Secretary for Administration, this will hinder the exercise of the powers of this Council by us in the future. However, I have served in this legislature for many years and this is nothing strange at all, as I have seen it many times that our own Members assisted the Government in curtailing our own powers, that is, to castrate ourselves. Deputy Chairman, this is not the first time.

DEPUTY CHAIRMAN (in Cantonese): Dr YEUNG Sum, speaking for the second time.

DR YEUNG SUM (in Cantonese): Just now, I heard Mr Jasper TSANG ask me in his speech how the proposed independent investigation committee in my amendment would work. Does it have to maintain confidentiality and what are the details? This really shocks me. It makes me think that he is a newcomer to the Legislative Council and does not know how an independent investigation committee operates. The existing law allows the establishment of an independent investigation committee. As regards how the investigation committee should operate, once it is really set up, its objectives and scope of power, that is, the so-called terms of reference, will be defined. Why is it necessary to set out in the Ordinance such details as its composition, operation and confidentiality? What he asked was really strange. However, he behaves like this sometimes. Sometimes, in order to support the Government his rhetoric is so good that he can always think of some reasons, however, they

really sound very strange to me. He now looks as though he knew nothing about the operation of an independent investigation committee, yet he is such a senior and competent Member of the Legislative Council.

Just now, the Secretary said that in fact, we do not have to worry about the Independent Commission Against Corruption (ICAC) as it is so professional, disciplined and reputable. In fact, I do not have any great reservation about the reputation and independence of the ICAC and I also have great respect for it. However, the problem is that its Commissioner is appointed by the Chief Executive and he is accountable to the Chief Executive. I just wish to ask one very simple question, Deputy Chairman. When an employee has to investigate his boss, no matters how righteous he is, even when he is just like the reincarnation of Judge BAO, will members of the public think that he will let his boss off lightly?

Just now, Mr Martin LEE mentioned the Secretary for Justice's power of discretion in deciding whether the ICAC report should be referred to the Legislative Council. The Secretary for Justice has an image of great independence. Constitutionally, he is also very independent and he should protect the law. Ms Margaret NG often says that the Secretary for Justice should be a protector of the law rather than a defender of the Government. I wonder why this piece of legislation has been turned into this state. The Secretary for Justice is not present here. However, the issue is that he has the discretion. May I ask the Secretary if the ICAC has ever investigated the Chief Executive? Has the Secretary for Justice ever drafted any report on any offence committed by the Chief Executive? The answer is no. Now, it is the first time in history for us to set up this system. When an employee has to investigate his boss, when the Secretary for Justice has the discretion to decide whether the report should be referred to the Legislative Council, will members of the public think that justice has done? Actually, this is where the problem lies.

I will not insist on questioning the independence of the Secretary for Justice and I will not insist on questioning the professionalism of the ICAC. I just want to point out a very basic problem. I often tell my students that justice has to be seen to be done and it cannot vary from person to person or from time to time. Everyone must be treated equally without regard to his wealth or status. However, the present arrangement cannot achieve this end, so I consider it necessary to set up an independent investigation committee to be

chaired by a retired judge. With its professionalism, the ICAC can assist in the investigation but the report must be referred to the Legislative Council. Only in this way can the Legislative Council invoke Article 73(9) of the Basic Law and we can decide whether impeachment should be instituted. This mechanism will help us exercise this power of ours. When we wish to exercise the power of impeachment but the Government poses so many obstacles, or the investigation is regarded as unfair, can Members consider whether such a situation is acceptable to them?

Thank you, Deputy Chairman.

MS MARGARET NG (in Cantonese): I will first respond to the Chief Secretary for Administration's explanation on why Members should oppose my amendment. He said that if section 5 were to be deleted, the Secretary for Justice would not be able to disclose to the Legislative Council matters relating to the violation of the Prevention of Bribery Ordinance by the Chief Executive. He talked about this from two angles. However, when discussing section 4A, I said that if it shall not be unlawful to make such disclosure to the Legislative Council, my way of drafting is both simple and comprehensive. Deputy Chairman, despite being repetitive, I will read out my subsection (1B) again. It reads: "For the avoidance of doubt, it shall not be unlawful for the Commissioner or the Secretary for Justice to make such appropriate disclosure referred to in subsection (1) to the Legislative Council in connection with the performance of its duty under Article 73(9) of the Basic Law." With such a way of drafting, in fact, the Secretary for Justice can be either active or passive, that is, he can disclose the information either upon the Legislative Council's request or on his own volition.

Moreover, when drafting the amendment, I have also considered how much has to be disclosed. Is it necessary to produce all the files or just to tell the facts? Therefore, I put in my amendments "such appropriate disclosure", that is, he himself has to decide what information is the most appropriate. The appropriateness hinges on enabling the Legislative Council to exercise its powers and functions conferred by the Basic Law. This amendment can be said to be very simple and fair. It also displays the trust that the Secretary for Justice will make a disclosure that befits his status and the requirements of his office. Therefore, Deputy Chairman, I cannot understand why the Chief Secretary for

Administration should oppose the proposal I made in section 4A if he also agrees that the Secretary for Justice should have the power to make a disclosure.

(THE CHAIRMAN resumed the Chair)

The ground of his opposition is that my amendment, that is, section 4A, is very much different from the amendment proposed by the Government now. In fact, what sort of great difference is it? It turns out that the difference is that here, I say that for the avoidance of doubt, it is stated that "it shall not be unlawful for the Commissioner or the Secretary for Justice". Well, the reason is that I also allow the Commissioner, ICAC to make a disclosure. Now, I have gained a better understanding of the thrust of section 30 and section 31AA. It means that first of all, the Commissioner, ICAC can only make a disclosure to the Secretary for Justice and the Secretary for Justice is the only person who can make a disclosure to the Legislative Council. Why does the Department want to stop the Commissioner from making a disclosure to the Legislative Council even though the Legislative Council is doing so for the purpose of exercising the powers and functions conferred by the Basic Law? Why does the Department have to stop it in this way? This is really very mysterious. He claims that my present amendment does not fit into the system because the Secretary for Justice would be bypassed. Now, the Commissioner, ICAC is independent. Dr YEUNG Sum has said a lot about this just now. Mr Martin LEE also said that the Commissioner would decide on his own whether any disclosure should be made in the course of his work.

Nevertheless, there is no system at present to require that any disclosure by the Commissioner must be made through the Secretary for Justice. It is only said that the power of deciding whether a certain person has to be prosecuted must be exercised through the Secretary for Justice. However, we already said very clearly just now that whether a certain person had to be prosecuted was a legal procedure and a power of the Secretary for Justice under the Basic Law. However, impeachment is in fact something new, not a part of a prosecution. Why is it that only the Secretary for Justice can make a disclosure but not the Commissioner, ICAC? I really think that this time, the Chief Secretary for Administration's speech does not hold water. Therefore, Chairman, I think that

in fact, both the Secretary for Justice and the Commissioner, ICAC have their legal authority and should disclose the relevant matters to this Council.

Assuming that it is not the Commissioner or the Secretary for Justice who takes the initiative to make a disclosure to the Legislative Council but since paper cannot cover up a fire and it is the press that exposes the matter and as a result, the Legislative Council will take follow-up action and a motion to establish such an investigation committee headed by a judge is initiated jointly by one fourth of all the Members of the Legislative Council, does such investigation committee have the power to require the Commissioner, ICAC or the Secretary for Justice to disclose the relevant documents and evidence to the investigation committee? I think it would surely have such a power. Otherwise, how can investigation be conducted? If the best evidence cannot be looked at, this is impossible and unreasonable. Therefore, it will still be possible to obtain them in that event. Or assuming that a motion is initiated jointly by one fourth of all the Members but Members cannot decide whether they should support the motion until we have more information, yet the Commissioner, ICAC is unwilling to provide it or the Secretary for Justice is of the opinion that it should not be provided, can this Council exercise the powers under the Basic Law to request them to make a disclosure pursuant to the Legislative Council (Powers and Privileges) Ordinance? This is of course a very reasonable move, Chairman. Therefore, I cannot see why we have to introduce this piece of legislation. Now, it can be said that the truth is out and the hidden agenda has been exposed. It is not designed to enhance but to restrict our powers and to make the Secretary for Justice the only person who can make a disclosure.

Chairman, just now, there were too many documents on my table and they were in a mess, but now I have found the relevant paper and can formally tell Members why the amendment proposed by the Chief Secretary for Administration should be opposed. I will also talk about the problems that I find in it, that is, too much emphasis is given to the technical legal provisions instead of the legal principle and background.

Chairman, the original section 31AA only states that the Secretary for Justice — here, it refers to the Secretary for Justice — may refer the matter to the Legislative Council but it does not say to which part of the Legislative Council. It does not specify whether it is its Members, the President of the Legislative Council, the Legislative Council Secretariat or any other party. Why doesn't it? Because it is not necessary to do so. The operation of the

legislature is of course decided by its House Rules or the Rules of Procedure. The legislature is autonomous. At present, the executive also submits papers to the Legislative Council frequently. We do not see any need to specify with legislation whether they should be submitted to the President of the Legislative Council, the Chairman of the House Committee, the Secretary General, the secretary to the Secretary General or the person at the entrance responsible for receiving mail. This is not necessary because, all along, the Legislative Council or the legislature follows its rules and regulations. However, such a bad precedent is now being set.

First of all, whom does section 31AB seek to protect? I have to point out again that, originally, section 30 and section 30 that I proposed even in the case of for section 30AA and section 31AA, they are also general in nature, not specific. Once it becomes specific with clear stipulations, it will affect other provisions and makes it necessary for them to be specific. Concerning those people not protected by specific provisions, it will be necessary to consider if there will be any problem. Take section 31AB as an example, it stipulates that even some people made disclosure, they will not be regarded as having violated the law. Subsection (1) reads, "for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law," disclosure can be made to the Secretary General, that is, a Member of the Legislative Council may make disclosure to the Secretary General. In that case, can people other than the Secretary General be protected? If a Member of the Legislative Council discloses it to other Members of the Legislative Council, including the President of the Legislative Council, will he be protected by this provision?

Members can see that in subsection (2), restriction is imposed on the Secretary General. If the Secretary General is satisfied — first of all, he has to be satisfied — that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take action under the Basic Law, or for the purpose of helping the Members of the Legislative Council to consider this point, such an act has to be reasonably necessary, that is, first of all, it is necessary to begin in this way. If the Secretary General thinks that the papers referred to being the Secretary General, he is obliged to do so as part of his normal duties, so, he is probably not allowed by those words to do so. Even if he is covered by those words, to whom can he disclose? He can disclose to any staff member of the Legislative Council Secretariat. In that case, are all of us staff members employed by the Legislative Council

Secretariat? If not, can he disclose the information to us? If we are employees, the Secretary General can, with the prior approval of the President of the Legislative Council, disclose the information to the staff members. That is to say, if the Secretary General receives something, he cannot follow the normal procedure, but must refer it to the President of the Legislative Council. If the President of the Legislative Council is out of town, what can be done? Is there any explicit provision to authorize him to perform the duties on behalf of the President of the Legislative Council? This stipulation will give us a lot of unnecessary troubles.

As regards subsection (3), it provides that the President of the Legislative Council "shall not approve a disclosure under subsection (2) unless the President is satisfied that the disclosure is reasonably necessary" for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law. Therefore, when it comes to the President of the Legislative Council, he also has to take such an action. In taking such an action or making such a judgement, it is entirely founded on subjective first, there must be a subjective judgement. Then, it has to be supported by objective justifications. Therefore, the President of the Legislative Council is another hurdle. If he is not satisfied, such a disclosure will not be allowed. In that case, the process will end at the President of the Legislative Council.

And what about subsection (4)? It is about disclosures to any person, that is, it can be anybody. When will that happen? It is when a motion has been initiated jointly by one fourth of all the Members of the Legislative Council in accordance with the Basic Law. That means one fourth of all Members is required. If only one or two persons know about this and Members do not know if they can make disclosures to one another, how can this one fourth of all the Members come together?

Therefore, Chairman, looking at these details further, as originally, I thought that these details were not necessary as they are not required in the present section 30. Please take a look at my amendment. These details are not required. However, once these details are proposed, of course, we have to look at them. If we want to keep those details, of course, we must see if there are any new loopholes in these details. Since there are so many loopholes, so many unnecessary and frivolous things, I really cannot understand why the Government insists on proposing such an amendment instead of accepting the

simple, general and easily comprehensible amendment proposed by Ms Margaret NG. I really cannot find many words of praise for it and other Members may have to think about them. Anyway, Chairman, in simple terms, I think that for the sake of the constitution, for the certainty of law and for the sake of avoiding many unnecessary restrictions and disputes in future work, I urge Members to support my amendment.

Thank you.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, in the speech I gave earlier on, I have already said that in fact, the Government attaches great importance to its administrative power and in this pyramid of powers, the Chief Executive is protected.

In fact, the legislature in all democratic countries or self-proclaimed democratic countries exercises checks and balances on the executive. Of course, in the case of the United Kingdom, if a party is already the majority party, it will surely have enough votes in the Parliament. If it is a party with overwhelming majority, it cannot possibly lose. However, the problem is that when there is a political crisis, just as back in those years, when Mrs Margaret THATCHER could not get enough votes because of the division within her party due to the poll tax issue, she was forced by her subordinates to step down and subsequently, Chris PATTEN came to Hong Kong.

At present, it seems that the system being practised by us is not a British system but a system that is somewhere between the British system and the presidential system and the Chief Executive is the president. Of course, the Chief Executive is not popularly elected. Our Basic Law provides clearly that our system is executive-led. Let us look at how we would deal with the Chief Executive if there was the likelihood that the Chief Executive might accept a bribe or commit bribery. It looks as though we have set up numerous check points. Apparently, the first check point is the Legislative Council. In fact, this authority that monitors the Government on behalf of the public, known as the Legislative Council, has been seriously infringed upon.

First of all, the Commissioner, ICAC, has no independent power. When he feels that a certain case is very serious, he can only inform the Legislative Council. This arrangement is the answer to the question over which Members

have been wrangling. Many people said that although the Commissioner was appointed by the Chief Executive and he is only accountable to the office of the Chief Executive, not to the post holder *per se*, the problem is that he will only briefly disclose the matter to an organization established according to the constitution, that is, the Legislative Council, when he considers that the matter is very serious. As a natural person, the Commissioner plays a part in electing the Legislative Council. After universal suffrage has been introduced, he even plays a part in electing the Chief Executive. At present, when he considers that a case is so serious that it cannot be ignored, he should inform a constitutional institution which has the constitutional responsibility to monitor the President or the Chief Executive or the legislature. However, at present, he cannot do so because he can and must only inform the Secretary for Justice.

This has confounded the matter. Of course, I understand that we have the separation of power. If the Secretary for Justice does not prosecute a certain person, that person cannot be prosecuted. This is a good system because the Secretary for Justice is the gate-keeper and he assumes personal responsibility. If any thing goes wrong, the Secretary for Justice will be the first person to face it. Therefore, he will not abuse his power. However, what we are talking about is disclosure only. We are only talking about such a simple act as disclosure. It can be seen from this that the authority of the Legislative Council is being eroded gradually. I remember that many of our Honourable colleagues said that on the face of it, there were many check points in the executive and if we cannot get immunity from it, we may get into trouble at any time. For example, if I take a document to the office and let my assistant look at it without any satisfactory reason or reasonable explanation, then I will be in trouble, right? Look! This way of thinking is a manifestation of self-denigration.

The Legislative Council is a legislature controlled by the representatives elected by the people. Its duty is to monitor the Government. Of course, it has its own authority and dignity and must assume responsibilities for all matters. The person who oversees the operation of the Legislative Council is the speaker and the speaker of the legislature is our President, who was elected by us. Of course, she has to resist pressure from the Government. Regarding the information we obtained, no matter if they come from the Government or not, since we can exercise our autonomy independently, matters such as whether an investigation has to be conducted or a joint impeachment is required are entirely within the ambit of the Legislative Council. If the Government feels unhappy after the Legislative Council has exercised its power, it has several options to

deal with it. If a presidential system is not practised by the Government, it will be forced to hold a re-election; alternatively, a vote of no confidence on the Council can be cast; or, in a country practising a presidential system, one can use executive powers to destroy the Legislative Council. This has always been the case in other countries. Other options include holding a referendum, and so on.

What is being practised now is not actually mutual checks and balances on power, so that the Legislative Council can exercise its powers of checks and balances or the power of sanction. We even have so many hurdles imposed on us by the executive. Quite simply, when a member of the public intends to lodge a complaint, it is totally up to him to decide whether to go to the ICAC to lodge the complaint or to the Legislative Council to disclose the matter. If he chooses not to disclose it to the Legislative Council but to the ICAC, the ICAC can be the gate-keeper. Conversely, if that person passes the information directly to the Legislative Council (the Secretary for Justice has said that that person can pass the information directly to the Legislative Council) and since the Legislative Council is independent, once the information is obtained, it can exercise its power and let the President decide what to do with it.

Well, the Legislative Council will face a serious matter after receiving the information: Now it is alleged that the Chief Executive has bribed someone as well as accepted a bribe. However, this has to be dealt with in this way because we are not going to prosecute him. We will just impeach or investigate the Chief Executive in relation to this matter in accordance with our Rules of Procedure, the procedures and our constitutional powers. The Secretary for Justice and many pro-government Honourable colleagues have created confusion in this regard.

The power that we ask for is in fact pathetically limited. As I said before, we in the Legislative Council, which is the legislature, cannot enjoy, first, any power of investigation whatsoever at all. It is totally absent, unless the President gives her permission or when there are enough votes. Many people will just accept the reality and understand that the Legislative Council cannot do anything because of its limited power in the constitution and because of the presence of the royalist party, so it is futile to refer the information. Consequently, they will turn to the ICAC because it claims itself to be independent.

Well, when the Commissioner, ICAC receives the information, he has to consult the Secretary for Justice to see if the information obtained should be handed over to the Legislative Council. After this point, the ICAC has no more say in the matter. When the Secretary for Justice gets hold of the information, he will call the Chief Executive to tell him of the information and ask him if it should be referred to the Legislative Council or should it be discussed in a meeting of the Executive Council, and so on. All such actions are confidential. Those people may be asked if the information received should be referred to the Legislative Council.

I am telling Members that this situation is possible. When a small-circle election is held, in the operation of various "stables", if the foregoing approach is adopted, I can say for sure that the Chief Executive will surely be doomed. This is because the matter will certainly be leaked to the mass media and in this kind of court politics, the power is still on their side. Therefore, as I say that if the ICAC really wishes to have independent power, it should have the power to disclose such information to the Legislative Council and Members of the Legislative Council do not need the protection from the Government. After some information is presented, the President can decide to whom she wishes to pass the information. She can say that it be passed to the Secretary General or be distributed to all Members, who can then pass it on to their assistants. There is not any problem.

What is the merit of doing so? It means that the Legislative Council has its dignity as it can exercise its power of disclosure in accordance with its conscience, so all people can be informed. When the information is known to the media, there will even be another authority to monitor it. I wonder if Members still recall the incident in which Ms Elsie LEUNG was hospitalized due to her illness. The person who disclosed the information had certainly committed an offence but the then Secretary's safety was hinged on him. Therefore, even though he only disclosed the information, he was given a term of imprisonment, man. Therefore, insofar as this point is concerned, the media is monitoring the Government as the forth authority and in fact, it has been cut off, has it not? How can we always rely on people like those two chaps from the Washington Post who sneaked into government agencies? This is not possible. Therefore, when monitoring the Government through the legislature called the Legislative Council, the media will be involved in monitoring the Government, and the reverse is definitely true. Of course, it depends on how

much real power the Legislative Council has and how its composition is like. The present situation of Hong Kong is that the media is even better informed than the Legislative Council. This is really humiliation. Quite often, they know something earlier than we do and the Legislative Council is informed by them. This is already a shame for us. The information received by Members is often provided by reporters, who say that something has happened to a certain person or there is something wrong with some other persons. For example, weren't the issues concerning the Under Secretaries and Political Assistants uncovered by the media? Did we hear anything? Therefore, in this regard, due to the above reasons, even if the legislation is amended, it is virtually the same as it has not been because it still allows the Chief Executive to betray the Secretary for Justice. If something goes wrong, he can ask the Secretary to be the scapegoat. When he says that there cannot be any other alternative, that is it. The whole system is like this. The Chief Executive can always stay out of the matter.

Therefore, I hope that Honourable colleagues can support the amendment proposed by Ms Margaret NG. Even though she may lose, we still have to support her. Why? Because we have to leave an untainted name in this world. YU Qian is dead and he was persecuted by the eunuch to the Minister of the Army but he showed not a bit of fear even if he was to be crushed. Of course, what we are doing is still a far cry from what YU Qian did, man. However, since we are elected by the public, they have to leave in this world an untainted name — it is members of the public who want to do so, not us, for what we can leave behind is only very limited. In the record of proceedings in this Chamber of the Legislative Council, the terrible conduct of the Government is recorded, and the ways of those people who support such terrible conduct are also recorded. We are speaking here with a view to contributing our humble efforts to the discussion and have it put on record that there was such a discussion in Hong Kong. However, the Government is really formidable. It can always secure enough votes, so it has nothing to fear. If we ask what will happen without the amendment, it can only be worse than before. If we adopt the same approach in dealing with matters on each occasion, how can we teach our children?

Let me make an analogy. Someone is collecting protection money outside a school. A student points out that it can be said that the situation has improved a little bit since because the guy is just asking for three dollars today whereas the other guy was asking for five dollars yesterday! Since he is asking

only for three dollars, never mind, so do not report him. Otherwise, if someone asks for seven dollars later, one does not know what to do. However, the collection of protection money is not allowed. Therefore, I hope that Members can understand this point. When the Chief Executive can rely on the executive to make the legislative body succumb to him, there is no more monitoring nowadays. Justice cannot prevail at all.

I also want to say something about the issue of Under Secretaries and Political Assistants. Many people say that the matter is over and they even ask, "Do you guys in the pro-democracy camp have nothing to do?" At the 30S Group, there is a Mr Laurence LI who wrote, "Some men of letters who support the Government also wrote down this question, 'Do you guys in the pro-democracy camp have nothing to do?'" Let me ask you a question in return, I want to ask if you people in the Government have nothing to do. Why did you put forward such a proposal and ask us to discuss it? Had you people not done such a thing, why would we have had to discuss it? You people do not admit your fault, on the contrary, you say that you are right and say that the Government has not done anything wrong. You even say, "You people caused all these. We are only upholding the rule of law." They even have the guts to say "the rule of law". That should be "politics", not the "rule of law".

Therefore, on this issue, I am rather lazy and seldom attend the meetings of that Bills Committee. No matter how I tried to listen (although I rarely attend the meetings), I did not hear anything good from the Government. Today, faced with such development of events, what can we do? I think that if Members support the Government in doing so, this is tantamount to curtailing the powers of the Legislative Council and the fourth power for the media in carrying out monitoring. This will also make it impossible to exercise civil rights in Hong Kong. Therefore, I hope Members will support the amendment proposed by Ms Margaret NG.

Thank you, Members.

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

MR MARTIN LEE (in Cantonese): Madam Chairman, I would like the Government to clarify one point because our present discussion is triggered by section 30 of the Prevention of Bribery Ordinance (the Ordinance). We have already mentioned earlier on that this is a very unfair Ordinance. Moreover, it is also very harsh and different from other offences. That is to say, if any person is arrested by the police, be it for murder, rape or other offences, his offence can be disclosed. Of course, no one should help or abet him to escape as soon as possible because this constitutes another offence. However, if that person tells others that he is under investigation in connection with a murder case, this is not a problem. Even if he tells the reporters, that is not a problem either. It is only in Part II of the Ordinance, that is, in sections 4 to 10, which are so familiar to us, that disclosure is not allowed.

Furthermore, we are now discussing section 31AA and section 31AB proposed by the Government. For example, the Independent Commission Against Corruption (ICAC) has investigated four offences and thinks that the Chief Executive might have violated the law and one of the offences involves a certain provision in Part II of the Ordinance while the other three offences do not, as they are other kinds of offences and the ICAC may even find that some acts cannot be considered illegal but can be considered as dereliction of duty. For this reason, the ICAC submits its report to the Secretary of Justice. Regarding the subsequent development of such a case, what I want the Government to clarify is: There is no problem with disclosing other information and among the four offences, only the disclosure of the offence relating to corruption is restricted. Therefore, when the report is presented to the Legislative Council, everything can be disclosed so long as they are in connection with other matters because for us to exercise our power under Article 73(9) of the Basic Law, the Chief Executive must have been involved in a "serious breach of law" and the "law" refers to any law, not necessarily in connection with corruption. Moreover, the dereliction of duty does not necessarily have anything to do with corruption.

Therefore, it is not a problem to disclose everything except that which is specified in Part II of the Ordinance. In my opinion, this is definitely the case. I hope the Government can clarify this point because in future, the proceedings of our meetings will be put down on record and when there is any litigation, it can be used to help the Court interpret the law.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Dr YEUNG Sum, do you wish to speak again?

(Dr YEUNG Sum shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Chief Secretary for Administration, do you wish to speak again?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam Chairman, I wish to reiterate that the Government opposes the amendments proposed by Ms Margaret NG and Dr YEUNG Sum.

Provisions in the proposed sections 31AA and 31AB under clause 5 has already provided for a mechanism for Members of the Legislative Council to obtain information on any corruption complaint against the Chief Executive for considering whether the impeachment mechanism stipulated in Article 73(9) of the Basic Law should be activated. The provisions have already responded to the Bills Committee's concern about whether there is any immunity for the disclosure of information contained in referral made by the Secretary for Justice.

The Secretary for Justice, in the team of Principal Officials in the SAR Government, is the highest-ranking official responsible for criminal prosecutions and he has the responsibility to ensure full implementation of the Basic Law. Therefore, the new section 31AA allows the Secretary for Justice to refer the matter to Members of the Legislative Council for them to consider whether to take any action under Article 73(9) of the Basic Law when there is reason to suspect that the Chief Executive may have committed an offence under the Prevention of Bribery Ordinance (the Ordinance). Doing so is entirely appropriate.

Moreover, just now, Ms Margaret NG also mentioned clause 4A, which she has proposed to add, that is, to propose to add section 30(1B). I wish to reiterate that her section 30(1B) will allow the Independent Commission Against

Corruption (ICAC) to bypass the Secretary for Justice to disclose directly to the Legislative Council the details of the investigation relating to the offences under the Ordinance committed by the Chief Executive. It is wholly inappropriate. This will alter the statutory role and duties of the ICAC under section 12 of the ICAC Ordinance and may also interfere with the constitutional function of the Secretary for Justice as the prosecuting authority.

The duties of the ICAC as set out in section 12 of the ICAC Ordinance include, among others, the duty to investigate any alleged or suspected offences under the Ordinance, as well as receiving and considering complaints alleging corrupt practices.

Pursuant to section 30(1) of the Ordinance, a person, while knowing or suspecting that an investigation in respect of an offence in connection with Part II of the Ordinance, which Mr Martin LEE mentioned just now, is taking place, including investigations into the offences specified by sections 4, 5 and 10, shall commit an offence if he discloses the identity of the persons being investigated or any details of such investigation, unless with lawful authority or reasonable excuse, or any of the other conditions in section 30(2) has been satisfied, such as when the person under investigation has been arrested.

It is beyond doubt that the ICAC has its expertise and proven track record and many Members have also commended and sung praises of them. In terms of the law and the system, there are robust safeguards to ensure the independence and integrity of investigation. We remain strongly of the view that the ICAC is the most appropriate authority to investigate a corruption offence suspected to have been committed by the Chief Executive. Therefore, the establishment of another body to conduct the investigation will only duplicate or compromise the role of the investigation committee to be chaired by the Chief Justice established in accordance with Article 73(9) of the Basic Law.

Madam Chairman, in view of my comments just now, I hope Members will oppose the amendments proposed by Ms Margaret NG and Dr YEUNG Sum. Thank you, Madam Chairman.

MS MARGARET NG (in Cantonese): Chairman, I just wish to point out briefly that later on, in the event that my amendment is not passed, nor is Dr YEUNG Sum's amendment, but the Government's motion is passed, I can still propose

the amendment to section 4A. That is to say, I will specify that pursuant to section 30 of the existing Prevention of Bribery Ordinance (the Ordinance), it shall not be unlawful for the Secretary for Justice or the Commissioner, ICAC to make disclosure for the purpose of enabling the Legislative Council to exercise its right of impeachment. Members can still give their support to this. This is the first point.

Chairman, the second point I wish to comment on briefly is that the more I listen to the comments of the Secretary in this debate, the more I can see that he wishes to make use of section 31AB to restrict this Council to act in accordance with, or to draw up, our Rules of Procedure in the performance of our duties under Article 73(9) of the Basic Law. For this reason, I find this very problematic. In fact, this will also lead to many constitutional issues. In the future, if we really passed this I know that many Members support section 31AB because they may not have foreseen this situation. However, I think that Members have to think about this situation in the future. As the Chief Secretary for Administration said just now, section 31AB has already provided a satisfactory approach to enable the Legislative Council to act according to Article 73(9) of the Basic Law.

Of course, apart from this Ordinance, this power will not be affected. However, in the future, when we formulate legislation to exercise our power under Article 73(9) of the Basic Law, this procedure will surely be affected. Therefore, Chairman, I am very much concerned about this point.

Thank you, Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, just now, I raised a very clear question, hoping that the Chief Secretary for Administration could give me a reply. I believe he should be able to give me a reply now because he has spent some time discussing it.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Chief Secretary for Administration, do you wish to speak again?

(Chief Secretary for Administration shook his head to indicate that he did not wish to do so)

MR MARTIN LEE (in Cantonese): This point is in fact very important, that is, why is it that only the Chief Secretary for Administration is present in this meeting but the Secretary of Justice does not show up? In my view, the person seated next to the Chief Secretary for Administration is probably a legal expert — No? The one behind him has read law and has professional qualifications for legal practice.

CHAIRMAN (in Cantonese): Does any other Members or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): If there is none, the Committee will now deal with the amendments to clause 5. Ms Margaret NG, you may move your amendment.

MS MARGARET NG (in Cantonese): Chairman, I move the deletion of clause 5.

Proposed amendment

Clause 5 (see Annex I)

CHAIRMAN (in Cantonese): Before I put to you the question on Ms Margaret NG's amendment, I wish to remind Members that if that amendment is passed, Dr YEUNG Sum and the Chief Secretary for Administration may not move their amendments to clause 5.

If that amendment is negatived, Dr Hon YEUNG Sum may move his amendment to clause 5. Subject to the voting result of Dr YEUNG Sum's amendment, the Committee will then deal with the Chief Secretary for Administration's amendments to clause 5.

On the other hand, irrespective of whether the amendments moved to clause 5 are passed or not, Ms Margaret NG may move the Second Reading of new clause 4A. Ms Margaret NG has already pointed this out in the speech she delivered just now.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming, voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the amendment and 21 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 14 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the motion on the Prevention of Bribery (Amendment) Bill 2007 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak).

CHAIRMAN (in Cantonese): I now propose 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.

(Members raised their hands)

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

I order that in the event of further divisions being claimed in respect of the motion on the Prevention of Bribery (Amendment) Bill 2007 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): Dr YEUNG Sum, you may move your amendment.

DR YEUNG SUM (in Cantonese): Chairman, I move the amendment to clause 5.

Proposed amendment

Clause 5 (see Annex I)

CHAIRMAN (in Cantonese): Before I put to you the question on Dr YEUNG Sum's amendment, I wish to remind Members that if the amendment is passed, the Chief Secretary for Administration may not move his amendment to the proposed section 31AA in clause 5, but the Secretary may move his remaining amendments to clause 5.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr YEUNG Sum be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

CHAIRMAN (in Cantonese): Dr YEUNG Sum has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the amendment and 21

against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 14 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Chief Secretary for Administration, you may move your amendment.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam Chairman, I move the amendment to clause 5.

Proposed amendment

Clause 5 (see Annex I)

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

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Ms CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Albert CHENG and Mr KWONG Chi-kin voted for the amendment.

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Dr Joseph LEE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 51 Members present, 33 were in favour of the amendments and 17 against them. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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.

(Members raised their hands)

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

MS MARGARET NG (in Cantonese): Chairman, I move that new clause 4A be read the second time.

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.

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Dr David LI, Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, eight were in favour of the motion and 20

against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 13 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CLERK (in Cantonese): Clause 6.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam Chairman, I move that clause 6 be amended, as set out in the paper circularized to Members.

Let me give a brief explanation. The amendment to clause 6 covers the corresponding amendments to the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 enacted in December 2007. The Order adds the existing offence of soliciting or accepting bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance to Schedule 2 of the Organized and Serious Crimes Ordinance in order to implement the confiscation requirements under the United Nations Convention Against Corruption (the Convention) more properly. Apart from adding, through clause 6 of the Bill, the offences relating to offering bribes to the Chief Executive under the new sections 4(2)(a) and 5(3) to Schedule 2 of the Organized and Serious Crimes Ordinance, the Administration should also, in response to the enactment of that Order, add the offences of soliciting or accepting bribes to the Chief Executive under the new sections 4(2)(b) and 5(4) to the Schedule. By so doing, the Government will be able to apply to the Court pursuant to the Organized and Serious Crimes Ordinance for orders to freeze, seize and confiscate proceeds or property derived from these corruption offences.

Madam Chairman, the Bills Committee supports this amendment and I hope Members will support my amendments. Thank you, Madam Chairman.

Proposed amendment

Clause 6 (see Annex I)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Chief Secretary for Administration 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.

CLERK (in Cantonese): Clause 6 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the

Prevention of Bribery (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 Prevention of Bribery (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.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr David LI, Mr Fred LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Albert CHENG, Mr KWONG Chi-kin, Miss TAM Heung-man and Mrs Anson CHAN voted for the motion.

Mr LEUNG Kwok-hung voted against the motion.

Ms Emily LAU abstained.

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

THE PRESIDENT announced that there were 48 Members present, 45 were in favour of the motion, one against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Prevention of Bribery (Amendment) Bill 2007.

PRESIDENT (in Cantonese): Members, right now, it is nine o'clock sharp. This meeting started only at 2.30 pm. Therefore, I think we can still persevere with a view to deliberating one more Bill, namely, the Revenue Bill 2008. I may adjourn the meeting only after 10 pm. However, I promise that I will let Members go home before midnight.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Revenue Bill 2008.

REVENUE BILL 2008

Resumption of debate on Second Reading which was moved on 7 May 2008

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

MR ANDREW LEUNG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Revenue Bill 2008, I now submit our report and present the key points.

The objective of the Revenue Bill 2008 (the Bill) is to implement several Concessionary revenue measures proposed in the 2008-2009 Budget. In principle, the Bills Committee agreed that the Government should make good use of the huge fiscal surplus recorded in the year 2007-2008 to do good to the

community. Organizations presenting views to the Bills Committee are unanimously in favour of the Bill. Some members, however, have expressed different views on some of the proposals in the Bill.

With regard to the proposal to lower the standard rate of salaries tax and tax under personal assessment and the corporate profits tax, certain members hold the view that the proposal can bring no benefit to low income people, and that, in order not to drive down government revenue, there is no need to have further reduction as the rate of our corporate profits tax is already low. On the other hand, there are members who think that the proposal can alleviate tax-payers' burden, and help improve our competitiveness. After discussions, the Bills Committee passed, in the name of the Bills Committee, an amendment to the Bill to the effect that the first \$10 million of assessable profits of a corporation should be charged for profits tax at the proposed rate of 16.5% while the remainder should be taxed on the basis of the existing rate of 17.5%. As both the Liberal Party and I are not in favour of this amendment, it is going to be moved by Mr LEE Cheuk-yan. The Bills Committee also noted that the Government is not in favour of the said amendment.

Generally speaking, the Bills Committee does not object to the other proposals contained in the Bill. However, some members object to lowering the standard rate and waiving the tax levied on hotel accommodation charges. In addition, there are members holding the view that the Government should enhance the transparency of the consultation work of the Budget.

Madam President, below are comments on the Bill from me and the Liberal Party:

First of all, we support the enactment of the Bill, and are of the view that it responds to the content of this year's Budget, and is in line with the proposal made by the Liberal Party in February this year when in conference with the Financial Secretary, namely, dividing the fiscal surplus into three portions, one for returning wealth to the people, one for the relief of the poor and the disadvantaged, and, finally, one to go back to the Treasury and to be invested for the future so as to pave the way for our long-term sustainable economic development.

The Liberal Party supports various concessionary revenue measures proposed by the Government, especially lowering the standard rate of salaries

tax and tax under personal assessment, as well as the corporate profits tax rate, and widening the tax bands, which are taken as moves by the Government to return wealth to the people at a time of fiscal surplus.

With regard to the proposal to lower the rate of corporate profits tax to 16.5%, the Liberal Party and I consider it conducive to our competitiveness. The Federation of Hong Kong Industries has previously conducted several surveys and studies on the business operations run by Hong Kong businessmen. It has been noticed that quite a few local corporations, attracted by the policies of other places which offer preferential tax rates, are thinking of leaving Hong Kong or have left already. This shows the importance of tax rates to enterprises. Of the different tax rates all over Asia, it seems that the profits tax rate in Hong Kong is only higher than that of Macau (Macau 0%-12%, Japan 30%, Singapore 18%, Malaysia 26%, Thailand 30%). When other forms of tax concessions or reliefs are taken into account, our tax rate is in fact less favourable than those of Singapore, South Korea and Taiwan, which are in our neighbourhood, in drawing in innovative high technology, strategic industries, and general overseas capital. So, I am of the view that in the long run, lowering corporate profits tax is conducive to our long-term economic development as well as to the creation of jobs.

Moreover, we should not forget that the proposal to lower the rate of corporate profits tax by one percentage to 16.5% is still 0.5% higher than that prior to the hike in tax rate by the Government in the year 2002-2003.

The corporate profits tax rate of 16.5% proposed by Mr LEE Cheuk-yan in the name of the Bills Committee will only be applicable to the first \$10 million of a corporation's annual assessable profits. The remainder will be subject to the existing tax rate of 17.5%. The Liberal Party and I are all against it. Hong Kong adopts low tax rates and a simple taxation regime. The relevant amendment amounts to changing the taxation system, making it complicated and converting it into progressive taxation.

The Liberal Party is against setting up progressive profits tax as this is very pernicious to our role as an international financial centre and the Asian Pacific headquarters of transnational corporations. One of the keystones of our success is the adherence to a system of simple and relatively low tax. Once the system is complicated by any change, not only will our business environment be affected and detrimental to the investment incentive among international

investors, it may even make some corporations to relocate their branches or head offices elsewhere.

Those supporting progressive taxation will argue that we are just asking corporations making more profits to pay an additional 1% tax, and that the tax rate is not high. However, it is necessary to understand that, from the standpoint of overseas funds, the tax rates will go up indefinitely upon the introduction of progressive profits tax, which will make Hong Kong less attractive to investors around the world. If it is held that the principle of affordability can never be realized without the introduction of the progressive system, I would like to say a few words in fairness to all: the current taxation system has already realized the principle of affordability, that is, companies making more profits are actually paying more tax. Hence, the Liberal Party disagrees with LEE Cheuk-yan with regard to his demand that additional profits tax should be paid by companies making more money.

For many enterprises, taxation system is an essential factor for deciding whether they will be enrooted and further expanded in Hong Kong. It has been noticed that over the past few years, nearby nations have, one after another, introduced tax incentives to attract foreign capital and entice enterprises into the development of innovative high technology. For instance, Singapore, Malaysia and Thailand have all introduced measures waiving one half to two thirds of profits tax, or even offering tax holidays of five to 10 years for some innovative high technology items.

To draw in more overseas capital, Singapore has even introduced tax incentives for newly established corporations, mechanism for tax offset in respect of foreign incomes, and a lower tax rate of 5% for Muslim financial institutions. In order to encourage innovations among enterprises, the Singaporean government will, with effect from 2009, set aside annually S\$250 million to implement three tax incentives for research and development, specifically catering to enterprises spending more than S\$0.15 million on research and development. The fund will be applicable to three new tax incentive schemes for five years to encourage innovations among enterprises. To maintain our competitive edge, the Government should, in my opinion, lower taxes, and even consider more targeted tax incentives.

With regard to waiving hotel accommodation tax, I think it is conducive to the growth of our tourist industry. There are members who think that to waive

hotel accommodation tax is unlikely to benefit hotel guests directly, or that hotel guests "do not mind" paying a 3% tax. My wish is for the members concerned to understand that hotel accommodation tax is not part of the room tariff. It is levied as a separate charge listed on the bill. There will be immediate benefit for hotel guests once the Bill is passed. Foreign tourists coming here to watch the Olympic Equestrian Events in August may all pay 3% less on the tax, which, in a different way, is going to promote their spending on food and beverages as well as on retail shopping. In the opinion of the Liberal Party, making amendments to the Ordinance for implementation before the Olympic Equestrian Events can make it possible for members of the industry to do more publicity work and improve their service so as to catch up with the Olympic tide in their best outfit. So, we support the Government's proposal to waive hotel accommodation tax.

Finally, I would like to offer my thanks to the Legislative Council Secretariat and the Legal Service Division for helping us examine this Bill and to participating members for their support and attendance as that made it possible for the Bills Committee to smoothly finish examining the Bill by holding just four meetings.

Madam President, these are my remarks.

MR LAU CHIN-SHEK (in Cantonese): President, this time, the most controversial point with regard to concessionary revenue measures certainly centres on lowering by 1% the rate of corporate profits tax and the standard rate of salaries tax.

President, as stated in the letter issued to Members of this Council by the Financial Secretary earlier on, the reason why the Government is thinking of lowering profits tax and the standard rate of salaries tax is that as there were tax hikes in 2003-2004 when we had fiscal deficits, it is only reasonable for the Government to bring in measures to lessen tax-payers' burden now when the financial situation has taken a turn for the better. On the face of it, the saying that "going through yesterday's crunch surely justifies sharing today's prosperity" sounds reasonable. It is particularly desirable if every employer holds the view of "sharing the fruit of profits with employees when the good time comes." However, the main consideration of the Government when formulating taxation system and tax rates is something else. It is because the

Government has to rely on reliable tax revenue and other incomes to maintain necessary social services, particularly in looking after disadvantaged social groups that keep cropping up and evolving in the process of social development.

President, the Financial Secretary is not merely the Treasury's "chief cashier". He is also the "politician" responsible for the effective distribution of resources of the community. On several occasions in the past, I have stated in this Chamber that a budget is not just arithmetic. How much tax the Government is to collect, upon whom the taxes are to be levied, how much the Government is to spend, and how the money is to be spent are all political issues. So, the concept of financial management presented to the people by a government with both vision and a sense of responsibility should not be merely one about "handing out money when loaded, but stretching out its hands to the people for money when it runs out of money." Instead, the people should be led to the discussion and acceptance of one whole set of long-term arrangement of appropriation covering the amount of tax revenue collectable by the Government, the types of tax revenue, the volume of services required from the Government, and those for whom the services are intended. In short, it is necessary to clarify the issues of "whence comes the money" and "whence goes the money."

President, of course, it is very difficult for the Government to lead the people to discuss and decide on this major issue. The recent consultation process in connection with the long-term development of health care and the reform of health care financing well reflected the predicament in this respect. Obviously, the people's expectation is for public services to improve significantly in both quality and quantity. However, when the question "whence comes the money" is also put to the people, especially with the possibility of having to get money from them, there immediately comes strong objection. Anyway, the Government cannot keep dodging this question.

As a matter of fact, with an ageing population, there is bound to be additional demand for social welfare and health care. Because of economic restructuring, there emerge a large number of low-income peripheral workers, who have strong demand for re-training as well as for creation of employment by the Government. Furthermore, a knowledge-based society also requires the Government to invest further in education. There are also all sorts of requests for improvement in areas like environmental protection, environmental hygiene, and food safety. Nowadays, the social role of the Government is bound to grow

in importance. That is to say, the financial resources required by the Government for community services and promotion of sustainable economic growth are bound to go up. This has got to be faced squarely, no matter how firm you want to stick to the principle of "small government".

President, even if we forget about the distant future and just look at the situation of recent days, it can already be noticed that the financial burden on the Government is going to grow steadily. The recent decision by the Government to waive the diesel duty levied on professional drivers to ease high oil prices is just one example.

What the Government must face now in particular is the trend of a steadily rising inflation that has been around for more than six months. It is already beyond the level tolerable by members of the general public. In particular, the increase in food costs has far exceeded a 2-digit figure, which has especially great impact on the grassroots. Discontent among the people is mounting. In my opinion, the Government should no longer imagine that the measures of "handing out money" in the budget earlier on are already good enough; nor should it delay till the coming October, when the Chief Executive is to present his Policy Address, before suggesting a resolution. Financial and administrative measures "for the curtailment of inflation and hardship relief for the people" should be put forward as soon as possible. If necessary, Honourable Members are prepared, I believe, to hold additional meetings of the Finance Committee to grant approval for the relevant spending.

President, it is invariably pleasing to have tax cuts. However, it is my firm belief that a good housekeeper should make sure that the Government makes good use of the resources available for the good of the social groups in need. Particularly, the lowering of profits tax and the standard rate of salaries tax by 1% on this occasion already cuts \$5.4 billion from the Government's recurrent revenue for the current financial year. At the same time, however, when asked to increase welfare for the elderly and implement measures for the relief of the people's hardship, the Government says, "Where can we find such money?" This definitely cannot convince the people.

President, I so submit.

MR WONG KWOK-HING (in Cantonese): Madam President, the Federation of Trade Unions (FTU) is against the Government's proposal to lower the rate of profits tax from 17.5% to 16.5%. For many years, FTU has been of the view that there should be progressive taxation for profits tax so as to bring into effect the principle of vertical equity. This is the principle of affordability. The tax revenue collected is to be handed out to the disadvantaged social groups. Over the last 10-odd years, because of our urban growth, and the Government's unfair policies, there has been serious curtailment on the survival margin available to small businessmen operating with small capital. Small shops previously running profitably around street corners or in back lanes have been replaced by big chain stores for reasons like redevelopment or rental hikes by the Link Corporation.

Madam President, under the Government's biased policy, the earnings of highly remunerative corporations have been escalating. In fact, about how to implement a progressive taxation system for profits tax, let's say in the year 2006-2007, corporations with an annual assessable profits exceeding \$10 million numbered only 4 300. Even if they are required to pay higher profits tax, corporations to be affected will be limited in number, making up just 5% of the corporations in Hong Kong required to pay profits tax. I think it is fair to levy more on them as they are earning more.

The local wealth gap is widening. In the first quarter of last year, those earning less than \$5,000 numbered over 490 000. The figure was over 520 000 by the beginning of this year, almost making up 15% of the working population. However, those earning more than \$100,000 a month numbered 35 900 in the first quarter of last year. By the first quarter of this year, the figure swelled to over 49 000. It can be noted from this that those with low income have increased; so have those with high income. The polarization of incomes is an undeniable fact.

Hence, one of the uses of Government's tax revenue is to eliminate poverty and relieve those in distress by helping individuals or families in need to survive in Hong Kong, where cost of living is high. It is, however, a great pity that our taxation system ignores fairness in taxation. With the taxation system not being progressive, our wealth gap is widening further, and the number of the poor keeps on growing.

The implementation of a progressive taxation system in line with the principle of vertical equity is good for the community, regardless of the economic situation. In the first place, when the economy is good, there will be more tax revenue for the Government. When the economy is bad, tax revenue going to the Government will shrink; so will the incomes of corporations. The amounts of tax payable will shrink too, which can stimulate an economic recovery. Its purpose is to maintain the gross needs of the community at a relatively stable level. So, a progressive taxation system is not at all good for nothing as the Government claims.

Madam President, these are my remarks.

MR SIN CHUNG-KAI (in Cantonese): Madam President, about this year's Budget, despite the Government's generosity, its policy on public finance still inevitably tends to get more and more conservative. Many people consider the Government to be a reversed Robin Hood, or just focused on returning wealth to the wealthy. As said by LAU Chin-shek, which I do not want to repeat and it was about the rich and the poor — last year, the Government notched a fiscal surplus of \$100 billion. Although the Government has indeed done a little better than before, there is still much room for improvement.

I must stress that although the Democratic Party finds some of the Government's concessionary revenue measures on this occasion worth supporting, the approach adopted by the Government is often infuriating. Surely, if the Government has no money, and cannot afford certain social expenses, the people will find that understandable. There can be no way to proceed when there is no money. However, when the Government has money, the first thing it does is to hand out money instead of improving social services.

When looking back on the Government's policies of the past few years, we can easily notice that whenever the people ask the Government to increase social services, especially those involving recurrent expenditure, the Government often uses certain words from the Basic Law as a shield, such as keeping expenditure within the limits of revenues, the need for the growth of government expenditure to commensurate with economic growth, and saving up for a rainy day. Although public expenditure in the year 2003 exceeded our gross domestic product (GDP) by 20%, by last year, due to the rising GDP and a tight grip on spending, the figure went down to 16%, reaching a record low in years. In

brief, if there is the so-called requirement that the increase in government spending should commensurate with economic growth, there is no such commensuration now, as the economic growth is faster than the increase in government spending. With spending lagging behind economic growth, it means fewer public services on the part of the Government in real terms.

Members of this Council all know that it is difficult to ask the Government to increase public services that involve recurrent expenses, such as increasing the Old Aged Allowance and nursing home places for the elderly. The Government invariably turns them down on the ground that the community cannot afford them in the long run, and it is only prepared to hand out one-off "red packets". Small class teaching is something for which struggles have been waged for years. The Government is just beginning to be prepared to carry out some of the suggestions.

However, in recent years, the Government has not increased services most needed by the grassroots of the community. On the contrary, the people are being "tapped". This is most unacceptable. In 2006, the Government introduced a consultation paper on sales tax. This year, the Government again introduced a consultation paper on health care financing. Both are proposals seeking to tax the people. According to both papers, as our population ages, and there is an incessant rise in health care expenditure, it is necessary to open up other sources of revenue. Both policies are identical in nature, that is, seeking "to stretch out the hands" to the grassroots who are currently not required to pay any tax.

If the Government indeed cannot cope with future expenditure and has to either increase tax or ask for contributions, the people will find that understandable and accept it, even though unwillingly. The Government, however, has fiscal reserves of \$500 billion. The Exchange Fund even has accumulative reserves of \$600 billion. There is actually ample room to ease the people's burden. However, the Government did exactly the opposite by charging new taxes and asking for contributions. The people cannot but look upon the Government as a miser always trying to snatch from the people.

More ironically, during the same period, the Government was being particularly generous to specific organizations or individuals. For example, the appointment of Under Secretaries and Political Assistants, which similarly would increase the Government's recurrent expenditure, was introduced, not only

without hesitation but also with generosity. The annual spending on their salaries alone will be close to \$50 million. The Government has said nothing about the fact that such an addition to the recurrent expenditure will add to the burden. In the same manner, the Government has in recent years abolished duties on wine and beer as well as estate duty. According to the logic of the Government, the tax base may shrink as a result of the abolition of these duties. The Government should not have done so. However, the Government put forward a list of justifications to argue that the move could boost the economy of Hong Kong. Having said so many words, we in fact only hope that the Government can give a little care to the grassroots.

On the one hand, the Government drastically lowers taxes, slashing more than \$10 billion from the annual revenue. On the other hand, it holds a tight fist even over a sum of \$1.6 billion. No wonder people have a feeling that the Government favours the rich.

Although the Democratic Party supports some of the concessionary revenue measures, it is believed that the Government should put in more resources to alleviate the people's burden. In brief, it is hoped that the Government can adjust government expenditure or public expenditure so that such spending, as a proportion of GDP, can be close to 20%. We are of the view that there are some measures which the Government ought to take. It is hoped that the Government can listen and consider our views once they are presented.

Firstly, we welcome the Government's move to set up within this year a health care fund of \$50 billion. However, we think a more comprehensive approach is to set up an Old Age Fund. Health care expenditure is just one item of expenditure generated by an aging population. Part of the spending on social welfare will also come under pressure in the future with an aging population. The people's greatest worry is that once the Government brings in health care contributions, their burden will grow, and the amounts required to be contributed will steadily increase too. In the opinion of the Democratic Party, the Government should set up an Old Age Fund, and make good use of the fiscal surplus and the investment return from the Exchange Fund so as to lessen the people's burdens from making contributions.

Secondly, we think the Old Age Allowance for the elderly should be increased. It has been mentioned here by many Members. This Council has

also had many debates on this. There is already a consensus. It is hoped that the Old Age Allowance can be increased to \$1,000, and I do not want to repeat here. The Government should in fact complete the relevant review as soon as possible.

Thirdly, we think there should be more nursing home places for the elderly. At present, it takes the elderly to wait for two to three years before securing a nursing home places. In fact, the Government can considerably increase those places and create low-skilled jobs by spending just a few hundred million dollars.

Fourthly, we think that the Government should provide interest-free loans to low-income tertiary students, and abolish the 1.5% risk factor interest payable under the non-means-tested loan scheme. There is no justification whatsoever for the Government to levy a 1.5% risk-factor interest on students making applications under the non-means-tested loan scheme. To put it bluntly, this can be called an accumulation of wealth by foul means because the Government has no justification to charge such an extra interest indeed.

Fifthly, there should be extra-curricular activity allowances for children. Several years ago, the Democratic Party suggested that the Government set up the Child Development Fund in the hope that the Government would subsidize children of low-income families for them to take part in extra-curricular activities and develop their potential so as not to let their families' poverty or inability to make payments compromise their development in this respect. However, the Government has merely taken the name of Child Development Fund, while parents who cannot make ends meet can hardly benefit from it. This is just impractical. My wish is for the Government to reconsider setting up extra-curricular activity allowances for children.

Sixthly, we hope that the Government will extend the eligibility of health care vouchers for the elderly. In the opinion of the Democratic Party, the eligibility for such health care vouchers can be extended to those aged 65. Also, it is more appropriate to lower the eligibility age from 70 to 65.

Seventhly, foreign domestic helpers' levy should be abolished. The Democratic Party is looking forward to an expedient abolition of the foreign domestic helpers' levy by the Government. In fact, this Council has had discussions about this. However, the Government has not accepted the idea.

Eighthly, our wish is that the Government will expeditiously bring in small class teaching. The Government has promised to implement small class teaching in primary schools. In the opinion of the Democratic Party, the Government may consider cutting, year by year, the class size in secondary schools so as to implement small class teaching in secondary schools for the benefit of parents, students and teachers.

Ninthly, sub-degree graduates satisfying set standards should be allowed to apply for interest-free loans for them to study abroad as there are not enough university places in Hong Kong. At present, it is still very difficult for many sub-degree graduates to enrol in bachelor degree courses. If this goes on, there will be a drain on our manpower. The Government should consider making loans to students meeting the required standards or up to certain level for them to pursue bachelor degree courses abroad so as to improve the quality of our manpower.

Tenthly, our wish is for the Government to extend the coverage of pre-primary education vouchers to all kindergarteners. It was good for the Government to introduce pre-primary education vouchers. However, it restricted the application of some students unnecessarily. The Government should let all kindergarteners, including those studying at private or privately-operated kindergartens, apply for the vouchers.

Madam President, do the many issues I put forward have nothing to do with tax reduction? They are related. In short, the Government is quick to reduce tax but slow to spend, or throws in restrictions and balks at spending. To the people, this is infuriating. The Government just keeps lowering taxes, and yet refuses to spend money on matters sought by us. I now take great pains to reiterate the ten areas on which the Democratic Party is most desirous for the Government to increase spending, in the hope that the Government will remember them. We in fact are not too keen about tax reduction. Tax reduction is just a refund to the society. To spend money on matters that so require can in fact stimulate the economic cycle too.

Madam President, our wish is for the Government to put into effect most of the aforesaid measures in the Budget to be delivered this March. However, I think what the people desire more is that the Government can be people-oriented and return wealth to the people. Members want the Government to understand this and we have again and again discussed the aforesaid measures in this

Council. However, the Government keeps turning a deaf ear to our words, or simply goes its own way.

With regard to the amendments, we are going to support some, including LEE Cheuk-yan on a 2-level system with the \$10 million threshold. We are going to support it. With regard to lowering the standard rate, we, in view of the huge wealth gap, object to such a move by the Government. In fact, the affected tax-payers merely make up 1% or so. Only those earning an annual income in excess of some \$1.40 million can enjoy the benefit of paying less tax.

MR LEE CHEUK-YAN (in Cantonese): I begin with the part that we, the Confederation of Trade Unions (CTU), support. With regard to the Revenue Bill 2008, we are in favour of widening the tax bands and increasing the personal allowances. It is because these moves can make the taxation system more progressive and, thus, render it more in line with the principle of affordability, which we have been advocating. As such, President, I first state our support for this part.

With regard to hotel accommodation tax, I made known my objection at the meetings of the Bills Committee. However, I did not pull it out for a vote because I heard that it was supported by many people. Hence, I did not bother to have it pulled out for a vote. As in the words of Mr Andrew LEUNG just now, waiving the hotel accommodation tax can benefit hotel guests right away with the Olympic Equestrian Events coming soon. But I doubt this very much. The reason is that hotels can raise their room rates immediately after the tax cut. There is utterly no set standards for hotel room rates, which are merely determined by the market. If there is a sharp rise in demand in the market and travellers have to scramble for rooms, room rates are bound to escalate. So, a tax cut of whatever scale will not bring any benefit to hotel guests. I, therefore, have to make clear one point. Waiving hotel accommodation tax ultimately can only lead to less revenue for the Treasury. There can be no benefit whatsoever for consumers or travellers. I have to make clear this point. I have not pulled it out for a vote mainly because many members, I noticed, did support it. So, I did not bother to do that.

President, we would like to make it clear that the objection to the Bill on this occasion is for the reason that it seeks to lower tax for consortia as well as

for "kingpin employees". We are adamant on this, and hope to get the support from you all.

First of all, I would like to point out that lowering profits tax and the standard rate of salaries tax is not a proposal of the Budget. Every person thinks it was put forward in the Budget. In fact it was proposed by the Chief Executive in his election platform. At that time, he proposed to consider lowering profits tax to 15%. So, the first point that I must remind fellow Members is the history of the measure so as to account for its origin. It was definitely not originated from the Budget. It is an out-and-out thanks-giving cheque from the Chief Executive to his voters. How much does this cheque cost? Bearing a value of \$5.4 billion, this cheque is signed by him together with all of us. If you agree to it, then you have a share in signing this cheque with him. The history behind it is that the Chief Executive had to win votes in a small circle election. As you all know, in this small circle of 800 persons, most are individuals paying tax at standard rate or consortia paying profits tax. So, such an item of the Chief Executive's political platform was definitely pleasing. Those people certainly voted for him. He now has to thank them for their votes. I wonder if you all want to do so with him. If you also think that our public resources should not be controlled by a so-called royal family, or that we should not thank voters for the sake of one person's election, then I think you should re-consider whether we should thank the voters for his sake.

On the other hand, President, we have another very strong reason to object to lowering taxes. At present, the greatest problem confronting the whole community is that both inflation and commodity prices are high. Those who are honest and hard-working cannot support their families, earning hardly enough to feed themselves. What's more, the wealth gap is so wide. So, the community is abuzz with grievances. On the contrary, rich people lead very good lives, and can look forward to very good future. They can even afford to be very extravagant. However, poor people can hardly keep their bodies and souls together.

With wealth so unevenly distributed, yet the Government still proposes to lower the taxes payable by the richest. What will the people think of this? Let me quote you some examples, and you can see how outrageous the Government is. I vividly remember that, so should all political parties, in the case of this year's Budget, everybody asked the Government to increase the Old Age Allowance by \$300. The Government, however, said "no" as an increase of

\$300 in the current year would grow into an amount of \$4 billion or more in 10-odd years. However, the current proposal to lower profits tax coincidentally also involves more than \$4 billion. According to the Government, the reason rendering it impossible to increase the Old Age Allowance was that it would involve more than \$4 billion. However, it did not hesitate one moment over the proposal to lower taxes. This is the first example. Will the elderly be convinced? Will the general public be convinced?

Here is the second example, namely, the issue of health care financing often put forward by Dr KWOK Ka-ki on behalf of the medical sector in pointing out the inadequacy of health care resources. The Government does not inject any money into the health care system; nor does it give any financial assistance in response to the high cost of medications. With regard to the recent topic on health care financing, there is suggestion asking wage earners earning over \$10,000 a month to make contributions of 3% to 5%. One of the consultation papers even spells out how much money 3% to 5% amounts to. They find it quite "a hard pinch" to have to make contributions of 3% to 5%, being really in no position to pay the sums out of their own pockets. The reason is that the burden is indeed very heavy. However, the total amount is merely \$6 billion.

Because of a sum of \$6 billion, consultation was carried out. The people are asked to pay out of their own pockets \$6 billion into the health care system. People are told to have mandatory insurance. People are told to save up. It is only \$6 billion a year. However, on this occasion, the entire measure of tax cut costs \$5.4 billion. I have been rather kind in putting it this way, the reason being that in future it will still cost \$5.4 billion a year. On the one hand, the Government asks wage earners for money for health care financing, but, on the other hand, it seems to be unmindful of the sum exceeding \$5 billion. Also, there is one very major issue, for which we have already criticized the Government when discussing the Budget. The point is that the whole matter gives people the impression that the words said to the very rich are always "Thank you, I love you"; whilst the words said to the poor are "It is difficult to take care of the poor for a long time, sorry. It is too bad you are poor, so just hang on." The whole message is like this.

Whenever there is discussion on expenditure, it is always like squeezing a tube of tooth paste. No matter how hard the squeeze is, nothing comes out. Just now Mr SIN Chung-kai listed out quite a few items. Earlier on I only mentioned two items. If they were indeed put forward one by one, just like

squeezing a tube of tooth paste, the Government would have said, "This is not okay. Although the annual spending is not much, it is hard to afford in the long run." We just want to squeeze out some spending in the way of squeezing a tube of tooth paste so as to help those in need. However, the squeezing is hard work. Well, let us reflect upon this. Tax cut is also very long lasting. Why doesn't the Government follow the same logic and say "no" to tax cut? In the long run, tax cut will slash several billion dollars from Government revenue. Why is it that the Government claims that it would not be able to afford in the long run whenever we strive to get more spending for the poor in need? How come tax cut is affordable? Why is it that it is totally okay and affordable in the long run to hand out money to the very rich? What sort of logic is this? Do you accept such arguments?

So, President, I very much want to carry out lobbying here. It is because several amendments later will be formally put to the vote. The first one is going to be that of standard rate of salaries tax. The Government proposes to lower it by 1%, which will lead to collecting \$1 billion less. Who will be affected? I sought information from the Government, and noticed that those subject to standard rate number 144 000, with 24 000 persons paying unincorporated profits tax; 19 000 persons paying salaries tax, that is, those kingpin employees; and the rest are property tax payers. It can be noted from this that these people are in fact leading very good lives. They constitute the most well-off group. Is it still necessary to lower their tax by 1%? This will result in a drop of \$1 billion in the revenue. This is the first item to be put to the vote later.

The second item pulled out for a vote is an amendment proposed by me and endorsed by the Bills Committee. It seeks to set two tiers of profits tax on the basis of a progressive system, one tier being 16.5% and the other being 17.5%. Profits below \$10 million will be subject to a tax rate of 16.5%. That is, 16.5% is applicable to the first \$10 million of the profits and 17.5% to the remainder. There is to be a two-tier system. The Liberal Party disapproves of it for the reason that such an approach runs counter to the simple taxation regime. I have one question for you all. What is simple? Is it simple to have just one tier? However, will you agree to it if it is so simple that it benefits consortia to the exclusion of small and medium-sized enterprises (SMEs)?

President, at present there is a very absurd phenomenon, which is that people often say our tax rates are low. However, when there is a comparison

with other places, the tax rates applicable to our SMEs in fact are not lower than those of other places. Only the tax rates applicable to consortia are lower than those of others. Let me quote you some examples. In Canada, SMEs' tax rate is 12%; that for big enterprises is 21%. In South Korea, SMEs' tax rate is 13%; that for big enterprises is 25%. In the United States, SMEs' tax rate is 15%; that for big enterprises is 35%. In France, SMEs' tax rate is 15%; that for big enterprises is 34.4%. In England, SMEs' tax rate is 0% to 19%; that for big enterprises is 30%. In the case of Hong Kong, both SMEs and big enterprises are subject to the tax rate of 17.5%. Given such comparison, the tax rate applicable to our SMEs tops the world whilst the tax rate applicable to our consortia is the lowest in the world. It is just the other way round.

The Liberal Party often clamours their position as the champion of SMEs. Then, why not keep the tax rate at 17.5% so as to be really nice to SMEs, and, on the other hand, subject them to a tax rate of only 16.5% so as to give concession to SMEs? This time I really cannot think of a way. If I could make a proposal, SMEs, in my opinion, definitely need not be subject to the rate of 16.5%, and paying 12% is fine. There is great difference between the two. If SMEs pay less tax, it can help them channel resources into local investment and the economy. Nowadays, consortia invest around the world. If the tax rate for consortia is lowered, the percentage of capital thrown in by them for investment in Hong Kong will definitely be lower than that of SMEs. The reason is that they may invest elsewhere. Where? We do not know as at present many consortia are multi-national enterprises. So, there is great difference between the two approaches. The situation in Hong Kong is absurd as the matter is ignored and a "across the board" approach is adopted. The simple taxation regime in fact is a taxation regime simply seeking to offer concession to consortia while exploiting SMEs. Hence, it is hoped that all of you will support us so as to set up a 2-tier system for our tax rates.

However, I find it most lamentable that this proposal of two tiers will definitely be voted down in the end. It is because the Liberal Party is still against it. In the event that it gets voted down, then nothing can be done. Right under our nose is the gravity of the wealth gap in Hong Kong. I call upon you all to say "no" to lowering profits tax. As a matter of fact, it is not just our labour sector that is against lowering profits tax. Even the business sector once mentioned "supporting poverty alleviation whilst seeking no reduction of profits tax." According to the business sector on the Commission on Strategic Development (CSD), this will not be detrimental to the business environment.

Even the business sector on CSD finds it not necessary to lower profits tax. Doesn't the Government always listen to CSD? Why does it have to thank them for their votes when the business sector also says that there is no need to do so?

So, President, with regard to our taxation system, we, after all, want to adhere to the principle of affordability and narrow the wealth gap through the re-distribution of resources in order to use them on those in our community who are in need. In my opinion, only this constitutes an equitable society. This is something needed to be done especially in Hong Kong, a place with such a wide wealth gap. Don't behave like facing squeezing of tooth paste in dealing with us and yet show great readiness towards the rich.

President, in due course I will deliver another speech on our amendment. I call upon you all to support the stand of CTU in this respect. Thank you, President.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, nowadays everything is expensive, with the price of every commodity going up. The burden of living on the middle class is indeed growing. In my opinion, to members of the middle class, this Bill of today is like timely rain.

The reason is that the Bill gives effect to a series of concessionary revenue measures for salaries tax proposed by the Financial Secretary in the Budget, including an increase in personal allowances and widening of tax bands, and lowering of the standard rate. Furthermore, there is arrangement for tax reimbursement. I think the burden on the middle class will be alleviated considerably. So, I support proposals on salaries tax contained in the Bill. However, with regard to the proposal in the Bill to lower profits tax, I think this is an area calling for further consideration. On the contrary, I find the proposal of one colleague to only lower the profits tax of enterprises making less than \$10 million profits more desirable.

According to the Government's estimate, a full-scale reduction of profits tax will result in an annual financial loss of \$4.4 billion on the part of the Government. Compared with this year's fiscal surplus of \$100 billion, the sum of \$4.4 billion is, of course, negligible. Well, how about next year or the year after the next? With this sum, there can be an increase of almost 10% in the expenditure of public health care. In such case, there will be no need for us to

discuss health care financing proposals any further. In addition, this sum can be used to provide subsidy for low-income people to help them get through a time of high inflation. To sum up, a slash of \$4.4 billion from recurrent revenue is indeed a matter calling for careful consideration.

Both the Financial Secretary and the Secretary for Financial Services and the Treasury have made the point that the purpose of lowering the standard rate of salaries tax and the rate of profits tax is to let small and medium-sized enterprises (SMEs) enjoy the fruit of our economic growth. We surely appreciate the thoughtfulness shown to SMEs by the Government. However, who are to benefit most from a full-scale reduction of profits tax? They are the giant enterprises earning tens of billion dollars a year.

According to IRD statistics, the 500 enterprises with the greatest profits every year in Hong Kong already account for more than one half of the profits tax. Should the Government just lower the profits tax of SMEs, the goal of helping SMEs can be achieved, and they can enjoy the fruit of economic growth. Also, the result will be one averting the need for the Government to lose so much recurrent revenue. That can be said to be killing two birds with one stone.

The Government often stresses that Hong Kong is an economic entity adhering to a simple taxation regime and low tax rates. That being the case, we would like to ask the Government a question, which is whether it is still necessary for Hong Kong to make itself more attractive to foreign investors by lowering the rate of profits tax. Or, put it this way. To further lower tax rate that is already very low will lead to loss of revenue. By how much can our competitiveness be improved at the end of the day? We really have to look into the cost effectiveness of this policy, and that is, whether there will be any corporations deciding to operate in Hong Kong because the tax rate will go down from 17% to 16.2%.

It is more advisable for the Government to work harder and act on other matters beneficial or contributive to our taxation system instead of spending time to convince Members to support the lowering of taxes or persuade them to oppose the amendments proposed by the democrats. Examples are the review of the Taxation Ordinance, something which I have been advocating; and the early conclusion with foreign nations' agreements to avoid double taxation. In my opinion, getting all these done is more meaningful than lowering taxes, and will prove to be more cost effective in promoting competitiveness.

Madam President, this year Hong Kong notched a fiscal surplus of \$100 billion. This is, of course, gratifying and laudable. However, in the Mainland are policies of economic realignment and control. Globally, economic growth is slowing down. We cannot guarantee that it is possible to maintain for the next few years this year's prosperity. The Government should get resources ready for possible challenges in the days to come. My wish is for Honourable Members to consider carefully the proposal to lower taxes for the reward of the middle class and SMEs as well as the Government's long-term balance of resources, and support the amendments proposed by the democrats.

Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Revenue Bill 2008 has two amendment proposals to the Inland Revenue Ordinance that are pertinent to people's livelihood and business environment. These two proposals seek, separately, to lower the standard rate from the existing 16% to 15%, and to reduce the current corporate profits tax rate from 17.5% to 16.5%. These two concessionary revenue measures are decisions based on the huge fiscal surplus that the Government is having, and in line with the proposal last year made by Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), which was to readjust salaries tax and profits tax back to the level of the year 2002-2003. Hence, DAB supports these two amendments, which are being seen as simple and direct measures returning wealth to the people.

In the Budget of the year 2008-2009, the Financial Secretary announced the unprecedented and most massive measures for the return of wealth to the people as well as for the support of disadvantaged groups. We applaud these. In our opinion, the Budget manages to respond to aspirations of the community, which will benefit the people as a whole. Looking back to the time when our economy was having a downturn, tax-payers made great contributions to stabilize the financial position of the Hong Kong Government. They even shared the pain of tax hikes at a time of economic downturn. At present, the financial position of the Government is better than what was expected. It is the right time to adopt measures for a more massive return of wealth to the people. The proposed revenue concessions to lower standard rate and profits tax rate are givebacks to tax-payers made out of good will in return for their willingness shown in the past to share both wealth and woe.

While examining the Bill in the Bills Committee, some members opined that the proposed lowered standard rate and profits tax rate should only be made applicable to people with medium or low incomes and corporations making profits not more than \$10 million. Their worry is that if the tax cut is made applicable to all without discrimination, the problem of wealth gap will worsen. We totally understand the problem of a widening wealth gap. However, to address the needs of the grassroots, we should put forward some down-to-earth pragmatic measures instead of narrowing the wealth gap by making proposal to change the taxation system. The reason is that changing the taxation system cannot whatsoever help the poor improve their incomes. As a matter of fact, in the current Budget, there are measures for the relief of the grassroots. For instance, the Government proposed to pay one month's rent for public housing estate families, provide one additional month of welfare relief, grant a subsidy of \$3,000 to the elderly, and provide electricity charge subsidy. These constitute a form of welfare enjoyable by most of the grassroots. It is the proper approach to deal with the problem of wealth gap.

On the other hand, we notice that if tax reduction is to be selective, such an approach will discriminate against some of the tax-payers who in the past jointly rode out the storm. This goes against the principle of fairness. All Hong Kong workers and enterprises alike have to put in mental and physical efforts for the sake of their posts or business. In the past, they too jointly contributed a lot of brainwork and effort to our economy. Regarding such contributions, there is no difference between the high income and the low income groups; nor is there distinction among large, medium and small enterprises. In the past, they also made huge tax payments. Why should they be rejected and discriminated against now when the Government is having huge fiscal surplus?

This time, the Budget has been able to go along with public opinion to share the fruit of economic success with the people. Also, all sectors are being taken care of for them to share the benefits equally. So, the Budget has smoothly won general acceptance of different political parties. If we now suddenly put in new clauses and smash the original expectations, this indeed runs counter to the inceptive principle of sharing the fruit of economic success with the people.

Furthermore, with the economy taking a turn for the better in recent years, the Government's financial position is beginning to improve, and a huge fiscal surplus has arisen. There is no more need for the Government to introduce

additional taxation regulations to bring in progressive taxation system to increase revenue. If a progressive taxation system is still introduced in a forced manner to put in unwarranted curbs on investment while there is indeed no need, such a move is going to jeopardize the good reputation enjoyed by our well-tested simple taxation regime. It should be noted that our investment environment is world famous. The simple taxation regime has always been one of its major selling points, giving investors all over the world the incentive to invest here. If the Government foregoes the reputation established over the years at a time of huge fiscal surplus, the loss will indeed outweigh the gain.

Hong Kong now has to face economic competition from the Mainland as well as from other Asian territories. Governments of different places have, one after another, introduced concessionary policies on taxation and investment to attract foreign capital. Now Hong Kong must expeditiously find a way to merge into the Pearl River Delta Economic Zone, and, at the same time, grasp the economic ties among the four places on both sides of the Taiwan Strait, and help to bring about an economic community between Hong Kong and Macau. Among all these regional economic relations, Hong Kong has got to play the leading role so as to meet the challenges from different Asian territories. Given the overall trend of investment, to bring in new taxation regulations now is to run counter to the general trend and increase our risks. In fact, before the introduction of additional taxation regulations, there have got to be thorough and extensive discussions. To hastily set curbs on the concessionary measures merely after discussions at the Bills Committee but without extensive consultation or study will lead to even more troubles, with the possibility of delaying the implementation of the Bill, one originally for the benefit of the people. This is not something that we would like to see.

Madam President, DAB supports the Bill. We, for reason of the views given above, disagree with amendments proposed by the Bills Committee. Thank you, Madam President.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, this year is my thirteenth year in the Legislative Council. This time it is about profits tax as mentioned in the Budget. As a matter of fact, ever since I first joined the Legislative Council, the Federation of Trade Unions (FTU) has been holding the stand that profits tax should, as in the case of salaries tax, be levied on the basis of vertical equity and progressively. I still remember that at a former time I

proposed to the then Financial Secretary — Donald, today's Chief Executive — that the tax rate applicable to gross profits in excess of \$5 million should be higher and that tax rate applicable to gross profits not more than \$5 million should be lower. That was proposed by me then. As the economy of the society grows, the figure set by us in recent years is gross profits of \$10 million. Why do we have such an idea? The reason is that it has come to our notice that personal allowances for salaries tax gradually give rise to tax bands on the basis of different salary points. So, as we can see, he who earns more pays more tax. Likewise, can profits tax follow the concept that he who earns more pays more tax?

We, therefore, discussed for a long time. It is very much hoped that the Government can hear that we today support Mr LEE Cheuk-yan's proposal. I very much hope that his amendment can be passed. However, my guess is that it is going to be difficult. Anyway, my wish is for the Secretary to understand why this faction of us is holding such a view. Likewise, we have discussed for a long time about asking the Government to increase the amount of personal allowances of salaries tax so as to revert it to the level of the year 2002-2003, and to widen the tax bands. In recent years, there have been a lot of discussions about this. Not until the present occasion has it been done. Hence, I find it laudable for the Government to have the amount of personal allowances of salaries tax restored to the level of 2002-2003 in the present Budget. I also applaud the widening of tax bands.

However, here comes the problem. In dealing with profits tax, the Government not only fails to follow the direction of the principle of vertical equity which we have mentioned, something with a progressive perspective, but even ventured to lower that tax by a small margin. I really would like to tell the Secretary the actual situation. The Budget's policy on tax cuts that benefits the grassroots, wage earners and members of the public has brought positive reaction, and the Government should be able to see that. Why does it finally give people the impression that it has to lower profits tax to benefit those tycoons who are too well-fed to bend and put on their socks? The poor cannot even get a little more. There is no increase in, say, the Old Age Allowance. In circulation are words of resentment saying that the government only seeks to butter up businessmen but is oblivious to the plight of the common people. As far as this move is concerned, there is, in my opinion, something wrong with government officials in charge of taxation.

At first, with the Government doing what I mentioned earlier on, which is to restore the amount of personal allowances of salaries tax to the level of 2002-2003, we all applauded. All expressed great pleasure when the widening of tax bands was mentioned. However, the above measures got shadowed because of the Government's intention to lower profits tax. Now the people find the Government's move very wrong. I am of the view that as there is such a doubt among members of the public, if the Government cares about public opinion (at present the Government often claims to adhere to public opinion), this should warrant consideration.

Madam President, about profits tax, as a matter of fact, before the release of the Budget, it was already known that a famous businessman once openly said that he did not mind paying more tax and that what mattered most was the availability of business. They are not words from my mouth. They are from the business sector. With these words in circulation, I wonder how the Government made the judgment. When the Budget announced all the tax cuts, including the lowering of profits tax, there were even words from businessmen saying they cared little about reduction in tax — these words were published in newspapers, not mine. I cannot help asking a question, "What is the Government doing that for?"

In fact, many countries also collect profits tax. Take a look at Korea, Taiwan, Singapore, England and the United States, and so on. They all levy corporation tax on a progressive basis. However, the attractiveness and competitiveness of these countries are absolutely not second to ours, especially Korea, Taiwan and Singapore, which are places well known to us. They all do so, but that has not given rise to a lot of problems. I, however, do not deny that they too use this instrument — profits tax — to get the best way out.

However, our profits tax rate is not very high at present. That is to say, our rate is already very low. If the Government is to make further reduction, it will go down from 17.5% to 16.5%. Please take a look. Profits tax rate in Singapore is 20%. Profits tax rate in Korea is 27.5%. In the case of Taiwan, it is 25%. Why is it still necessary for us to make the reduction? Doing that merely results in people's condemnation that the entire Government only cares about businessmen. Now many people are saying — those businessmen are so fat that they cannot even put their socks on, but the Government still lowers their profits tax; the grassroots are so poor that they almost have nothing to eat, and yet there is no benefit from the Government for them. I wonder whether the

Government has drawn on the experience of other countries when assessing public opinion. Why does the Government still insist on doing so?

I would like to emphasize another point. Neither are the tax rates in the aforesaid countries set "across the board". They aim at drawing in industries which their cities or countries seek to attract — they resort to concessionary revenue measures to attract value-added innovative technological industries. I would like to ask the Secretary something. Today, profits tax is to go down by 1%. Please give us an answer later whether it is for the purpose of drawing in investors to Hong Kong for investment, and how many investors have come. The Secretary is bound to say that the outcome is unknown as the lowering of profits tax has yet to be implemented. Then, can the Secretary guess how many there will be? An insensible cut can only lead to jeering from the people, or the people's comment that the Government only cares about businessmen and ignores the grassroots. Then, why has the Government to do that? Strictly speaking, this is stupid as neither side can be pleased. This is a very typical act of the Government.

Madam President, the Government and some people object to profits tax for the reason that this is a progressive taxation system. Their views come essentially in two aspects. First, big corporations will split up into small corporations to dodge the progressive taxation system. Second, progressive taxation system involves intricate calculation. I believe any change can bring about different situations. But I think there is no ground for such a conclusion. It should not be so simple. I find it too simple and devoid of academic reasoning. We have studied this taxation system for over 10 years, constantly exploring here and there. Our feeling is that in saying such words, the Government only seeks to cover up the move to lower profits tax. There is no other reason.

With regard to the claim about the computation intricacy of a progressive taxation system, we see no problem in this at all. In the first place, in the year 2006-2007, there were 74 200 corporations paying profits tax in Hong Kong. Out of them, those with assessable gross profits in excess of \$10 million only numbered 4 300. That is to say, the figures are some 70 000 and some 4 000. The numbers being so small, it should give rise to no problem. What is more, our existing taxation regime is a simple one. There are thousands of professionals to help corporations compile tax returns. Moreover, more and more people can do it without turning to professional firms. In short, whenever

a corporation is to file tax return, there is always an even better way to outwit the ever improving law. They have many ways to help corporations avoid paying tax. So, there are a lot of qualified people for those wishing to hire experts to audit the full accounts of corporations and file tax returns. In other words, no matter how complicated or simple the accounts of a corporation are, it is still necessary to hire someone to handle all the accounts in order to avert the need to pay too much tax. Hence, the corporation only has to hire a few more persons. Why should the Government be so calculating? Moreover, if seen from this perspective, it can create more employment opportunities for wage earners. This is probably something good. I, therefore, wonder why the Government has to be so calculating.

Madam President, having come to this point, I really hope that the Government can understand our situation. The Government is likely to win today. Just now I told my colleagues outside that the Madam President said at most the meeting today would last till 10 o'clock. Other colleagues said, "That is impossible, Sister Han. Perhaps it will last till 11 or 12 o'clock." Everybody knows that 9 pm is the deadline that I do not want to cross. It is because I want to go home earlier for sleep tonight so that I can come here for meeting at 9 am tomorrow. Then a Member said, "Sister Han, you may leave first." I said, "Although we have just three votes, my guess is that upon my departure, the Government is going to defeat not just the three votes of ours. We will lose." Why do I still stay on to attend the meeting? It is because I support LEE Cheuk-yan's amendment today. Though certain of defeat, I still stay in the Chamber. Even though it well passes the deadline set for my rest, I have the feeling that I still very much want to speak out for the grassroots. Why does the Government benefit those earning excessive profits — never before have I made reference to those so-called businessmen who cannot even put on their socks; today I, for the first time, repeated the same words, something in fact said by grassroots — Why not care for the poor? Why not increase the Old Age Allowance? Why this and why that

Madam President, regarding the Budget, it has also been my practice to convene meeting with residents to listen to public opinions. The topic discussed also included health care financing. According to the opinion of the grassroots, that was very, very, very terrible. So, even though tonight's meeting is likely to last till very late, Madam President, I think it is hard to adjourn the meeting around 10 o'clock. By the time I finish speaking, it will be five minutes past 10. There is every chance for the meeting to go well into 12 o'clock, and yet it

is not sure if it can end. Anyway, I will hold on, even though we will lose. I, therefore, would like very much to tell the Secretary not to just note that in recent days whenever Members speak, the whole lot of us also stand up, but also that on every occasion, the confrontation seems to be with Secretary Mr CHAN. I would like very much to tell you, Mr Secretary, that it is not so. I have been expressing such opinion for 10-odd years, from the time when the Chief Executive was still our Financial Secretary right up to now. So, it is very much hoped that the Government can understand the mentality of this group of ours. Do understand the mentality of the grassroots.

Madam President, in fact during the same period, the Government once promoted the idea of sales tax. At that time, FTU also went against it. On this, ever since the 1980's when I served Hong Kong Department Store Employees' General Association as a board member (now as President), we have had arguments with the Government over sales tax. We clearly stated the difficulties faced by the industry. Last term, when Henry TANG was the Financial Secretary, we also argued for a long time. To be honest, we are against sales tax. Here is the reason. The said tax can affect many business operators and many consumers. Also, there will be something we are most reluctant to see. Say, when we buy a bottle of water. The sum of \$3.2 paid by Mr LI, the person with hundreds of billion dollars, is subject to a tax of \$0.2. We also pay \$0.2 in tax when buying that bottle of water. A poor old man or woman also pays \$0.2 in tax when buying that bottle of water. This runs counter to our principle requiring those earning more to pay more tax. This is also the main reason for our opposition to sales tax. Such a move can only widen our wealth gap.

Madam President, I am of the view that by now even the Government says there is a need to review the taxation system — the Government says so occasionally — thus I want to bring in such words of the community. We are not doing some random shooting. Instead, our target is on how Hong Kong can use taxation as an instrument to prevent further widening of our wealth gap; on how to use taxation as an instrument to help the helpless in the community; on how to materialize the community's support for the grassroots through taxation. So, with regard to this point, the proposal for reduction of profits tax, we definitely disagree. Madam President, these are my remarks.

MR RONNY TONG (in Cantonese): President, the most controversial point in the present Bill is certainly the issue about concessionary revenue measures. Because of this issue, we in fact have had a long struggle. I have been a Member for four years. The Government's indifference to predicament of the grassroots has all along been distressful to me.

Over the past four years, the Government has almost invariably turned a blind eye or deaf ear to motions about the lower classes. Given such a situation, I wonder if we should oppose this Bill.

President, several weeks ago, I sat down and asked myself a very basic question, "For what purposes does a government collect taxes?". The answer is in fact very simple. In the age of feudalism, a government collected taxes in order to increase the king's wealth. However, in the case of modern society, no government, I believe, collects taxes for the purpose of increasing its wealth. The collection of taxes is for the purpose of giving the government enough resources for it to discharge its responsibilities to the community. In a civilized society, the sole responsibility of most government in fact is to promote economy and take care of the disadvantaged. In the area of promoting economy, this Government of ours can be said to be barely up to par. It is, however, absolutely not up to par in taking care of the disadvantaged.

The question is whether we have enough money. If there is not enough money, it is absolutely acceptable for us to collect taxes or even raise the tax rates. However, the situation is not so. Our fiscal reserves stand at more than \$1,000 billion. Every year, the Government invariably says that — that is, over the past few years, with the exception of the time of the SARS outbreak — there would be deficit. However, instead of deficit, the profits made could actually fill up every barrel. Last year, the fiscal surplus even amounted to \$100 billion. The calculation is so off the mark that it is indeed seldom heard of elsewhere in the world.

President, here is another point for consideration. Several weeks ago, a friend who runs a small or medium enterprise (SME) talked to me. He asked me, "Ronny, why are you against tax cut?" I replied, "My dear brother, see how unreasonable this government is. It is not willing to increase the Old Age Allowance by \$300. Why does it still lower the tax? Can't you see the huge wealth gap in Hong Kong?" He said, "Ronny, I have nothing to do with the wealth gap. Nor is it my responsibility. Every year, I donate a lot of money

to charitable organizations." Then he added, "You think it over. If the Government is to say tomorrow that there is not enough money to take care of the elderly in Hong Kong or grant them the Old Age Allowance, I am prepared to make contributions. However, the problem is that the existing situation is not like that. The Government has fiscal reserves amounting to more than \$1,000 billion. Why does it still levy so much tax? Is it going after fiscal reserves of \$2,000 billion or even \$3,000 billion? As far as we are concerned, why is it necessary for us to do so? It is not that we are not willing to discharge our social responsibility. However, you oppose tax cut to force the Government to look after the disadvantaged. Is this justifiable? Will the Government stop doing that following your opposition?" I was immediately rendered speechless, President. My feeling is that logically it is hard to prove his words to be wrong. Then he continued and said to me, "Ronny, this in fact is not an issue about the taxation system; it is an issue about the political system. It is because our government is not one elected by the people. It depends on the business sector. If you want it to be a more equitable society, the only way is, instead of saying no to tax cut, to continue the fight for universal suffrage." When he came to this, it was even more impossible for me to repudiate him.

President, I think this theory is sound logically. Should we punish those in the community who are more successful so as to make up for the Government's crimes? The Government is irresponsible. Is that tax-payers' fault? If not, why must we say "no" to tax cut at a time when the Government is having a huge fiscal surplus? President, this is a question hard to answer.

However, President, there is another issue that we must consider. Article 108 of the Basic Law explicitly says that the HKSAR Government should pursue a low tax policy. Having made mention of Article 108, I must say a few words although I will talk about it again in due course. According to the Liberal Party and LEE Cheuk-yan, Hong Kong has a simple taxation regime. But I am sorry to say that Article 108 makes no mention of simple taxation regime. One cannot find these few words even if he goes through the entire document. They are non-existent. There is, however, mention of low tax system.

The Government now has a lot of money, some as bank deposits and some for speculation in the stock market. Yet, it is reluctant to lower taxes. Well, is it again correct to do so? I find this a question hard to answer. I totally agree with the speech delivered by Mr LEE Cheuk-yan just now. I find it very

persuasive, but ultimately I am unable to make my way through the logic that I questioned myself with, that is, who is to blame for Hong Kong having so many poor people now? We, the Civic Party, do not just represent a certain sector. We represent the entire community. If those who are economically successful here are not at fault, why should we say "no" to tax cut to punish them? Madam President, for this, I think it is very difficult to find an answer.

On the other hand, President, if profits tax is to be reduced, we can indeed further broaden the difference between ours and Singapore's profits tax rate. On this, as far as South-east Asia is concerned, I think this can increase our competitiveness, and attract foreign capital to come here for investment. However, will the final result be of help to the poor? I really do not know. Anyway, at least I know that some Hong Kong people will benefit from it.

Regarding salaries tax, President, those subject to the standard rate only constitute a minority in Hong Kong. They are also the more affluent ones. However, the logic just now cited by me is similarly applicable to them. So, with regard to this very basic question, it is very hard for us to object, especially at a time when the financial situation of the Government is so sound. By the same token, if we today support this Bill of the Government, one on tax cut, can the government tell us tomorrow that there is not enough money to do things? I do not think it should even give this a thought. If the Government should tell me tomorrow that there is not enough money to do things, why should it lower our tax today? The Government should do a thorough computation for the entire account.

Hence, if support is given to this Bill today, from tomorrow onwards, the Government will not be able to use this excuse to explain to us why it cannot help the disadvantaged in Hong Kong. The only reason to prove or to be known to Hong Kong people will be that the Government and the Chief Executive are unwilling to do that on account of their indifference to the predicament of grassroots.

President, based on the same logic, I ought to oppose Mr LEE Cheuk-yan's amendment. The logic is the same. However, we have long been strongly in favour of having a progressive taxation system in Hong Kong. I think only this is really in line with the principle of affordability. I do not believe that under the Basic Law, progressive taxation system is against the spirit of the Basic Law. There is definitely no violation of the clauses, as explained

by me earlier on. Throughout the entire Basic Law, there is no provision prohibiting progressive taxation system; nor is there stipulation for a simple taxation regime. A progressive taxation system can also be a low-tax system.

If the principle of affordability mentioned by me just now is to be satisfied, a form of progressive taxation system is more helpful to SMEs, but less so to consortia. I think this is also an argument worth supporting. So, we are going to support Mr LEE Cheuk-yan's amendment. However, with regard to the Bill, it is hard for us to say "no".

Thank you, President.

DR KWOK KA-KI (in Cantonese): Madam President, a fiscal surplus of \$125 billion should have filled us with joy. There being so much money, it can be put to good uses. However, the current problem is that the Government's management of public finance makes us feel ashamed. Out of the sum of \$125 billion, payments for the benefit of most of the grassroots, such as rent reduction, rent waiver, subsidy on electricity tariff and reduction in rates, as well as CSSA payments, are either one-off measures or one-month grants. Yet, four tax items, that is, profits tax, standard tax rate, duty on wine, and hotel accommodation tax, receive permanent reduction.

Just now much has been said. I do not know whether Mr LEE Cheuk-yan has seen this. The Chairman of the Hong Kong Hotels Association also said that to lower hotel accommodation tax is to have much ado about nothing. The reason is that hotel room tariffs are always determined by supply and demand. Nobody is mindful of the levy of a hotel accommodation tax of 3%. Hence, such a reduction is injurious to others but not beneficial to oneself. The amount to be given up is \$350 million, a sum neither too small nor too big. However, to the poorest in Hong Kong, a sum of \$350 million is indeed a lot of money.

Just now, someone said theoretically the Government should not collect money from the people after having the tax lowered. The fact is certainly not like this. The Budget was just released on 27 February. Released on 13 March was the proposal on health care financing. Many figures were piled up there to make false representation that in 25 years health care services are going to cost \$186.6 billion and that the ones earning more than \$10,000 a month must take out 3% to 5% from their salaries to pay for health care expenses

themselves. At present, one earning \$10,000 a month pays less than \$300 a month in salaries tax. In the days to come, however, \$6,000 will be payable towards health care financing. That is 20 times as much as his tax payment. In the case of a couple earning \$25,000 a month, tax payable under the existing tax rate is less than \$5,000. However, upon the implementation of health care financing in the days to come, the husband and wife will have to pay altogether \$15,000, which is three times as much as their tax payment. This is one of the examples showing contradiction between the left side and the right side.

It should have been reasonable for me to be supportive if there was no further request from the Government for the people's money following the lowering of taxes, including not getting money from the people for crucial health care services. However, the current moves by the Government resemble a split of the brain into left and right halves, with each working on its own but totally opposite to the other. On the one hand, it thinks that there is no money. On the other hand, if it thinks that there is no money, why does it still reimburse people for the tax paid? With four tax items slashed this year, profits tax, salaries tax at standard rate, duty on wine, and hotel accommodation tax cost the government \$4.4 billion, \$0.9 billion, \$0.58 billion, and \$0.35 billion respectively. Mr LEE Cheuk-yan, the total amount not only exceeds \$5.4 billion, but also more than \$6 billion, exactly the same amount of \$6 billion being sought by the Government for the days after 2012. However, this sum of \$6 billion and that sum of \$6 billion affect totally different people. This sum of \$6 billion is to be contributed by all wage earners making about \$10,000 a month.

The Government is sitting on \$140 billion. The fiscal surplus of the next five years is expected to be more than \$238 billion. If we talk about the "fattest" persons, apart from the consortia, the Government is the fattest of all, who still tells the people that looming ahead is great difficulty as health care and other areas all pose big problems. What will this result in? This is to divide the people into two categories. Those earning less than \$10,000 a month will be asked to give money, with the rhetoric that after making payment, they can have choices and go to public hospitals as private patients for better services and shorter waiting time. To be placed in the "general group" are the other 5 million people. Patients are thus being rigidly divided into two categories. Should a responsible government do this sort of thing? Though holding almost \$2,000 billion, the Government still claims itself poor.

Why do I say that the Government is somehow suffering from schizophrenia? When we discussed GST (Goods & Service Tax) two years ago — the Government at that time had not lowered profits tax and standard rate yet — what was the justification put forward by the Government? The Government said it was because the tax base was too narrow, and that there might be problems in the long run if it as it would not let Hong Kong maintain financial stability. So, it was necessary to bring in GST. With the lapse of two years, it totally forgets the words that it once said, making no mention of all the justifications concerning this issue. Following the release of this year's Budget, the Commissioner of Inland Revenue still came forward to say that our tax base was too narrow, and that it was definitely necessary to think of a way. I would like to ask her to see clearly what have been proposed in the Budget. Are these policies going to make Hong Kong more stable, and the public services better? The problem lies not in collecting just a few billion dollars less.

As reported in the newspapers, some of our colleagues have had discussions with major businessmen. In fact, to those doing business or individuals on high pays, such as those with an annual salary of \$1.50 million, the amounts payable under that 1% of profits tax or standard rate do not mean too much. They would rather the Government make good use of the money to solve all the existing problems, including health care issues, welfare issues, wealth gap issues, and issues confronting low income people at a time of high inflation.

The Government shirks its responsibility, and shifts it onto the people by saying that the Government has not got enough money, and that the people had better solve the problem themselves and make contribution on their own for health care financing. Nowhere in the world can we find a system in which contributions are made solely by employees whilst employers and government contribute nothing. But our Government has innovated such a system. What's more, its words are inconsistent. If the community is able to see in the aftermath of the tax reduction that the Government is indeed fair and can really help the people, it will be fine, of course.

Let me read out this year's accounts of the Hospital Authority (HA) — \$125 billion, which is a lot of money, but the increase set aside for HA is \$0.78 billion, which does not even represent 1% of the fiscal surplus. It only represents 0.6%. Mr Ronny TONG, you can understand why we, physicians working in hospitals, find this Budget so infuriating. Hospitals have no money

to buy drugs. Psychiatric patients are taking the worst medications. Cancer patients should not expect too much. Buy your own drugs if you like. With regard to medical appliances, sorry, no replacement for the time being. Now they even have health care financing proposals. If a society is able to give patients the feeling of being cared for, then I, being a physician, should not object to any government proposal. However, it is not like that in reality.

Of course, logically had the Government been mindful of logic, it would not have been necessary for me to speak so angrily. I do not know what its logic is. Anyway, I am very clear about whom the sum of \$6 billion will be given to. As for profits tax, 80% of the tax is paid by local consortia that make the most profits. Even if profits tax is reduced, in fact they will not thank the Government. Hence, there goes the saying, "Making much ado about nothing." Why has the Government got to do such things? If the Government is able to put money to good uses and successfully solve all the problems, tax reduction is going to be very meaningful. However, in the financing report, the Government states that in the long run the spending on health care services will have a problem, that the Government can ill-afford health care expenses and that it is thus necessary for the Government to ask the people for money. Exactly because of such inconsistency in saying things, it is impossible for me to accept these proposals of tax reduction. Otherwise, the Government can allege that we have made one more step to becoming killers. It is then prepared to further lower the taxes. When it is later necessary to arrange financing, we will also be held responsible. Seldom will a far-sighted government with sense of responsibility act like this.

The ideas mentioned at the time of the discussion about GST two years ago are all gone. The Government puts on its own straightjacket, claiming that there can be no increase in public expenditure. Why is it so funny? Doesn't it take into consideration the actual needs of the community? In fact, nobody says low tax rate is something bad. However, our tax rates are already quite low even without the cuts, quite low indeed for developed places.

As a matter of fact, very few people would measure things purely on the basis of the lowering of profits tax. Let me quote an example, of which the Secretary knows better than I do. In Macau, the profits tax rate is 12%. There is no salaries tax. However, it does not appear that all the consortia have set up their regional head offices in Macau. Surely, they will not. They have to look at the entire structure. How possibly can the Government do some

simple arithmetic, and then say that this is the only way to improve our competitiveness? For the purpose of improving competitiveness, many things are required to be done, such as to provide better education and health care services, to deal with the wealth gap, and to make the society more stable. Only such a society can show better competitiveness. It is meaningless just to lower the taxes to foist money upon those basically not having the greatest needs.

Nobody objects to government measures like widening the tax bands and increasing personal allowances. We will not object to them because such measures can help those in the community who are most in need. However, the Government specifically lowers profits tax, standard rate, duty on wine and hotel accommodation tax. These can be of no help to them. If the Government really wants to help them, there are still a lot of things to be done. As stated by me earlier on, it is not a problem to levy progressive profits tax. We even think that the Government should further lower this tax in respect of SMEs whilst the rate of such tax should go up for consortia making high earnings so as to be in line with other places. Only this is right and worth doing. The discussions have been in progress for a long time but there is no action by the Government at all. The same tax rate is applicable to the ones making tens of billion dollars as well as to the ones making a few hundred dollars. This is fair on the face of it. In reality, this is unfair.

At present, the Government is still cheeky enough to collect from the people all sorts of monetary contributions. Those to be ultimately benefited are still the ones in the business sector. As a matter of fact, contributions towards health care financing will first be passed onto those engaged in mandatory provident fund operations for "savouring". Private insurance companies are to have the second round of "savouring". Only after that will they be passed onto patients for use on them. I implore the Government not to do so. If the entire Government is tilted towards the business sector, at the end of the day the Government will catch fire.

I do not believe that the people find the Government well-intentioned. They can tell. Those given to the people are one-off. Once it is received, no more will follow. Those given to the richest are everlasting. Such attitude will not make Hong Kong more harmonious. We definitely should not do such things if we want our community to be harmonious. As a matter of fact, few people will be pleased with the Government's acts. Even the richest do not appreciate such acts very much. Many members of the business sector have

also said that they would rather Hong Kong have better health care system, better educational system, and better social welfare and security system.

Besides, we have many hostels, disabled persons and children with learning difficulties. Basically, the Government gives them very little, or, as it can be so described, zero, attention. In the case of psychiatric patients, the ratio for which we can prescribe new drugs is still under 40%, which is quite low. To put all these bluntly, the Government in fact has no wish to work on these things. However, as we all understand, the Government seeks to cut taxes to thank its supporters in the business sector, those of greatest influence in Hong Kong as well as those being jeered by us as the ones who are so fat that they cannot even put on their socks. I am not going to support such financial policy and tax reduction proposals.

These are my remarks. Thank you, Madam President.

MS EMILY LAU (in Cantonese): President, Hong Kong is now sitting on fiscal reserves of more than \$1,000 billion. The economy is said to be very good. There is a drop in unemployment, too. Then how come the Government's proposals to lower taxes have stirred up surging waves? It is not just today's debate. The Secretary also knows that at every meeting of the Finance Committee, the session will just go on and on whenever the discussion is about welfare issues. There is no end to the matters for discussion. I wonder if we have to ask whether there is something basically wrong with the administration of the SAR. Rich though it is, it has aroused so much fury.

President, when I recently chatted with a friend from northern Europe, he asked me why the disparity between the rich and the poor in the HKSAR was so serious. Some people think that disparity between the rich and the poor is a global trend. He says that it is not true because the situation is not so serious in certain countries and that the gap in their national income is not so wide. Perhaps their citizens are well-educated. Some work as professionals or businessmen while some work as the so-called "craftsmen". However, there is little disparity among their pays. What's more, they all pay high taxes, but the division is not so serious. Well, the HKSAR perhaps takes pride in this.

At present, more than a million people in Hong Kong are living in an abyss of misery. However, our Government is unwilling to do something more

to help them. I, therefore, very much agree with what Dr KWOK Ka-ki said just now. I myself also heard some high-income people say that they in fact do not mind doing something more to help the poor. It is because numerous people have seen elderly aged between 70 and 80 dragging paper boards along the streets, or doing other chores. I often see some old women aged between 70 and 80 selling flowers at cemetery entrances, too. How come things are like that in Hong Kong? Is it that we do not have money to help them? Surely, it is not the case. Under such circumstances, there is the consensus that we, being so rich, had better lower the taxes to leave wealth with the people. However, we are now talking about whether to leave wealth with the "wealthy".

What Mr LEE Cheuk-yan said just now is also very correct. He said the cuts on profits tax and standard rate, the two currently most controversial items, were put forward by the Chief Executive at the time of the so-called small circle election. So, the Financial Secretary had that frankly spelt out in the Budget. According to him in paragraph 165, on salaries tax and tax under personal assessment, the Chief Executive announced in his Policy Address the lowering of the standard rate of salaries tax. That means \$960 million. Also, according to him in paragraph 170, the Policy Address also announced the lowering of the corporate profits tax to the tune of \$4.4 billion. With regard to the others, President, if you remember, the Secretary used the words "I propose" or "I further propose" when speaking on each of the items. Only on the two items did he explicitly say he had no choice as the Chief Executive had made the announcement. However, once the Chief Executive attended a question-and-answer session and said — President, sitting next to him then, you certainly remember — "I am in no position to influence the Financial Secretary in his preparation of the Budget. Even if I have the time, it does not necessarily mean that I can see what he is doing." He actually said one thing and meant another.

Moreover, the Financial Secretary did consult us before drawing up the Budget. However, his hands were bound. What was the consultation for? In fact the Chief Executive had already given him instruction on what to do. We, the Frontier, all along advocate levying progressive profits tax. As to the standard rate, the Commissioner of Inland Revenue has told us who are paying standard rate. In the year 2007-2008, single persons earning \$2.75 million a year were subject to the standard rate. President, to be honest, such persons probably include the Political Assistants of the current Under Secretaries, but certainly exclude us, Legislative Council Members. In particular, we Members

with only one source of income, are definitely not included. President, I strongly believe that these persons, as mentioned by Dr KWOK Ka-ki, do not mind paying 1% extra tax. To be honest, for such people, making such payments is just like throwing a few coins to the ground. I wonder if these rich persons really care.

Furthermore, with regard to collecting taxes, as I have repeated many times, it is easy to have cuts but hard to have hikes. Although we are very rich, if we are giving up this and that, such as duty on wine, hotel accommodation tax, estate duty, while the Government, on the other hand, seeks to widen the tax basis, which means to levy sales tax, and to collect sales tax is like "snatching food from the beggars' bowls", that is to say, return to the rich the tax they have paid and then make the remaining seven million people pay other taxes, how can we possibly "swallow" all these? How can we, the Frontier, possibly support these?

So, I hope that the Secretary, even though he today has somehow mustered enough votes — those doggie teams are all over the place, President, the ground floor is packed with chairs which are all occupied — in any case, the Government is likely to win. However, President, the Government is not going to win the people's support. The people are not asking the Government to increase that tax rate to 30% or 40%. The people are in fact very conservative; every person agrees to implement a low tax regime to attract foreign investment. This is what the people accept. The Government adopts a low tax system, and is sitting on some \$1,000 billion of fiscal reserves. Why still let more than one million people live in such dire poverty? I, a Hong Kong citizen, indeed feel ashamed.

So, President, I really would like the Government to reflect on this. Blunders crop up in the health care system daily that we do not even want to ask any more questions as stated by Dr KWOK earlier on. Why? It is because too many people have to use the service. Is it that some very fundamental problems have appeared? As to welfare aspects, some people do not have enough money, President, really not enough money to feed themselves. Or else they do not have enough for meals after taking public transport. The Government says that it cannot care less, and accuses people for having no sense of dignity, wondering why they come to ask for money and do not earn it themselves.

So, President, here is the problem. Some people wonder why the Government does not lower the taxes so as to give all people some joy as it has so much money. If it really deserved the delight, it would be worth opening a bottle of wine to celebrate. Don't you think we wouldn't want to? However, if you do take a look at the situation in our society, you will wonder why the wealth created by Hong Kong cannot be more evenly distributed among the people. We are not seeking to re-distribute all the wealth. However, I wonder why the Government cannot do a little more.

It has come to my notice that among all our schools, several hundred of them are either dilapidated or unfinished. I would like to ask the Secretary to take a look when he has the time. Millennium schools are, of course, very nice. However, the conditions of many schools are deplorable. Why must our students study in such poor environment? The Government does not solve these problems, and yet offers to dish out money to the rich. President, I think many members of the public do not support such a move. Some people will probably say that it is fine to have tax cuts under such circumstances. It is because they think there will be trickling down effect, which can bring benefit to the lower classes. In fact, these people have been rich for a long time. However, I cannot see any trickling down so far. On the contrary, we only see an increasing number of poor people. Even the Hong Kong Council of Social Service (HKCSS) also stepped forward to say so. It is said by, HKCSS, a group most trusted by the Government. Hence, I wonder where our money is spent.

I object to handing out money to those who are already very rich while the disparity between the poor and the rich is so serious. This system should be changed completely.

I so submit.

MR FREDERICK FUNG (in Cantonese): President, just now Mr Ronny TONG said that some friends asked him whether objection to tax cuts would give the successful people a feeling of guilt. He does not know how to answer such a question as it seems to be a little wrong to say so. I think there is nothing wrong with the successful people; nor do I think it is a matter about who is right and who is wrong. The point is that we have to analyse the matter from two perspectives. The first is from the perspective of the system. Having made

earnings from work, a certain industry can make allocation to people on different work strata. Is the allocation reasonable and appropriate? This is a view from the micro-perspective. From a macro-perspective, the taxation system in the society of Hong Kong is a mechanism for the re-distribution of wealth. Are the persons charged with the control of the mechanism effecting, through a taxation system, a proper and reasonable distribution of wealth? If it is in the affirmative, it is okay for successful people to get credit for their efforts. Otherwise, the fault does not lie with the successful people; it lies with the systems of their industries as well as with our taxation system.

Let us take a look on another level. No matter whether the taxation system or the distribution within the industry is at fault, if the successful people get high income but cannot spend it all Bill Gates, the richest man in the world, is going to make donation of most his assets, with only a small portion, or close to nothing, for his children. What is wrong with such practice of giving back to society? So, in my opinion, Mr TONG may reply to his friend, "You are not wrong, but please give back to society and be supportive of not lowering the profits tax or standard rate applicable to the rich, especially the very rich."

Can democracy solve this problem? Yes, democracy can solve part of the problem as it can set up a mechanism. However, democracy itself does not tell us what is reasonable or appropriate; nor does it have sense of value. Sense of value usually provides a reasonable mechanism for those who can avail themselves of the mechanism to compete among one another to see whose is stronger. Take the United Kingdom as example. There are two political parties in the United Kingdom, namely, the Labour Party, which represents the poor, and the Conservative Party, which represents the business sector. The two major parties are always at a tug-of-war. With regard to the issue of taxation system, the party in power determines the taxation system. At present, there is not much difference between the two parties. They are 70% to 80% alike. However, between the 1960's and the 1980's, the two parties were only 20% in common, and 80% dissimilar. At that time, a different party coming to power would result in a totally different taxation system.

Hence, democracy is not necessarily the solution to the problems of livelihood for the poor. If the government controlling the mechanism takes the side of the rich, or that of the business sector, in dealing with the mechanism, only two approaches are open to the poor. First, they may at least force the government to make the mechanism available for them to take part. The reason

is that there can be no participation without the mechanism. Second, the poor must arrange to have themselves organized and mobilized so as to gather their strength. Though we still have no universal suffrage for the election of the Chief Executive or all Members of the Legislative Council, we have functional constituency elections and geographical direct elections. If the grassroots, members of the lower middle classes or those with low income, are able to cast more votes and make their views and standpoints known in geographical direct elections, this can, I believe, induce or force some candidates or their parties to side more with poor people's views, and help them push the government.

President, I took part in the work of the Bills Committee. I support two of the amendments discussed by the Bills Committee. They are the ones on widening the tax bands and increasing the amount of personal allowances. However, with regard to the other two more important issues, namely, profits tax and standard rate of salaries tax, I am totally in favour of the amendments put forward by LEE Cheuk-yan and Albert HO.

I would like to speak on the Government's expenditure. Earlier on, quite a few Members also talked about many of the Government's expenses. I am not going to analyse them in detail. Around the time for the Budget to be released, we proposed to increase the Old Age Allowance from \$705 to \$1,000. It took almost one year to look into the matter. The outcome was not known until October. Besides, there is also health care financing, about which we have been talking for 10 years. There have also been debates. We can see that the spending on health care services by the Government only takes up a few percents of the GDP. Among all the places in south-east Asia, Hong Kong is at the lower end in this respect. Regarding CSSA, we have had a lot of discussions. The Government itself would say that the taxation system ought to be reverted to the level of 2002-2003. Why is there still reluctance to restore CSSA to the level prior to the cut of \$100 to \$200 that took place in the year 2002-2003? For years, we have had discussions about care-and-attention homes on the Panel on Welfare Services. We recently set up a sub-committee on elderly services with the hope to focus the discussion on several topics. Discussion has been in progress for some time. Does the Government have any line of argument to justify not setting a timetable and roadmap to keep the waiting time below three or four years? Because of the long waiting time, a quarter of the seniors have died before getting their places. Is it that there is no money? This is not a reason at all. This year alone the Government already has fiscal surplus of \$120 billion. To lower the profits tax means \$5.4 billion less in the revenue.

So, the Government is in no position to claim to be penniless when asked to carry out such basic tasks.

President, in the course of discussion on the Bills Committee, there was mention of profits tax. So, we may spend more time on the discussion about profits tax. The Government stresses that lower profits tax can enhance our competitive edge and attract foreign capital. It also says that this is the trend of our neighbouring territories to lower profits tax, too. However, I find it strange, President. This paper is provided by the Government. Of the nine territories listed therein, namely, Hong Kong, Mainland China, Japan, Macau, Malaysia, Singapore, South Korea, Taiwan and Thailand, only three, that is, Mainland China, Malaysia and Singapore, have had profits tax lowered. There has been no change to the profits tax in the other six territories. Why is the Government telling us that all our neighbouring territories are lowering profits tax? In fact, the majority, that is to say, two thirds, remain unchanged. Yet, it is made to sound as if all our neighbouring territories were making the cuts. Unexpectedly, the fact and conclusion differ from each other.

The second line of argument is that a downward adjustment of profits tax can attract more people to come here to set up headquarters or base their Asian headquarters in Hong Kong. Please take a look. This may not be the actual case. Let me provide you all with some data. According to the data supplied by the Government, during the period of so-called high tax rate (that is, 17.5%), the number of non-local corporations with offices in Hong Kong went up from 5 414 in 2003 to 6 440 in 2007. This proves that a drop or increase of 1% to 2% in profits tax rate has little impact on the attractiveness of Hong Kong to foreign corporations. There is, in fact, another set of arguments about attracting foreign capital. We are all aware of it. The Government is aware of it, too, and has talked about it. Such arguments also included the freedom of cash flows, liberty of the taxation system, convenience offered by the whole financial system, and social stability. The Government has given many reasons, too. However, now profits tax becomes the sole and most important reason. So, in my opinion, these reasons cannot convince me that it is imperative to lower profits tax.

President, I can tell all colleagues, and believe it is known to you all, that in many territories, profits tax is not lowered when there is a tax cut. Take Singapore as an example. It did not lower profits tax when its economy was robust. On the contrary, in order to attract foreign capital, it tactically helped

the development of various industries, as well as offering tax incentives selectively to individual industries. This approach was adopted not only by Singapore, but also South Korea and Taiwan. In other words, we are to attract foreign capital not by lowering profits tax from 17.5% to 16.5%. On the contrary, those with foreign capital will take into consideration any tax incentives offered by the government for the environmental industries, offensive trades, and industries built on community hardware, rather than any "across the board" reduction of profits tax from 17.5% to 16.5%. While other territories are so flexible, why should we be so rigid? Others have several knives, which are all sharp, but we just have one, a blunt one. It is really "fatal". Hence, in my opinion, the right approach is to have progressive profits tax.

President, let me provide some more information, which is also from the Government. Suppose LEE Cheuk-yan's proposal is adopted, that is to say, the profits tax rate for those with profits in excess of \$10 million is to remain unchanged, and the cut is only applicable to those with profits below \$10 million, how many corporations are to get no tax cut? According to the data from the Government, those with gross profits in excess of \$10,000 number 74 000 whilst those making profits in excess of \$10 million in fact number 4 300 only, that is, about 5%. According to these figures, only those highly profitable corporations that make up some 5% of the total cannot get the benefit. In other words, even if LEE Cheuk-yan's amendment is adopted, 95% of the corporations can still get the benefit. Most importantly, while the Budget was under discussion, I heard that among the 5% of major businessmen, quite a few openly stated that it was not necessary for the Government to lower their tax rate. They would rather the Government spend the money on poverty alleviation. What is going on in this world? This is totally incomprehensible.

President, next I would like to speak on the purpose of a progressive tax rate. When a person is earning a lot of money, it does not matter whether it is due to the reasons I mentioned just now, that is to say, he gets a lot of benefits because he is capable, or because of the distribution system of the industry that he is in, or the wealth distribution brought about by our taxation system, we just hope the principle of affordability will work. He who earns more is to give back more to the community. Or, the expectation is for those earning even more to voluntarily return more to the community, regardless of whether the system is faulty or not. So, it is a reasonable approach to look at the issue from two separate levels.

The same reasoning is applicable to standard rate of salaries tax. Who in fact will stand to benefit from a drop in the standard rate? The middle class will not benefit from it, let alone the grassroots. Those who stand to benefit from it are precisely those with the highest income. In the case of those whose income does not qualify them to be taxed at standard rate, whenever they make one more dollar, the tax payable will be higher than that of those subject to the standard rate. What I mean is that if the standard rate goes down to 15%, those subject to the tax rates of 16% to 18% will have their income counted under a tax band higher than 15% whenever they earn one extra dollar. The tax payable will then be more than that of those subject to the standard rate. The reason is that in the case of those subject to the standard rate, they are required to pay just 15% whenever they additionally earn \$100. In the case of other people, they probably will have to pay tax of 16% or 17%.

At the meeting, the Government told us who may pay tax at standard rate. I hope the figures are not wrong. It is because I find these figures very high. Before reading such information, I thought that the figures would not be very high. According to the information from the Government, one with an annual income of \$2.75 million is subject to the standard rate. I thought tax payment based on standard rate was applicable to a sum around \$1 million. It is in fact over \$2 million, that is, an average monthly income of some \$200,000. In other words, one earning more than \$200,000 a month is only required to pay \$15 in tax for every \$100 made in extra. However, those yet to reach such a level are required to pay \$16 to \$18 for every \$100 made additionally. In other words, he who earns higher income pays less in tax. I find this a problem. So, in my opinion, what matters the most is as follows. As the income of these people are so high, I find it not advisable to lower the tax rate applicable to those earning top incomes, no matter whether the consideration is based on the question of taxation system or on the question of giving back to the community.

Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): There are various kinds of remuneration, such as monetary remuneration, which means we work for our boss and get paid in cash. Another one is remuneration in kind. For instance, a factory offers goods to its staff for sale. It is usually a practice in less prosperous economies. There is also social remuneration, which means we work all day from morning till night, year after year, and finally get our

remuneration from the society. For instance, when you pay for your son's education all the way through university, and if the Government does not offer you any assistance, you may have to pay \$2 million. But now the Government considers education as a social goal and a policy target, just like the concept of "progressive development" mentioned by Donald TSANG., and therefore only a little has to be paid by Hong Kong people for an education up to university level. This is social remuneration.

Many people, such as the friend of TONG, do not understand this. In his eyes, there is only currency. In fact, when he realizes that the Government asks those who earn more Those who earn more may not be those with capabilities. Those who earn more may be someone very corrupt. They may have made money by stock flipping or soccer betting. So it is unjustifiable that those with capabilities should pay more. Instead, those who earn more should pay more. Regardless of their source of income, those who have the ability to make a fortune should pay more.

In Hong Kong, those who have means may say that as the Government has so much money, why do they have to pay more for tax to help the Government benefit others? In fact, this is a leverage theory because if they pay 10 cents, the rich will have to pay \$1. Do you understand? This theory also applies to the progressive tax regime or a regime based on the "earn more, pay more" principle, and it can be reflected in the lower strata of society. Under the principle of "earn more, pay more", if you earn a little, you pay less. As for those who earn more and pay more, that is, those who earn more, they have to pay more. It is just this simple. It does not mean that we have to punish them, but just make them help others. The Civic Party also proposed that if they paid \$1, the rich had to pay \$1 to the poor. Or if they paid \$1, the poor could get \$2. That is what it means.

If most of the pillars of society, that is, those professionals and the middle class, do not even have an intention to do that, the society must be decadent. I am not scared of saying this. Even if they do not vote for me in the next election, I will still say this. I also said the same thing during the last term. The middle class includes a wide range of people, who say that they are well-educated and thus consider themselves the ones with capabilities. However, when it comes to social justice, they consider themselves incapable. This is impossible. They do the right thing when they accuse the Government of sacrificing them to benefit others. The Government has so much money, so

why does it not give people some benefits on its own? But if they look at this matter from another perspective, they will find that some more contribution from them can ensure the rich to contribute even more. This is beyond doubt and indisputable. Why? It is because a society relies on the contribution of all the people. Here is an example. I do not know the profession of the friend of Mr Ronny TONG. Does he hire any workers? If he is doing research work, is there anybody providing air-conditioning for him? What if nobody helps him with electricity connection and air-conditioning supply? If his toilet is clogged and his garbage bag left untouched, how would he be able to earn money? Those who work day and night doing the so-called donkey jobs, that is, extremely tiring work, are people who make the society function. If all garbage collectors in Hong Kong stop working for three days, I believe nobody would come back to the Legislative Council for meetings because this place would be filled with stench. Am I right? If we look at it from this perspective, we have to compensate those who were "deprived" in the first process of distribution of jobs or professions, or diversification of labour. If they are low-paid workers, most of them are engaged in jobs instead of professions. If we look at the matter from a standpoint of social justice, these workers, who can only earn \$1 or \$2 from their \$10 tasks, were actually "deprived" in the very first process of distribution. Had we not looked at the matter from another perspective, how could we have seen the problem?

What kind of trick is the Government playing? It is playing a "shell game". Is it true that the poor do not pay tax? I have said so many times in the Council meetings that this is called "invisible tax" — high land prices and high rents which affect everyone in the society. I can cite an example to explain this if some people do not understand. Since The Link was sold, I have found that the price of everything in Kai Yip Estate has gone up a bit. This is the result of the Government's high land price and high rent policy. Banks made money through mortgages or financial investments which have resulted in a bubble economy. They invited the "grand masters" from the mainland to list their companies in Hong Kong and eventually created, by speculation, a Hong Kong Stock Exchange. Most of the impacts brought by all these things have in turn transmitted onto the poor. If we go to Fairwood Fast Food and find that the price of a set meal has recently been increased by \$4 to \$5, we may ask them if anything has gone wrong. In this case, they will tell us that the price increase is the result of the rise in rent or food supplies prices. They will not say that it is due to a pay rise because wages have already been reduced to an extremely low level. Therefore, in terms of distribution, workers have already been given the

lowest priority. It does not mean that they are people at the lowest level, but just in the lowest priority in terms of wealth distribution.

Now we can see that the poor actually have their share in that sum of money, that very shiny sum of money. Though the poor has been getting poorer and the number of the underprivileged getting higher, our society is blinded by "misdiagnosis". "No! We have too much money and need to pay back to the well-off," the Government said. Is this Government sick? Obviously it is. This is clearly benefiting the well-off at the expense of the poor. We are now asking the Government to make reforms in certain aspects, as people are categorized into nine classes. If unfortunately you need medicines of higher prices, you have to wait till death. Or if you suffer from a serious illness and a surgery is needed, you also have to wait till death. When asked to help these unfortunate people, the Government replies, "Sorry, we do not have money." When it comes to education, we can see that our university education has lagged behind when compared with that in Singapore, whereas our primary and secondary education systems also have problems. We want education reforms, but the Government says, "Sorry, we do not have money."

Some of our former Secretaries were requested to introduce health care reforms, and one of them was Dr YEOH Eng-kiong. At that time, he replied, "Is the money grown out from trees?" Even the current Secretary Denise YUE has once said, "Where can we get the money?" The truth is that the money is already here. In fact, she should have asked one more question: "Who made the money?" In this case, she would have been able to get an answer. They were really too shallow to ask such questions. Where can we get the money? Actually, the money is already here. Some is in the pockets of those fat guys who even have problems putting on their socks. Some is in the hands of our "useless" Government which has a huge surplus and fiscal reserve. However, we can do nothing about it. Both the Government and fat guys hold the money tight and do not care about those who are in need, or more accurately, those who need money to save their lives, and those who have a share in the wealth of our society. As soon as they ask the Government for money, the Government will retort, asking if they were lazybones.

When I was a newcomer in the Council, I requested the Government to improve the Comprehensive Social Security Assistance (CSSA) system. Now four years have lapsed and our economy has fully recovered. The well-off have become too "fat" to move, but what can the "skinny" people do? This is

actually a political issue. Donald TSANG once said so loudly in the election, "If I am elected, I will bring wealth to those who are lack of it, and will give the right to vote to those who do not have it." Temporarily speaking, the right to vote is totally out of question. As for the poor, they have just become poorer. I hope that Donald TSANG is a man of conscience. He once told secondary students that he had not intentionally told any lies since completing Form Six. I assume that is true. But at the same time, remedies are needed. Otherwise, what he does now is intentionally lying, isn't it? He did one thing and he told some lies. It means that he was "bluffing". However, instead of making remedies, he sent out his officials, who have to ignore their conscience, to defend his policy of "robbing the poor to help the rich". Honestly speaking, it is a shame! Promises are made to be kept. He said that he would provide the poor with the opportunities of self-development. He told us about the so-called progressive development. But what progress has he made? What development have we seen? He cannot argue with the data. Even for an argumentative person like me, data can be so scary. Though adjustment is needed, when asked if the number of the poor is increasing and the rich have become richer, he replied, "Sorry, I cannot adjust the wealth gap. It is not reasonable for those who earn more to pay more." Hey, man, please read the Bible. Even Jesus has never said things like this. Jesus accused the misers such as the Pharisees and tax collectors. Then what are the existing problems actually? We often say, "We beg you to raise the progressive profits tax so that those who have earned too much can give out a little bit of their money to help solve the existing problems recognized by all of us in Hong Kong." Our royalists, including the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), were so sentimental when they criticized the Government for shirking responsibilities. But when they knew that money was needed for solving problems, they immediately said "No". I do not understand why they did that. I think it is a bit like "a turncoat turning on his own countrymen". They serve the grassroots, work with the grassroots and fight for the grassroots. Every day when I arrive home and see those leaflets and posters, I know that apart from treating people to lunch or dinner, at least, even not to the full, they do fight for the poor. But now they accuse us and the FTU, their ally, of helping the poor. Are they sick?

I do not have any bad feelings towards the rich because they were born to be like that. It is inborn and stubborn. Some people said that they would work for the well-being of the poor on the one hand, but they think that they are rich and even proud of joining such a government on the other. I really despise

them. On which side are they standing? I was so shocked to hear the representatives of DAB saying that they are against this. I would like to ask what they oppose. Do they oppose adjusting the wealth gap? I know that they have received the information about the tax reduction on the Mainland. They know that the Mainland's corporate profits tax has been reduced from 33% to 25%.

Today we have mentioned that the election is coming. All political parties are so prepared to say that they work for our people. If you tell them you have a headache, they will guarantee that even your heart disease can be cured. However, when it is time to vote or to spend money, they behave in a different way. When it comes to reforms on systems such as education and health care reforms to enable Hong Kong to follow the examples of more advanced countries, they say "No". They say that they will not do such things. This is what we call "lip-service". This is "bluffing". This is what they do. But I am different. From the very beginning to the very end, I say the same thing all the way through. Whether people will vote for me or not, I do not tell lies.

Without a universal suffrage system, it is deemed to have such a scenario: the Chief Executive only needs to buy those 800 voters off and everything will be settled. It is so easy in money politics. You only need to buy them off and all problems will be solved. If there is universal suffrage, at least you would have to entertain all of us who would have the right to vote. Then some reforms could be carried out. So there is no doubt that democracy cannot solve the problem of wealth distribution, but it can certainly solve the problem of unfair distribution. Under a democratic system, if you cannot solve this problem, you would possibly be executed by a firing squad. Years ago Mrs Margaret Thatcher said something about "poll tax", then a riot broke out and she had to "leave" immediately. Even for the "Iron Lady", there is no exemption.

All in all, as long as there is no universal suffrage, there are royalists to safeguard the interests of the authoritarian, untruthful and deceitful tyrant. As long as there are royalists, all of us are doomed to be "out of luck".

MR LEUNG YIU-CHUNG (in Cantonese): President, over the past four years, we seldom had debates that ran into this hour. Even if it did happen, the speeches were not made in such a loud and angry tone as Emily LAU just did.

Her loud and angry speeches have won her applauses in the past because she has always rebuked false claims in certain issues and "called a spade a spade". Hence, she has won the support of many listeners. In fact, I also support what she just said.

She was indeed loud and angry. If you not only sit in the Council but also go into the communities to listen to the people, you will know that loud and angry as she was, it is not even one-tenth of the degree expressed by the people in dire straits. The Bill that we are debating today is all about putting icing on the cake for others instead of offering people timely help. In this regard, those in dire straits are left in total disappointment or even despair.

President, not so long ago, a TV station produced a programme called "Stories of a Million People", in which many heart-wrenching stories are told. The word "stories" is actually a misnomer because those are real life examples. The programme showed us that some people were living on steamed rice rolls. Why steamed rice rolls? It is because they could not make ends meet with the CSSA they got. Instead of helping these people, we would rather repay those with high income by reducing the profits tax rate or standard tax rate. So how can people not get angry? How can they be happy? How can they not get infuriated, President?

In fact, in our society today, we can see a scenario that even the Government has to admit, that is, the gap between the rich and the poor is getting wider. In his election platform, the Chief Executive acknowledged this problem and admitted that it had to be addressed. However, can it be addressed with this Budget? The problem of wealth gap has deteriorated over the years and we are now the fifth worst on the world list. But do we have any policy to deal with it?

We have not faced these issues squarely. Instead, we are here discussing how to help high earners pay less tax. Of course, President, the Secretary would say that if we do not do so, we would lose our competitiveness. As Mr Frederick FUNG just said, profits tax reduction is used in some places as a means to attract foreign investments. I do not know if the Secretary has done any surveys on it. When overseas investors decide to invest in a certain place, tax rates are not their first consideration. Very often, it is the political stability that comes first. Therefore, I think that low tax rates may not necessarily be

used as the means to attract foreign investments. It is not the sole factor. According to some international surveys, taxation only ranks as the fourth, fifth, or sometimes the sixth factor, while other social factors are considered more important. I think this can no longer be used as the excuse to repay high earners and ignore those who are desperately in need.

Today, in our society, we can also see another scenario, that is, the ever growing demand for social expenditure. As Emily LAU just mentioned, many of our schools are quite run-down. How can we still put up with it? President, actually it is not only about school buildings. This is just one of the issues. Among all, the most important is small class teaching, which has been on our agenda for years. How is it going? Its implementation is still confined to primary schools. What about secondary schools? We have not heard anything on that front yet. While we have yet to get the news on secondary schools, we have even got to fight for more resources to help school children take part in extracurricular activities. Many are denied the chance to join because they have no money to pay for the activities. Why don't we help these people? They do exist in our society and they need our help. But what have we done? We just ignore them.

Besides education, President, if you can recall, I have been fighting for half-price concession for the disabled for years. The response finally came this year. But what is that? It is the increase in severe disablement allowance by \$200, President. How great a help can that do, President? I told our chairman that if I could return to the Council after the summer break, I would still propose this motion. I would still fight for half-price concession for the disabled. If only the Government would do it — actually, MTR once dared the Government that if MTR still made money after the half-price concession had been implemented, the profit would be returned to the Government. If MTR suffered a loss, the Government had to assume it. However, the Government dared not take the bet. Why not? If the Government is so well-off that it can repay profits tax payers and standard rate tax payers, why can't it help the disabled? We keep saying "A Society for All" and we should help encourage the disabled to integrate into the society to make full use of their strengths. Is that just "lip service"?

The disabled aside, in terms of social welfare, besides CSSA, there is the Old Age Allowance. I have been talking about it for years. Several fellow

Members have also mentioned that our expectation is \$1,000. But where has the money gone? Where is our respect for the elderly?

Apart from the Old Age Allowance, there are many other social issues which need to be addressed by us. One is health care. It is also a very serious problem. We can see that many marginal families simply shun going to the doctor. The Government tells us that under the current system, no one will be denied medical care or die of illness for lack of money. I agree with this, President. But I wonder if you have noticed another problem, which is that many people shun going to the doctor because they have no money, thus turning minor illnesses into serious ones, and serious ones into death. Such scenarios do exist. But how much help can we offer them? Instead of helping them, we now want to implement health care financing to "fleece" the public "across the board". The contribution may take up 3-5% of their income. If I remember correctly, President, the annual contribution is about \$6 billion. If we lower the standard tax rate and profits tax rate by 1% today, it means \$5 billion. But if we maintain the current tax rates, we do not have to seek money for this so-called health care financing. So why don't we do it?

The issues are right in front of us. Loads of social issues have cropped up. We do not deal with them though we are able to. Why? The Government keeps asking us where to get the money for the social expenditure. In fact, Mr LEUNG Kwok-hung just gave us the right answer: the money is already here. Why do we still keep asking "where to get the money"? I really do not understand why the Government keeps asking this. How does the Government do calculations on its books? The Government often says, "The cake is just that big, and how should it be shared?" Yes, the cake is just that big. The point is that the sharing is unreasonable, unfair and inappropriate. Those who should have a share do not get it, and those who should not have a share are given one. The present situation thus arises.

In this regard, what I want to achieve today is a reasonable distribution of the social resources. Mr LEE Cheuk-yan's proposal of using \$10 million as the demarcation has clearly told us that we do not mean to oppose reimbursement to small businesses as a kind of relief or tax rebate. But why can't it be accepted? When you look at the matter from another perspective, you will find that it will allow high earners to contribute more to the society. So why don't we do that?

In fact, besides the Frontier and Association for Democracy and People's Livelihood (ADPL), we Neighbourhood Workers Service Centre (NWSC) also support a progressive tax regime, especially on profits tax. It means a more reasonable distribution of social resources. Why does the Government keep refusing to listen to us? I have talked about it for years, but the Government still turns a deaf ear to us.

I support the Committee stage amendment (CSA) proposed by Mr LEE Cheuk-yan and Mr Albert HO. However, I hope that the Government will refrain from using its assured edge to pass whatever it wants and to overrule the care for the grassroots, especially the needy that await our timely help. Otherwise, it will result in social discords and undesirable scenarios, which I believe both the Government and we do not want to see. Hence, I hope that the Government will do something concrete — the Government of course will beg to differ, pointing to the "double pay" and "red packet", that things have been done.

But is it fair, President? The disadvantaged is given a one-off help, whereas the consortia are given permanent concessions. The proposed tax concessions are permanent, not one-off. Is it fair? Is it reasonable? Not only should we provide the disadvantaged with reasonable care, we also have to give them proper treatment and respect. We should not help the needy with an alms-giving mentality, which I absolutely object to. In our society, people with different capabilities have different needs. If we are capable, we should take care of the disadvantaged. This is the underlying principle and attitude. We hope that the Government can understand this.

President, I so submit.

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

DR FERNANDO CHEUNG (in Cantonese): President, this Revenue Bill 2008 is so exasperating that it is hard to speak up with composure. I am given 15 minutes, but I think even 15 hours are not enough for expressing my views. Our Government thinks that "money stinks" because it has too much money. Such a government is really hard to find in this world. As many friends have said, with the introduction of this Bill, the Government has forfeited its right to

ask this question, "Where is the money; where does it come from?" It can no longer ask this.

While the Government thinks at this moment that "money stinks", it intends to reimburse the rich through lowering the standard tax rate, which will benefit those in the highest income bracket. By our current standard, the rich ones are those with an annual income of \$2.75 million. How many people have an annual income of \$2.75 million? I have not checked up the figure, but the Government is quite clear that it is around 14 000. Among the 3 million-odd "employees", over ten thousand are these "aristocrats of employees". The Government cannot wait to put icing on the cakes of these people, worrying that they do not have enough to spend. So just give them more!

Our profits tax rate is almost the lowest in the world, which is evident from Government figures. Among the developed regions, we have a very low tax rate. However, our Government still finds it not low enough, and lets profit-makers earn even more. Currently, most of the profits tax revenue, that is, about 70-80%, comes from the 10% highest profit-makers. Who are we going to reimburse now? Yes, we are going to reimburse more than 70 000 companies. But most of the profits tax will actually go back to the highest profit-makers. We really find "money stinks". Cool!

In fact, our SAR Government is really exceptional. Even when compared with national governments, we are still high up on the list, currently on the sixth or seventh in terms of reserve. We have a reserve of over a trillion dollars, not including the part used as collateral for backing up the currency in circulation. The money at our disposal, which the Government can fully put to use, is over a trillion dollars.

President, it is hard for me to convey the anger in my heart. Let me use what I have taken part and got in touch in the past week, to show you the difficulties and needs in our society. Resources and the Government's help are very much needed. However, the Government's answer is very clear every time, "We don't have the money."

President, one of the items that the Panel on Health Services discussed yesterday was about thalassemia patients. There is now a new drug, to be taken orally, which can replace the daily 12 hour hypodermic injection. You only have to take one oral tablet a day and the illness can be put under control. But

the drug is very expensive, five times as much as hypodermic injection. In this regard, the Hospital Authority declined to put it into the Standard Drug Formulary. As there is no supply from the Government, patients have to buy it themselves. The hypodermic injection or another oral drug currently in use may cause serious side effects to some patients. This new drug has proved to be efficacious in foreign countries and able to help reduce the side effects caused by other drugs. I am not saying that it is invariably efficacious and suitable for everyone. But can we let the patients choose? The answer is "No" because it is expensive.

Moreover, when we talked about health care financing, Dr KWOK Ka-ki has given us a clear account just now. On the one hand, we say that we have too much money, so we have to reimburse the rich and the most profitable consortia, although I do not know if they will thank the Government. As Emily LAU and KWOK Ka-ki have said just now, they will not be grateful to our Government because the money for tax has already been discounted. To American companies that have to comply with US international tax laws, our effort is in vain. The money, if not paid to the Hong Kong Government, has to be paid to the US Government. The tax reduction does them no good at all. They have to pay up anyway. I do not know what the Government is doing.

Health care financing means asking the public for money. On the one hand, we say that we have too much money, so much that we have to reimburse the rich. On the other hand, we demand that "employees" earning more than \$10,000 a month have to contribute 3-5% of their income, or our health care system will collapse! How can that be? Collapse? On the one hand it says that it has no money, on the other hand it wants to reimburse the rich.

Yesterday morning, a group of community neighbours came to the Complaints Division to see us. They said that many of their community networks were gone after redevelopment, and therefore they wanted more social worker teams and neighbourhood services for their community development. These service teams cost less than a million dollars each and their services cover the whole community. They hoped that the community networks could be rebuilt. However, such services are decreasing and shrinking.

Two mornings ago, some parents of the disabled and I went to meet the Director of Social Welfare Department (SWD). SWD is aware that the waiting list for our sheltered workshops is long. After leaving special schools, the

disabled have to stay home to wait for sheltered workshop acceptance. As the waiting list has been getting too long, SWD then came up with a cunning plan. Some organizations are given a small subvention to set up extension programmes, to put an additional 15 people to the facilities. Some trainees, who are old and not in good physical condition, have thus been transferred to perform other tasks. Those organizations, already short of resources, have to take up a greater workload. Their facilities are simply insufficient. They are so overcrowded and full of hazards, and yet they have to take in an additional 15 people. In fact, the objective of sheltered workshops is to take care of trainees who are physically poor. These people need physical therapy and care, as well as other social and medical services. But now this simply cannot be done.

The Director admitted that this plan was deficient from the start and absolutely infeasible. But why is it infeasible? Sorry, he told us a story that it was an arduous fight to get resources from the Financial Secretary. I do not know if I should believe that even for the Secretary and the Director, I mean Secretary Matthew CHEUNG and Director Stephen FISHER, it is an arduous fight to get resources from within. For instance, the Financial Secretary would say that social welfare expenditure is already the second largest in our overall expenditure, with the first being education. If it wants a bigger share, then which part should be cut? The "cake" is just that big, and there is no way to get more.

As far as the Bill is concerned, it thinks that the "cake" is too big for us now, and we had better reimburse all the money to the rich. Despite the long waiting list for sheltered workshops for the disabled, instead of expanding services, the Government simply pays a bit more to those organizations and then forces each of them to take in a dozen more people. When things happen, the Director can just say, "I am sorry. There's nothing I can do. I also want to improve this service which is deficient from the start." He really felt sorry when he said that. We have a director with a heart. I hope that my speech will not give him pressure.

This is a brief report of what I have done in the past two days. If I am allowed to go on, even 15 hours will not be enough. Yesterday, I also met some residents from Tai O and discussed with the Transport Department (TD) on the rainstorm havoc. It was so bad that land transport was cut. Water transport fared a bit better, but it only meant one ferry every four hours. Though the residents were in uproar, no more resources were put into it. There

was one additional ferry trip in the morning and another at eleven o'clock. But what about the afternoon? The land transport was already severed, why water transport could still be so poorly arranged?

We have talked with some single-parent families. The women have arrived in Hong Kong for less than seven years. Their marriage turned sour and ended in a divorce. The mothers often have to take care of the children and go out to work. Having been in Hong Kong for less than seven years, they are not eligible for CSSA. When they had worked for more than 120 hours and earned more than \$1,400 a month, SWD deducted the amount of assistance from them. But why was the deducted amount so large? How come it could happen under the wavier mechanism? It turned out that the woman who worked in a restaurant was given free meals. Therefore, the SWD staff counted them as her pay and added the dozens of dollars to her salary, drastically pushing up her income, which was later deducted from the amount of assistance for her family. Dozens of dollars worth of free meals are counted as income. How exact! Is this the way to encourage people to go out to work and help themselves with their own hands? Every penny is counted over there. But here, billions, hundreds of millions or tens of billions are nonchalantly thrown away, without batting an eyelid.

Last Saturday, I went for an outing to Tolo Harbour with a group of disabled people. All wheel-chair bound, they have never been to the cycling track along Tolo Harbour before. The outing, which they organized themselves, was a great challenge to them. They are quadriplegics who need 24 hour care. Some of them are actually totally paralyzed and they can only use their chins to move the joysticks of their wheel-chairs. They all face a problem, that is, they do not know how long they have to wait before they can be institutionalized. You all know this and it is also on the SWD website.

Last week, I talked to a group of officials from the Education Bureau about Chi Yan School, a school for the severely mental-handicapped. The school, which was built over 40 years ago, is located by the hillside. It has more than 80 students, among whom more than 50 are wheel-chair bound. To go into the school, they have to take a substandard lift, one at a time. The school is totally not wheel-chair friendly. It is not barrier-free. Education Bureau admits that the school building is substandard, failing to meet the requirements. If a fire breaks out, the consequence can be disastrous because it involves the lives of 100 people. This is a boarding school for students with severe mental impairment

or physical disabilities. I demanded a new school be built for them, but Education Bureau replied that there were no resources.

Ko Fook Iu Memorial School, another school for the physically-handicapped in Sha Tin, has to share a school building with a primary school. A school for the physically-handicapped has to share a building with a school for normal students. They cannot even use the playground. I asked the authorities concerned whether the facilities could be improved, and I got the same answer, "No resources." Although the authorities say that they are well aware of such situations, but they do nothing with the same excuse of no resources. But now, they are going to throw away billions of dollars at one time. How do they make use of the resources?

President, there are problems of the elderly as well, but I am not going to talk about it. Within 10 months last year, a quarter of the elderly who were on the nursing home waiting list died while waiting. The average waiting time is 47 months, and a quarter of them died in 10 months. I am not asking the Government to settle all social issues properly. I do agree that we can never have enough resources to take care of all social issues. But as administrators, we have to allocate resources rationally. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Financial Services and the Treasury to give his reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I would like to thank Mr Andrew LEUNG Kwan-yuen, Chairman of the Bills Committee as well as other Committee Members for scrutinizing the Revenue Bill 2008 (the Bill) and giving many valuable opinions on the Bill. I would also like to thank all Members in this meeting for allowing me to resume the Second Reading debate as it is now nearly twelve midnight.

Now let us go back to the Bill. In view of Hong Kong's satisfactory economic performance and the Government's consolidated financial position, the Financial Secretary, having taken account of the investments to be made to facilitate the long-term development of Hong Kong and the expenses needed to support the disadvantaged, proposed a number of concessionary revenue measures in the 2008-2009 Budget. It is a way to share the fruit of our prosperous economy with our people. As for the purpose of the Bill, it is to implement some of these proposals.

The Bill proposes to amend the Inland Revenue Ordinance and the Hotel Accommodation Tax Ordinance, in order to implement the various concessionary revenue measures in the Budget, which include: (1) raising the basic allowance and the single parent allowance of salaries tax from \$100,000 to \$108,000, and increasing the married person's allowance from \$200,000 to \$216,000; (2) widening each tax band from \$35,000 to \$40,000; (3) lowering the standard tax rate from 16% to 15%; (4) lowering the corporate profits tax rate from 17.5% to 16.5%; (5) raising the ceiling for tax deductible donations under profits tax, salaries tax and tax under personal assessment from 25% to 35%; (6) allowing more concessionary deduction for capital expenditure on environmentally-friendly machinery and facilities; (7) a one-off reduction of salaries tax, tax under personal assessment, profits tax and property tax for 2007-2008 by 75%, subject to a ceiling of \$25,000; (8) lowering the rate of tax levied on hotel accommodation charges to 0%, that is, waiving the tax.

In the course of scrutiny, members of the Bills Committee supported most of the proposals. However, some of the members expressed different views on the proposals of reducing the standard tax rate and the profits tax rate. I would like to point out that during the Budget consultation, the Government has received opinions from different sectors that clearly support these two proposals, which are considered to be able to enhance Hong Kong's competitiveness. Besides, when members of the Bills Committee were scrutinizing the Bill, several organizations submitted their views to the Legislative Council to express their support to the Government's proposals with a view to urging the Council to pass the Bill as soon as possible. All these show that our society obviously supports the reduction of the standard tax rate and the profits tax rate. Last week, a letter was sent by the Financial Secretary to each Council Member to clearly explain the justifications for making these two proposals, on which I would like to take this opportunity to further elaborate.

First of all, I would like to point out that those tax deduction measures should not be considered as the so-called benefits tailor-made for the "kings of employees" and big consortia. In 2003-2004, when the Government raised tax for the reason of financial difficulties, all taxpayers, whether high-paid or low-paid, big corporations or small and medium enterprises, made their contributions to help our society get through the difficult times. Now, the financial condition of the Government has improved. There is a strong consensus in our society on requesting the Government to adjust the tax rate back to the 2002-2003 level. In view of this, we wish to fully respond to this request through the Budget for last year and this year. We have to be fair to all taxpayers. Instead of particularly benefiting standard rate tax payers and profits tax payers, we have to treat all taxpayers equally. In fact, to ensure prudent fiscal management, the proposed corporate profits tax rate will still be 0.5% higher than that of 2002-2003. It is unfair to taxpayers if they can only share the burden but not the fruit of our society. More than that, this unfair taxation will also bring a negative impact on attracting foreign professionals and investors to come to Hong Kong.

Secondly, as we pointed out in the Bills Committee meetings and the Financial Secretary's letter to all Council Members, most of the beneficiaries of the proposed profits tax reduction will be small and medium enterprises instead of big consortia. In fact, 70% of the profits tax payers are companies with an annual profit not more than \$1 million. For small and medium enterprises, tax reduction will definitely be a factor to affect their decision on staff pay increase or any increase in investment. If the Legislative Council vetoes the proposal of profits tax reduction, those who suffer most will be the small and medium enterprises instead of the big consortia. Similarly, if the proposal of lowering the standard tax rate is vetoed, not only some of the salaries tax payers but also more than 24 000 unincorporated enterprises of a smaller scale will be affected.

Madam President, it is a global trend to enhance competitiveness through the reduction of profits tax rate. In the past 10 years, there was no tax reduction in Hong Kong. On the contrary, there was tax increase, which has had a negative impact on Hong Kong's competitiveness. A Council Member pointed out that Hong Kong's profits tax rate was already one of the lowest in the region, and there was no need for a reduction as we had done well in attracting foreign investments over the past few years. However, we do not agree with this point. Under the circumstances of global competition, Hong Kong needs to keep on making progress in order to avoid being left behind. Let us take Singapore as

an example. As our major competitor, Singapore has lowered its profits tax rate by 2% for two times in the past four years. Its current profits tax rate is 18%, which is only 0.5% higher than ours. Moreover, different from Singapore or other territories in the region, we do not offer specific tax concessions to any particular kind of business. In this regard, we cannot always remain at the same position as our taxation competitiveness is being challenged by our competitors in the region.

Mr LEE Cheuk-yan proposed in the CSA to be moved that the lower profits tax rate of 16.5% should only apply to the first 10 million of a corporation's profits, and the remainder of the profits should be subject to the existing tax rate of 17.5%. The Government strongly objects to this CSA because it will change Hong Kong's long-lasting profits tax regime, which is characterized by simplicity and single rate, to a regime with a progressive tax rate and a classified taxation structure. This proposal will have a great impact on the simple tax regime in Hong Kong. It will also weaken Hong Kong's competitiveness and increase the risk of tax evasion as well as the expenditure on counter-acting measures. We think that it is not a cautious decision if we bring any sudden change to an effective tax regime that has been implemented for decades without any careful analysis and consultation.

To conclude, the various proposals in the Bill have directly responded to the requests of our society. It is a way to leave wealth with the people when the Government's financial condition permits. It is also a way to share the fruit of economic prosperity with people from all walks of life in Hong Kong. In this regard, I sincerely request the Council Members to support this Bill and vote against Mr LEE Cheuk-yan's CSA.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue Bill 2008 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Revenue Bill 2008.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): At this stage, I think we should suspend the meeting. Members are requested to attend the meeting punctually at nine o'clock tomorrow morning.

Suspended accordingly at eleven minutes to Twelve o'clock at midnight.

Annex I

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

COMMITTEE STAGEAmendments to be moved by the Chief Secretary for Administration

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 5 | <p>In the English text –</p> <p>(a) in the heading, by deleting “Section” and substituting “Sections”;</p> <p>(b) by deleting “is added” and substituting “are added”.</p> |
| 5 | <p>In the proposed section 31AA(2), by deleting “Legislative Council for it” and substituting “Members of the Legislative Council for them”.</p> |
| 5 | <p>By adding immediately after the proposed section 31AA –</p> <p>“31AB. Disclosure of information received under section 31AA by Members of Legislative Council etc.</p> <p>(1) Notwithstanding section 30, a Member of the Legislative Council may disclose any information received under section 31AA to the Secretary General for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.</p> <p>(2) Notwithstanding section 30, the Secretary General may, with the prior approval of the President of</p> |

the Legislative Council, disclose any information received under subsection (1) to any member of the staff employed in the Legislative Council Secretariat if the Secretary General is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(3) The President of the Legislative Council shall not approve a disclosure under subsection (2) unless the President is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(4) Where in relation to a matter referred to the Members of the Legislative Council under section 31AA(2), a motion has been initiated jointly by one-fourth of all the Members of the Legislative Council under Article 73(9) of the Basic Law charging the Chief Executive with serious breach of law or dereliction of duty, section 30(1) shall not apply as regards the disclosure by any person of any information relating to the matter provided by the Secretary for Justice to the Members of the Legislative Council under section 31AA(2).

(5) In this section, “Secretary General” (秘書長) has the meaning assigned to it in section 2 of The Legislative Council Commission Ordinance (Cap. 443).”

6

By deleting the clause and substituting –

“6. Other specified offences

(1) Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 9, by repealing –

“section 5(1) bribery for giving assistance, etc. in regard to contracts”

and substituting –

“section 4(2A) bribery of Chief Executive

section 4(2B) soliciting or accepting bribes in the capacity of Chief Executive

section 5(1) bribery of public servant for giving assistance, etc. in regard to contracts”.

(2) Schedule 2 is amended, in paragraph 9, by adding –

“section 5(3) bribery of Chief Executive for giving assistance, etc. in regard to contracts

section 5(4) soliciting or accepting bribes in the capacity of Chief Executive for

giving assistance, etc.
in regard to contracts”

after –

“section 5(2) soliciting or accepting
bribes in the capacity
of a public servant for
giving assistance, etc.
in regard to
contracts”.’”.

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Honorable Margaret NG

ClauseAmendment Proposed

New

[NEGATIVED]

By adding—

**“4A. Offence to disclose identity, etc.
of persons being investigated**

Section 30 is amended by adding —

“(1B) For the avoidance of doubt, it shall not be unlawful for the Commissioner or the Secretary for Justice to make such appropriate disclosure referred to in subsection (1) to the Legislative Council in connection with the performance of its duty under Article 73(9) of the Basic Law.”.”.

5

[NEGATIVED]

By deleting the clause.

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

COMMITTEE STAGEAmendments to be moved by Dr. the Honourable YEUNG SumClauseAmendment Proposed

5

NEGATIVED

By deleting the proposed section 31AA and substituting -

**“31AA. Referral of matter involving offence
suspected to have been committed by
Chief Executive**

(1) Notwithstanding section 30, where the Commissioner has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, the Commissioner shall refer the matter to the Secretary for Justice. The Secretary for Justice shall appoint a retired judge to form and chair an independent investigation committee. The committee members therein may consist of the Commissioner. The committee shall be responsible for carrying out the investigation and report its findings to the Secretary for Justice.

(2) The Secretary for Justice shall refer the report to the Members of the Legislative Council for them to consider whether to take any action under Article 73(9) of the Basic Law.”.