

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 10 July 2008

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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 ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

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

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.

MEMBER ABSENT:

THE HONOURABLE CHIM PUI-CHUNG

PUBLIC OFFICERS ATTENDING:

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

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

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

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

CLERKS IN ATTENDANCE:

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

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is not present. Will the Clerk please ring the bell.

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

PRESIDENT (in Cantonese): We now have a quorum. The meeting now begins.

BILLS

Committee Stage

RACE DISCRIMINATION BILL

CLERK (in Cantonese): New clause 93A	Discrimination against contract workers
New clause 93B	Discrimination in provision of goods, facilities or services
New clause 93C	Discrimination in disposal or management of premises
New clause 93D	Claims under Part III or IV
New clause 93E	Period within which proceedings to be brought
New heading before new clause 93F	Disability Discrimination Ordinance
New clause 93F	Interpretation
New clause 93G	Discrimination against contract workers

New clause 93H	Vilification
New clause 93I	Section substituted
New clause 93J	Claims under Part III or IV
New clause 93K	Period within which proceedings to be brought
New heading before new clause 93L	Family Status Discrimination Ordinance
New clause 93L	Interpretation
New clause 93M	Discrimination against contract workers
New clause 93N	Discrimination in provision of goods, facilities or services
New clause 93O	Period within which proceedings are to be brought.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2, as printed on the paper circularized to Members.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and cross-headings read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 93A, 93B, 93C, 93D, 93E, 93F, 93G, 93H, 93I, 93J, 93K, 93L, 93M, 93N, 93O, and cross-headings immediately before new clauses 93F and 93L.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2, as printed on the paper circularized to Members.

CHAIRMAN (in Cantonese): I now put the question to you

(Mr Jasper TSANG raised his hand in indication)

CHAIRMAN (in Cantonese): Is it a point of order?

MR JASPER TSANG (in Cantonese): A point of order. May I ask the Chairman to check if what the Secretary has read out just now is the motion that he should move now?

CHAIRMAN (in Cantonese): Secretary, we are now dealing with page 48 of the Script. Originally, I intended to correct the Secretary in my own way but now, I can only ask the Secretary to move his motion again.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): I am sorry, Madam Chairman. I move that the new clauses and cross-headings read out just now be added to the Bill.

Proposed additions

New clause 93A (see Annex I)

New clause 93B (see Annex I)

New clause 93C (see Annex I)

New clause 93D (see Annex I)

New clause 93E (see Annex I)

New clause 93F (see Annex I)

New clause 93G (see Annex I)

New clause 93H (see Annex I)

New clause 93I (see Annex I)

New clause 93J (see Annex I)

New clause 93K (see Annex I)

New clause 93L (see Annex I)

New clause 93M (see Annex I)

New clause 93N (see Annex I)

New clause 93O (see Annex I)

Cross-heading immediately before new clauses 93F (see Annex I)

Cross-heading immediately before new clauses 93L (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and cross-headings read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 3 to 5.

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: That the schedules stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2 as printed on the paper circularized to Members.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 2 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendment to the long title as printed on the paper circularized to Members.

Proposed amendment

Long title (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to the long title moved by the Secretary for Constitutional and Mainland Affairs be passed.

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 to the long title moved by the Secretary for Constitutional and Mainland Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

RACE DISCRIMINATION BILL

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, Hong Kong is a pluralist international city. Ethnic minorities account for 5% of the total population in this international city with a population of almost 7 million people. We have a fine tradition of

blending international cultures and working together to create a quality city, and a good human rights record. So far, no serious racial confrontation has ever occurred in Hong Kong, in contrast with some overseas countries. Members of the Hong Kong public, no matter what racial group to which they belong, should take pride in this.

Over the years, various political parties and groupings have all been very concerned about upholding the core values of Hong Kong. This set of core values involves many aspects, including the rule of law, the common law system and judicial independence in Hong Kong. Hong Kong has a tradition of being a free and open city and it is comparatively speaking more progressive in Asia. In the past 18 months, we have examined and scrutinized the Race Discrimination Bill (the Bill) together. In fact, various political parties and groupings share the common overall objective of elevating Hong Kong to a new level. In the past 18 months, we have shown our care and concern for the ethnic minorities in Hong Kong through various approaches. In fact, the ethnic minorities in Hong Kong are multi-dimensional. Some of them come from western countries and may have better financial means and social ties. They have greater abilities and better social resources. Some of them are from other Asian regions, for example, people from South Asia. They also consist of several types of people. Some of them have lived in Hong Kong for decades, like businessmen or professionals. This group of people have greater abilities. However, some of them have come to Hong Kong only recently and their resources are limited. Be it people with great abilities and extensive resources or new comers with limited ability, this Bill protects them all.

In the discussion spanning more than one day, I can see that various political parties and groupings have great concern about the efforts in this area and hope very much that they can do a good job together. Madam President, I remember that about a year ago, that is, in 2007, soon after the new administration of the SAR took office, there was a motion debate in this Chamber, in which Members of various political parties and groupings voiced their views on behalf of the ethnic minorities they care about. As a Principal Official who took over the human rights portfolio not long ago, I heard Members' views on such areas as education and social services and when leaving the Chamber, my feeling was that Members had made a lot of suggestions. I remember that Mr CHEUNG Man-kwong said we had to take care of the young

people in ethnic minorities and give them the opportunity to receive tertiary education after completing primary and secondary education.

Subsequent to careful consideration together with colleagues in the Education Bureau, we put in place new arrangements to adopt greater flexibility in examinations such as the Hong Kong Certificate of Education Examination and the Advanced Level Examination, so that students from ethnic minorities can also apply to sit for Chinese Language examinations in overseas countries, which are easier for them. All of us are glad to bring this about and hope that in living in Hong Kong

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

MR JAMES TO (in Cantonese): President, are we now going through the Third Reading? Are we having another round of debate?

PRESIDENT (in Cantonese): Mr TO, please sit down first. According to the usual practice, no debate will be conducted at Third Reading but the Rules of Procedure does not prohibit a public officer from speaking at this stage either. Secretary for Constitutional and Mainland Affairs, please continue.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, in fact, I know that I can speak briefly. However, since Members expressed many views yesterday, I find it necessary to explain to Members briefly the overall background of the Bill and why we proposed these amendments. Madam President, I will try to be as brief as possible.

Having heard Members' views, we have made new initiatives in education and social services in the past year. In this year's budget, we have earmarked \$16 million for establishing four new community centres to cater to the needs of ethnic minorities, for example, by providing interpretation services. Our thinking is that on the one hand, it is hoped that a new piece of legislation will be enacted; and on the other, we hope that interpretation services can be provided in community centres. Subsequently, government departments will embark on the

formulation of administrative guidelines. By virtue of the combined efforts in these three areas, a set of new work plans and arrangements will be introduced to take care of the hundreds of thousands of ethnic minorities in Hong Kong. Through the work in these three areas, we hope that a new page and a new milestone can come into being. We hope we can strive together to take care of the ethnic minorities in Hong Kong by giving them the opportunity to integrate into Hong Kong society on the one hand and allowing them to preserve their characteristics as ethnic minorities on the other, so that they can make new contribution to Hong Kong as a pluralistic society.

Therefore, Madam President, we hope Members will continue to support the Bill. The Bill has passed through the Committee stage with amendments. I move that this Bill be read the Third time and do pass. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Race Discrimination Bill be read the Third time and do pass.

MS MARGARET NG (in Cantonese): President, please allow me to make some brief comments.

President, this piece of legislation on racial discrimination and the protection of racial equality is the fruit of a protracted campaign by all the groups concerned and by a number of Members in this Council. When I took over chairmanship of the Bills Committee, I could also sense such a goal among Members. I also hope very much that this Bill can be passed but President, after the lengthy debate yesterday, you also know clearly what the obstacles are. On the one hand, we hope very much that this Bill can be passed; yet on the other, it is practically impossible for us to pass the Bill. For this reason, the Bills Committee asked me to move some important amendments on its behalf. President, when speaking in the debate on the resumption of Second Reading, I also said, for myself and on behalf of Members from the Civic Party, that if the major amendments moved by me were not passed, we would oppose the Third Reading of the Bill.

President, as expected, my amendments were negatived one after another but when dealing with clause 58, an unexpected turn of events happened and

clause 58 was excluded from this Bill. President, I wish to explain to Members that this is by no means a coincidence because throughout the whole process of scrutiny, many Members, regardless of their political affiliations, had strong views on clause 58, thinking that it was totally unreasonable. Basically, that clause condones language discrimination and the effect is that it will render any protection provided by the Bill meaningless. For this reason, the removal of clause 58 is in fact a major many people feel as though a weight has been lifted from their hearts.

President, in the course of debate, it seemed a number of Members had the misunderstanding that without this safeguard, it would be necessary to post hundreds of interpreters to all kinds of services or all hospitals. This is a misunderstanding. I hope that after the passage of this Bill, the Government will step up its publicity to dispel all doubts.

President, looking back at my amendments in four major areas, in fact, apart from the part on language, another important part that was negated irrevocably was the one on the functions performed and the powers exercised by the Government. The Bill does not include the point that if the Government is involved in any act of discrimination, it will have committed an offence, so there is still a deficiency.

However, in view of the great success with regard to clause 58 and the fact that we have also heard many groups for ethnic minorities, including the Human Rights Monitor, express the hope that we can support the Third Reading, so later on, I will also support the Third Reading of the Bill together with Members of the Civic Party. I hope that Members of this Council and various groups can continue to lobby and make endeavours, so that the deficiencies of this Bill can be addressed as soon as possible. Thank you, President.

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

DR YEUNG SUM (in Cantonese): Madam President, on behalf of the Democratic Party, I will speak in support of the Third Reading of the Race Discrimination Bill (the Bill). Basically, the Democratic Party is a pragmatic and outspoken political party and we have been campaigning for the enactment of legislation. However, a Bill does not have to be perfect before we will support

it. If this had been the case, it would not have been possible to have any success in securing so many pieces of labour legislation. Therefore, for more than a decade, this Council has been campaigning for this Bill. Basically, the Democratic Party will support the Bill.

It is estimated that there is an ethnic minorities population of over 300 000 in Hong Kong. Madam President, be it in education, vocational training, employment and the treatment they get from society, they have been subjected to deep-seated discrimination for a long period of time. For this reason, Hong Kong has a disgraceful record and this is also a shameful page of Hong Kong's history. These forgotten people should be allowed to break from their past and we have to attach full importance to equal social opportunities. Be it in education, vocational training, employment or treatment by society, both the Government and civil society should continue to make efforts.

The major reason for the Democratic Party's support of the Bill is that this is indeed the first time that relatively comprehensive and fairly extensive protection is proposed with regard to private organizations because many of the debates have pointed to the inadequate protection accorded by the Government. However, in fact, the Bill will basically be applied to private organizations in society. I wish to add something concerning this point. The Democratic Party considers that in this area, this is the first time that a piece of legislation is introduced to require private organizations and groups to protect ethnic minorities more comprehensively and in various areas, so that they will not be subjected to racial discrimination. Our only dissatisfaction is with the inadequate monitoring of the Government. Although in the end, the Government accepted that the scope of the Bill should also cover the Government in such areas as employment, admission to clubs and recruitment, compared with other pieces of legislation such as the Sex Discrimination Ordinance or the Disability Discrimination Ordinance, the regulation of government functions and powers is indeed inadequate in the Bill. In this regard, the Democratic Party will continue to lobby through the United Nations, so that racial equality can be enhanced in Hong Kong and the Government will be subject to further monitoring.

I also proposed that the Government introduce an equality scheme. Basically, this Bill will be passed. If the Government can conduct a review of the equality scheme after implementing it for some time, just like the review of the Wage Protection Movement, if the Government finds the results not obvious, the Government should come to the Legislative Council again to formally enact

legislation on an equality scheme. Here, I am grateful to Honourable colleagues for holding a meeting until 10 or 15 minutes past 10 o'clock last night, so that clause 58 was excluded from the Bill. Some press reports said that it had been a fluke for Dr David LI. It was not a fluke. Rather, he made it a point to come back to give us his support and lobby for the removal of the language obstacle. Basically, he is a banker with a heart. I did not say much to reporters yesterday but since some commentaries say that he did not know what he was doing, I wish to say something in fairness for him.

Ms Margaret NG is the Chairman of the Bills Committee. Yesterday, she said that "heaven has eyes" and this is why we in the pro-democracy camp must make endeavours. So long as we persevere persistently, the development of events may take a turn for the better. Thank you, Madam President.

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

MS EMILY LAU (in Cantonese): President, I said in my speech yesterday that if the amendments were not passed, I would oppose the Third Reading of the Bill. Mr James TIEN said that if we opposed the Third Reading, this would deliver quite an undesirable message to society and perhaps even to the international community because the Legislative Council in Hong Kong would go so far as to oppose a piece of legislation prohibiting racial discrimination. However, even if we oppose it, we can perhaps still strike home the message that we do not mean it is all right to practise racial discrimination and therefore want to oppose the enactment of legislation by the Government.

However, I also agree with Ms Margaret NG's comment just now, that it is good news clause 58 was not included in the Bill and this is quite elating. I also thank those Members who brought about the exclusion of clause 58 from the Bill. Members can see that when it comes to the balance of power in the legislature, in fact, it is only necessary for several votes to switch sides and for a couple of Members on that side to have left for the Secretary to be rendered completely helpless. Some people say that it looks as though the Secretary had fallen asleep, in particular, that the new Under Secretary did not know what he was doing. So many people were deployed at the doorway and there were also people outside some doorways, but things could still get to such a state. The authorities really have to do some self-examination. However, no matter if

Members vote or not, in fact, there is no need to deploy soldiers or police officers and even if they were deployed, it would be useless. If people want to leave, even 10 police officers would not be able to prevent them from doing so. People can come if they want to, and they can press buttons if they want to.

I am also thankful to Honourable colleagues who supported clause 58. I neither hope nor believe that those things predicted by scaremongers would happen. They have talked about such things as leading to unnecessary litigations. However, the authorities should commit more resources, be it to education, health care or various other areas, so that language will not become a barrier. Now that this clause has been excluded, it does not mean that I will be able to tell the United Nations in future that Hong Kong has done everything properly. This is certainly not the case because yesterday, its requirements were read out. However, since many members of ethnic minorities hope that this Bill can be passed, I also hope that the authorities can devote more mental efforts and do a better job, so as to overcome the language problem.

Yesterday, Dr Fernando CHEUNG also advised the Government on a lot of methods. This morning, on the radio, he also taught the Hong Kong public what they could do, so I will support the Third Reading. Thank you, President.

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

DR FERNANDO CHEUNG (in Cantonese): Having been a Member for nearly four years, I am finally given a very good present in this last meeting. This very important piece of legislation will truly place Hong Kong in the rank of world cities, so that we can at least have a piece of legislation to prevent racial discrimination and language discrimination is definitely related to racial discrimination.

This time, the Government suffered a Waterloo at the final stage. I hope the Government will not bear any grudge, still less should it defer the enforcement and commencement of this Bill. We know that although there is the likelihood that this Bill will be passed, after its passage, the Government can still find ways to hinder the implementation of this Bill. If this happens, I am afraid we will become the laughing stock of the international community.

Given the repeat persuasion and monitoring by the international community, the SAR Government should pluck up its courage. President, in fact, no particularly great courage is required. It is only about aligning the practice and standards in Hong Kong with international standards.

Here, in fact, I wish very much to add one more remark. Although we will support the present Bill, which does not include clause 58 concerning language discrimination, it does not mean that the Bill is perfect because the part regulating the acts of the Government is actually still quite conservative and considerable exemptions have been given in respect of nationality and residency status. We think that there are still quite a lot of problems in these areas.

Concerning an equality scheme, we cannot see any reference to this in the Bill, nor can we see the Government's resolve and sincerity in the administrative guidelines. In view of this, we have to say something regarding these several areas for the record. We do not want the international community, including the United Nations, to think that the Bill is adequate on seeing that we have passed the Bill with a majority or interpret this as meaning that Hong Kong people or we, who are the main representatives of public opinion, are already very satisfied with the Bill.

Rather, the opposite is the case. We think that there is actually still room for improvement in many areas, only that we hope the first step can be taken. If even the first step is not taken and the door is not open, it will be even more difficult to promote racial harmony. For this reason, here, I wish to make it clear to the international community that passing the Bill does not mean that we are fully satisfied with it. Thank you, President.

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

MR RONNY TONG (in Cantonese): President, there is something about which I must say before I can feel relieved.

Of course, we cannot rule out the achievement made yesterday, but it seems some Honourable colleagues have made an overstatement. President, the greatest problem with the Bill, as we have pointed out, lies in the regulation of

the Government. Some Honourable colleagues such as Dr YEUNG Sum even described this as "heaven has eyes" and I totally disagree with this.

President, this year is an election year and anything can happen. What happened yesterday was a minor influence or show of force of the democratic spirit. Members can imagine that had this legislature been returned by universal suffrage, the debate yesterday would not have occurred at all.

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

MR MARTIN LEE (in Cantonese): Madam President, yesterday, in the debate on the resumption of the Second Reading of the Bill, I said that the Government often wanted us to pass a piece of legislation first and then reviews would be carried out slowly. However, it has not done this even once. I hope the Government can prove to us that Martin LEE is wrong. Frankly speaking, this Bill is very unfair to our compatriots on the Mainland and to new immigrants. Moreover, it is a disgrace to Hong Kong people.

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

MRS SELINA CHOW (in Cantonese): President, having come to this stage, I simply want to take this opportunity to talk about the views of the Liberal Party on the Bill.

We pointed out clearly in the debate on the resumption of Second Reading of the Bill that the Liberal Party believed the Bills Committee had taken the first stride in considering the Bill. We fully support anti-discrimination measures but in implementation, how far or to what length should we go? I believe the Government's amendments in various areas have already made some concessions in response to the concerns raised by Members. As the first step, we believe they are proper.

However, in view of the developments yesterday, we also think that removing the exemption on language will really pose quite a lot of difficulties in enforcement. For this reason, we think that if the present Bill is passed, in

future, various parties will have to comply fully with the requirements of this piece of legislation and there will definitely be a lot of difficulties because be it in resources, people with the skills we also heard some very strong justifications yesterday. For this reason, we believe problems will surely arise in this regard.

Anyway, even though the provision on language exemption was removed yesterday, we will not reject the whole Bill on account of this because in the final analysis, this Bill is still capable of preventing racial discrimination effectively and we absolutely support it. Therefore, we only want to state clearly that we still take issue with the removal of the language exemption from the Bill.

Thank you, President.

MR JASPER TSANG (in Cantonese): President, just now, Mr Ronny TONG said that if the entire legislature had been returned by universal suffrage, there would not have been such a lot of debate, that perhaps all of us would support the amendments proposed by Ms Margaret NG before the Bill could be passed
(There was a noise disturbance)

President, I wish to say that I was also elected through the direct elections of geographical constituencies and in my constituency, there are many voters who are ethnic minorities. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) is the political party with the greatest number of members from ethnic minorities and they now number at the hundreds. Its members of South Asian origin are all from the grassroots and they definitely do not belong to prominent families. Some people of Indian origin in Hong Kong have lived here for generations and they have a very high economic status. However, we do not have any such members. A lot of people among these members are receiving Comprehensive Social Security Assistance (CSSA) and their children also meet many difficulties in schooling. They include Nepalese, Pakistanis, Bangladeshis and Filipinos. These people are our members. We have a committee that holds monthly meetings to listen to their views.

My office also organizes a Cantonese class for South Asians. I can say boldly that this is one of the few more successful examples. I know that some non-governmental organizations and voluntary agencies have also organized this kind of courses before but there are a lot of difficulties. Although the Government allocated resources to them, no one would enroll at these courses

when they were offered or very few people would enroll at these courses. Even if people have enrolled at them, a still smaller number of them would continue with their study. Why? Because they are leading a very difficult life and have to attend such courses after work. I could also understand their difficulty in attending such classes. Some of them may fall asleep in class and it is really difficult to carry on. It is really very difficult for them to learn Chinese because they are rather old and their education standards are not very high. However, we still offer such courses to them.

Therefore, we understand their needs and I also rely on their support. If we in the DAB endorse a piece of legislation which they think is totally against their interests, they will surely be the first one to stage a revolt. Insofar as this Bill is concerned, ever since the day when the consultation document was released, we have kept in touch with them and many of them have been asking us with concern all the time: Will it fail to be passed? Will it be voted down? They know that it has deficiencies but the message they convey to us is that it is better to pass the Government's original Bill than not passing it at all. This message is very clear. In fact, the Bills Committee has also consulted them. Ms Emily LAU also asked them to state their position: If not a single word in the Bill is changed, should we support or oppose it?

Therefore, President, the DAB definitely supports the Bill. I also want to state clearly here that we want to take part in direct elections and I want to win the votes of members of ethnic minorities. We support the Bill.

MR ALBERT HO (in Cantonese): I wish to give a simple summing up. First, when the Government spoke, it still stressed that the language barrier will not give rise to racial discrimination. In fact, saying so is being removed from the reality in society, being completely removed. Often, the language problem can cause friction and even fractures among racial groups. This is really a matter of common knowledge, but it had never occurred to me that this could also trigger a debate.

We can see that no matter if it was due to an accident or some other factors, yesterday, clause 58 was finally excluded from the Bill and this changed the whole situation with regard to the voting today. In fact, the Government should also count itself lucky because despite the fact that this Bill has aroused such a great controversy, that there were so many amendments but the

Government was headstrong in refusing to accept them, due to the exclusion of clause 58 from the Bill, many political parties that originally considered the Bill flawed and originally had strong grounds to oppose the Bill are all prepared to endorse the Bill today. The Government should consider itself very lucky.

Yesterday, on seeing the look of the Secretary after voting, I could not say if he was feeling angry or flustered. (*Laughter*) In fact, back in his office, he should look at this matter in a more detached manner and consider how lucky the Government was. It really is very lucky. Otherwise, it would have aroused a great deal of wrath. It turned out that a piece of legislation that the Government considers to be so desirable and introduced and formulated after working for so many years was opposed by some Members of the pro-democracy camp who had been lobbying for the elimination of racial discrimination for a long time. How can the Government explain this to the rest of the world? Mr Jasper TSANG said it would be difficult to explain this to his voters and supporters but, in fact, it would not be. Anyway, the controversy over the Third Reading has subsided. However, I must say that it seems the comments made by Mr Jasper TSANG have omitted another point, that is, if the DAB had been willing to support the amendments moved by Ms Margaret NG, in fact, the Bill could have been even better, so why do we have to count on our luck? Why do we have to congratulate ourselves over the absence of some people and why should we count on heaven opening its eyes, as some people said? Why do we have to be like this? Had the Honourable colleagues from the DAB been more sensible and reasonable — to borrow a phrase from the Vice-President — and supported Ms Margaret NG's amendments or opposed the inclusion of clause 58, many of the heated debates would have been necessary.

Anyway, I believe that later, the Bill will pass the Third Reading smoothly. However, I wish to put on record again that through various channels, Members of the pro-democracy camp, in particular, Members of the Democratic Party, will continue to strive to bring about improvements to many of the serious flaws in the Bill, including the regulation of the Government.

(Mr Jasper TSANG stood up)

PRESIDENT (in Cantonese): Mr Jasper TSANG, do you want to clarify what has been misunderstood in your speech?

MR JASPER TSANG (in Cantonese): Can I seek an elucidation?

PRESIDENT (in Cantonese): You want to ask him to clarify?

MR JASPER TSANG (in Cantonese): Yes.

PRESIDENT (in Cantonese): In that case, you should do so when

MR JASPER TSANG (in Cantonese): Because Mr Albert HO said that the DAB should be "sensible and reasonable" and that he was borrowing a phrase from Mr XI Jin-ping. However, the Vice-President, Mr XI Jin-ping, did not use the words "sensible and reasonable", rather, what he said was "sensible and fair-minded": Be sensible to nationalistic feelings and fair-minded within the framework of the Basic Law. I cannot see the relationship of this remark to the present Bill.

PRESIDENT (in Cantonese): If there is no relationship, do you have any point of order to raise?

MR ALBERT HO (in Cantonese): President, I wish to clarify if he wants to interpret the remarks made by the Vice-President, Mr XI, by adopting the attitude towards the interpretation of the Basic Law?

PRESIDENT (in Cantonese): I will not allow any more requests for elucidation. Members, we have already broken the record in that the debate on the Third Reading can last so long. Since I have allowed so many Members to speak, I must also allow Mr Abraham SHEK to speak. Mr Abraham SHEK, please. *(Laughter)*

MR ABRAHAM SHEK (in Cantonese): President, I find it regrettable that this Bill has been politicized. President, that it is possible to achieve such results in respect of this Bill today is attributable not just to the campaigning by the pro-democracy camp. Each and every Member in this Chamber has also played a part in fighting for the passage of this Bill. The Government also deserves a lot of credit because it introduced this Bill for our discussion and amendment. Members held a total of 34 meetings to discuss this Bill. From the beginning to the present, the Government has done a lot of work and amended the Bill to its present state. Although the Government probably did not want to see the voting result on clause 58, be as it may, this has happened. President, the Government did not withdraw the Bill, so this shows that the Government is sincere about introducing the Bill. For this reason, I am happy to learn that even those people who are opposed to the Government also support it this time around and will vote for the Bill. This proves that the Government is right in introducing the Bill.

Second, I do not agree with Mr Ronny TONG's comment that had there been universal suffrage, the discussions on the Bill yesterday would not have been necessary. He is wrong. Clause 58 was not passed yesterday because several Members from functional constituencies had lent their support to them. Otherwise, the outcome would not have been like this.

Third, the Chairman of the Bills Committee is also a representative of a functional constituency, President. For this reason, there is no relationship between universal suffrage and the Bill. Moreover, it is precisely because there are Members from functional constituencies that there is stability in Hong Kong society and a balance can be achieved.

PRESIDENT (in Cantonese): Does any other Member wish to speak? Ms Audrey EU, please speak. However, I wish Members will not stray away from the question again because what we are talking about now is

MS AUDREY EU (in Cantonese): President, I only wish to request

PRESIDENT (in Cantonese): My remarks were not directed at you. I was only speaking in a general sense.

MS AUDREY EU (in Cantonese): President, as a member of the Civic Party, I only wish to ask Mr Abraham SHEK to clarify what is the reason for his thinking that the Chairman of the Bills Committee, Ms Margaret NG, will not be elected if she takes part in direct elections on the next occasion.

PRESIDENT (in Cantonese): I will not grant your request because this is not a request for elucidation. Mr Abraham SHEK has neither made such a comment nor such an assumption. He has only stated the facts.

MRS ANSON CHAN (in Cantonese): President, clause 58 was removed yesterday and to me, this is a pleasant surprise. The Secretary said he hoped that a new era would dawn after the passage of the Bill and I think all of us also hope so. Although there are still a lot of flaws in the Bill, at least, we have removed the language barrier and it is preferable to do so than otherwise. The Secretary is full of stamina, so I hope he can oversee the discharge of duties by all government departments properly. He proposes that administrative guidelines be introduced. I hope that in future, when he submits the administrative guidelines to the Legislative Council for scrutiny, they will live up to our standards.

When I spoke, I pointed out that if we were serious about eliminating racial discrimination, it is necessary to make changes to our thinking and culture. I hope the Government can make all the departments concerned work in concert and help members of ethnic minorities as they really deserve our help.

Yesterday, I had the occasion to meet with the Chief Secretary for Administration, Mr Henry TANG. I mentioned the Bill, and the proposals of the Bills Committee in particular, to him and asked him if he could chair an inter-departmental team. He did not say he would not give this consideration. Here, I reiterate that I hope the Chief Secretary for Administration will consider our proposal seriously. In fact, everyone considers it desirable for an

inter-departmental team to oversee that all government departments will work in concert. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, since you have allowed this Council to set a record today, I also wish to make a few more points in summing up.

I think that be it in dealing with the development of democracy or protecting the rights and interests of ethnic minorities, no political party or grouping has any monopoly. This is not the monopoly of any political party or grouping. Today, Mr Ronny TONG has made some remarks and yesterday, Ms Audrey EU also made comments in the same vein, asking why, whenever there were some rather controversial issues, it was always Members of the pro-democracy camp who would champion the people concerned or the ethnic minorities.

However, let us consider this. Members of various political parties and groupings are all returned through elections. Mr James TIEN is not in the Chamber now. He was also returned through direct elections, but he also supported retaining the provision to change the waiver period for small and medium enterprises (SMEs) from one year to three years. Why? Because he knows that SMEs operate with small amounts of capital, that they have difficulties and need our understanding. He has been involved in the work of his party over the years and from his participation in indirect election to participation in direct election, he has been reflecting the views of his voters. Just now, Mr Jasper TSANG talked about the work done by his party for ethnic minorities in local communities in recent years. Members of The Alliance and Mr Abraham SHEK are also very concerned about this Bill.

In fact, the coverage of this Bill is quite broad. Our discussions in the past two days indicate that some of the efforts have to be backed by a new piece of legislation, whereas some work has to be launched through administrative measures. On the whole, we all believe that we should support and protect the rights of ethnic minorities and take care of their needs. This general direction is supported by all political parties and groupings and independent Members, and the Government also takes the same view. What have we debated on in the past two days? Some Members think that some matters, for example, an equality scheme, should be set down as provisions, but some Members consider this unnecessary as they can be implemented through administrative measures. This is debate and the legislative process requires debates.

After the Third Reading of the Bill today, just as I explained to all Members earlier on, we will enter a new era. We will have a new piece of legislation to complement other pieces of legislation, including the Hong Kong Bill of Rights Ordinance, and make our protection and care for ethnic minorities more comprehensive. In particular, Mr Ronny TONG mentioned imposing regulation on the Government. I wish to reiterate that after the enactment of the Bill, together with the Hong Kong Bill of Rights Ordinance, comprehensive safeguards will be provided.

We have spent a lot of time dealing with this piece of legislation and it took a total of 18 months. Miss CHAN Yuen-han said she had waited 11 years. In the first decade after the reunification, the Government asked the Legislative Council to expend a lot of effort and time on such issues as the smooth transition of Hong Kong, the SARS outbreak, the financial turmoil, and so on. However, since the general situation in Hong Kong has become more stable in the past few years and the economy has also got back on track after the SARS outbreak, we will have more resources to take care of the ethnic minorities. Therefore, it is an absolutely positive development that we can carry out this legislative exercise now.

President, I really hope that Members can support the Third Reading and the passage of the Bill.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Race Discrimination Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr

KWONG Chi-kin, Miss TAM Heung-man and Mrs Anson CHAN voted for the motion.

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

THE PRESIDENT announced that there were 46 Members present, 45 were in favour of the motion. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

(A number of people in the public gallery clapped their hands)

PRESIDENT (in Cantonese): Will the people in the public gallery please keep quiet.

CLERK (in Cantonese): Race Discrimination Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Mandatory Provident Fund Schemes (Amendment) Bill 2008.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2008

Resumption of debate on Second Reading which was moved on 18 June 2008

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

MR CHAN KAM-LAM (in Cantonese): President, in my capacity as Chairman of the Bills Committee, I would like to submit the report of the Bills Committee. In principle, the Bills Committee supports the Government's one-off injection of \$6,000 (the special contribution) into the Mandatory Provident Fund (MPF) accounts of eligible members of the MPF schemes in order to further implement the relevant proposal in this year's budget. Members also note that the Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill) seeks to amend the primary and subsidiary legislation in order to give the Mandatory Provident Fund Schemes Authority (MPFA) the power to implement this injection exercise. However, the scope of the Bill does not cover the eligibility criteria or the amount of contribution made to each account in this injection exercise.

As the Administration did not introduce the Bill to the Legislative Council until 18 June 2008 and hoped that the Bill could be passed in the current Session, some Members strongly criticized the Administration for not giving the Legislative Council sufficient time to scrutinize the Bill. The Administration explained that early passage of the Bill could provide the MPFA with the necessary legal backing to carry out its work, so as to complete the injection exercise within 2008-2009. However, some Members were still very concerned about and dissatisfied with having to scrutinize the Bill within a very tight timeframe.

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

Regarding the eligibility criteria for the special contribution, Members noted that the Administration has already, in response to the opinions of members of the public, expanded the scope to cover people who had been in employment or self-employment at any time during the one-year period from 1 March 2007 to 29 February 2008 and with a monthly income not exceeding \$10,000 in one of the last three months of their last employment/self employment during that period. Members cited a number of examples to seek clarification from the authorities on whether these examples meet the eligibility criteria for the injection. In response to Members' requests, the authorities have provided a paper to set out in detail the eligibility criteria and complemented them with specific examples.

One of the proposals in the Bill is that the special contribution would be subject to the preservation rule under the MPF legislation. Some Members were of the view that the Administration should give eligible persons the flexibility to withdraw the special contribution before the age of 65 in order to provide timely assistance to low-income and disadvantaged groups in coping with the soaring commodity prices.

Regarding whether the Administration should establish a mechanism to handle complaints or requests for review, members of the Bills Committee noted that the MPFA would make administrative arrangements after the enactment of the Bill. The MPFA also indicated that after the enactment of the Bill, there would be extensive prior publicity to apprise the public of the injection and eligibility criteria. At the same time, it also undertook to provide the Panel on Financial Affairs of the Legislative Council with detailed information about the detailed arrangements for the review mechanism before the Administration seeks funding approval from the Finance Committee of the Legislative Council.

The Bill also contains provisions to stipulate that the new statutory provisions will prevail over the various documents relating to the MPF schemes (for example, the requirement that only employers, employees and self-employed persons are allowed to make contributions) to avoid any inconsistency between the new statutory provisions and the existing provisions. However, the Bills Committee also noted at the same time that trustees are managing MPF contributions according to the trust deed that they entered into with employees and the relevant code. The MPFA has re-confirmed that all approved trustees have been informed of the proposed overriding provision and none has raised any operational difficulties. The MPFA has also undertaken to continue to liaise with the trustees during the implementation of the injection exercise.

No amendment will be proposed in the name of the Bills Committee. Miss CHAN Yuen-han and Mr LEE Cheuk-yan will move respective amendments to the Bill in their personal capacity.

Deputy President, on behalf of the DAB, I would like to express the following views on the Bill.

The DAB supports the passage of the Bill. It is an original measure for the Financial Secretary to propose in the budget an injection of \$6,000 into the

accounts of low-income people with a monthly income of less than \$10,000. The aim is to store wealth amongst the people and deposit the money in MPF accounts. On the one hand, this can increase the amount of MPF for low-income people, so that they can benefit directly from it upon retirement; on the other hand, the immediate withdrawal of the funds can be pre-empted, thus reducing the amount of capital being ploughed back into the market in the short term, which might lead to the rapid worsening of the inflation problem. These considerations are understandable.

We have also occasionally received some enquiries from members of the public in local communities concerning why the Financial Secretary does not hand out cash, so that they can cash in immediately. However, after our explanation, basically, they also find this well-intentioned arrangement of the Financial Secretary acceptable. Therefore, we also accept this injection exercise introduced by the Financial Secretary for low-income people.

As regards the amendments proposed by other Members, we will abstain from voting on one of them and vote against the other.

Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): One of the measures in the budget this year is to inject a sum of \$6,000 into the MPF accounts of all wage earners earning less than \$10,000 a month. Prior to the release of the budget, in fact, I had put forward a proposal but my idea was very different from the Government's. Under the Government's present arrangement, employees have to wait until the age of 65 to use this sum of money. That means low-income employees now in their twenties have to wait 30 years and those in their thirties have to wait more than 20 years before they can use this sum of money. The amendment that I will move later on seeks to inject this sum of \$6,000 into the portion of voluntary contribution instead of the portion of mandatory contribution, as proposed by the Government now. What is the main difference between the two? It is prescribed that employees cannot make use of their mandatory contribution until they reach the age of 65, but they can decide on their own when to use their voluntary contribution. They can use it at the age of 65, they can use it at 60, 55 or 50 years of age and they can even use it now. It is up to the employees to decide.

I think that since the Government wants to do something nice by handing out money, why must it require employees to wait until the age of 65 to use it? Why not give employees the right to choose and decide instead of the Government making the decision for them and requiring that they reach the age of 65 before they can? This is not the way in which the Government offered tax rebates to the middle class, for they were given the rebates immediately, so that they could enjoy the benefit immediately. I once asked in the Bills Committee why the Government opposed my proposal. The Government said that if low-income employees were given \$6,000 and allowed to use the sum immediately, this might fuel inflation. I was very angry with this remark. When the Government offered tax rebates to the middle class, it did so immediately. It also offered immediate tax rebates to small and medium enterprises and consortia. Does it mean that these measures would not trigger inflation? Why would offering tax rebates to low-income people trigger inflation? I think the reasoning and rationale have been completely inverted. It is practically impossible for such a small sum of money to trigger inflation. Quite the contrary, to low-income people in Hong Kong, this sum of money is like disaster relief. At present, the inflation rate stands high. Secretary, if you put yourself in other people's shoes and if this is about providing disaster relief to Sichuan, were we to tell them that they would now be given a sum of money but they can use it only after 30 years, would this be feasible? Frankly speaking, if we were to do so, people would think that we are dumb. This instance in Hong Kong is more or less the same, that is, the Government will give them a sum of money but tells them they can use it only when they reach 65 years of age. To them, they are facing serious inflation and if they have pressing difficulties, what are they supposed to do? Maybe the Secretary will tell me that I can continue to lobby for them and demand that the Chief Executive hand out other things to them.

I have learnt from press reports that next Wednesday, the Chief Executive will come to the Legislative Council to attend a Question and Answer Session. At that time, maybe something will be handed out. That would be very ridiculous because on the one hand, this sum of money can be used only when employees are 65 years old; and on the other, due to the remark of the State Vice-President that the inflation in Hong Kong is a serious cause for concern, the Chief Executive, in order to get the job done, will immediately hand out money again. The Government has a lot of money to hand out and it is formidable.

However, regarding this sum of over \$10 billion, if the Government follows my advice, in fact, it will be possible to provide immediate relief to those people in hardship.

Deputy President, I think this is really a sad state of affairs. I have helped the Chief Executive come up with a way to meet the demands of the State Vice-President and tackle inflation. I am really well-intentioned. Just now, Mr CHAN Kam-lam said John TSANG was well-intentioned. When I think about myself, I am described as a member of the opposition. However, in fact, I am very pro-Donald TSANG because I have thought up this tactic for him, so that he will not be harmed or be subjected to serious damage or chided by his masters, but my good intentions are cold-shouldered. If the Government does not support my proposal, the Government will get its just deserts. Here, I am giving it a warning like a gentleman. If this Bill is passed, I will continue to say that the Government has not done anything for the low-income people, has not helped them cope with inflation. The Government must be prepared. All the people in this legislature will continue to upbraid the Government, stating that it has not helped the low-income people. In that case, the Government will have to hand out money again. All right, in that case, I will still be happy. We will forget about this matter and let employees wait until they are 65 years old before using this sum of money. Then, we will force the Government to spend another \$10 billion. Should we do this? It is irresponsible of the Government to act in such a manner.

In putting forward this proposal to the Government, in fact, I hope that, first, it will be possible to cope with inflation immediately; second, in principle, I think the right to choose should rest in the hands of employees. I am convinced that if employees are not financially straitened, they would not withdraw this sum of \$6,000 from their MPF accounts on purpose. Many employees have money in their MPF accounts, but have you ever seen them use it? If they do not really have the need, they would not use it. Therefore, they should have the right to choose and the Government should trust these employees or low-income people because they themselves know best how the money should be used and there is no need for the Government to make the decision for them. The Government often talks about "big market, small government" but in fact, it practises "big government, small public" in deciding when the public should use this sum of money. This is the first point. Deputy President, I think it really should not do this.

Having heard the speeches delivered by Honourable colleagues today, I know that not everyone is helping Donald TSANG and that only I am doing so. Everyone wants to give him a bashing. They want to bash him a few times more after he has given away more than \$10 billion. In future, I will bash him even more strongly than those people because he is so bad and unwilling to heed my advice. He deserves it. In future, let us continue to bash the Chief Executive. My amendment will probably not be passed. Some Honourable colleagues say that the original intention of the Government is to let employees use that amount of money only upon retirement. Judging from its original intention, this is not the best approach. I think it would be best to let employees make their own decisions and I want to win Members over.

Deputy President, the second point that I wish to make is that we think there is room for improvement in the details of implementation. Concerning this plan to hand out \$6,000, people who have been turned away are extremely unhappy. They hope that the Government can really consider their situation. What kinds of people are feeling extremely unhappy? The first group is domestic helpers. They told me that they were very unhappy because they were in a terrible situation. Deputy President, right from the beginning, domestic helpers were excluded from the coverage of the Mandatory Provident Fund Schemes Ordinance, so even though this group of domestic helpers have worked for many years, they are not entitled to one cent of MPF because the Mandatory Provident Fund Schemes Ordinance does not cover domestic helpers. All right, if they are not covered, what about the handing out of money on this occasion? They will not get any share. For this reason, to this group of domestic helpers numbering more than 10 000, who are women working part-time, although they have been toiling, they are deprived of their MPF and they will even be deprived of this sum of \$6,000. In fact, this is very unfair to them.

The second group of workers who cannot get any share are workers who have reached 65 years of age. They told me they no longer had any MPF account because it was not necessary to make contributions on reaching the age of 65. In fact, people do not have to make any contribution if they are 60 or older. Therefore, this group of old workers also cannot benefit from this plan. I think the Government should introduce an improved plan for these two groups of people by adopting other methods, for example, by giving the money to domestic helpers through the Integrated Scheme for Local Domestic Helpers,

whereas elderly people should be told to apply to the Government on their own. I think there are probably ways to hand out this sum of \$6,000 to them.

In addition, the drawing of the line has also made another group of people ineligible. I have demanded in the Bills Committee that the present approach is to use the pay in the last three months of the last financial year as the indicator. If one's monthly income is less than \$10,000, one can receive \$6,000. Some people asked if they would be eligible if prior to that, they had been earning a low income. For example, what if they only earned some \$9,000 monthly but in the last three months, they were given a pay rise? They will not be eligible either as their monthly income has exceeded \$10,000. I said that in order to avoid disputes in introducing this scheme, the Government wants to make people happy. If they are not eligible because they got a small pay rise, the Government may as well hand out the money to people who earn less than \$10,000 in any one month of the year, so that they will not make phone calls to lodge complaints, saying that they had been receiving some \$9,000 in the first nine months of the year and their pay was raised to \$10,100 only in the last three months, as a result of which they are rendered ineligible. I suggest that we may as well adopt a more generous approach. Although we have discussed with the Government for a long time, it remains unwilling to do so. I must tell Members that in future, when this sum of \$6,000 is handed out, these people will not get any share.

As regards the issue of unemployment, in contrast, we have solved it in the course of the discussion or before the discussion, that is, for people who were unemployed at any time last year, if their pay was less than \$10,000 in the three months prior to their becoming unemployed, they will also be entitled to the special contribution. Therefore, basically, the issues relating to unemployment have been dealt with generously. Another group is here, I will make an appeal to employees. Some of them are employed but do not have MPF accounts. It is illegal for employers not to open MPF accounts for their employees. If an employee does not have any account, the Government cannot inject \$6,000 into it and the only way is for employees to first make a report against their employers to make the latter open accounts for them. We discussed this in the Bills Committee and requested that if employers opened accounts for their employees and paid the outstanding contributions for last year for their employees, that is, the MPF contributions for the last financial year, the employees would then be eligible. For this reason, I want to make an appeal to all employees now. If they were employed last year but do not have any

account, since the other piece of legislation has been amended, they can lodge complaints to the MPFA to request that their employers open an account for them. Their employers will be prosecuted if they do not do so. If employees have opened accounts, they will be eligible for the \$6,000. In this regard, I call on all wage earners to lodge complaints to trade unions, for example, the Hong Kong Confederation of Trade Unions, if they encounter any difficulty in this regard. We will assist them in opening accounts immediately to solve the problems relating to the injection of \$6,000 by the Government.

Deputy President, I wish to make a last-ditch effort to persuade Members to support my amendment. In fact, my proposal is most reasonable because it can let employees choose how to use the money to which they are entitled. There is another issue. When employees reach the age of 65, this amount of \$6,000 may have accrued but due to the management fee, according to my calculation then, if the management fee stands at 2%, this amount of money will have been reduced by 40%. In view of this, who will be able to take away more money? To some extent, it can be said that the funds will take away more money, that is, the funds will get 40% and the employees only 60% of the money. In the end, having gone through the financial system, in fact, 40% of this sum of money will be taken away. For this reason, this is not a satisfactory arrangement. I hope Members will support allowing employees to make their own decisions. Thank you, Deputy President.

MR SIN CHUNG-KAI (in Cantonese): In the past, the Democratic Party has for a number of times criticized the MPF scheme for being unable to protect low-income people. Since the management fees for the constituent funds under the MPF scheme are too high, after the management fees are deducted from the contributions of low-income people, little will remain, so their accrued benefits and retirement protection will be affected. For this reason, the Democratic Party welcomes the Financial Secretary's announcement of a one-off injection of \$6,000 into the MPF accounts of employees and self-employed people earning less than \$10,000 per month because this move is conducive to improving the retirement protection for low-income people.

In the meetings of the Bills Committee, many Honourable colleagues were concerned about the issue of the eligibility criteria for recipients. Although the Government had prepared a list of eligibility criteria and examples for Members' consideration, the time given to the Bills Committee to scrutinize the Bill was

still far too short. Moreover, as the representatives of the Government said, in view of the different circumstances of each case, it would be difficult to examine whether or not each case was eligible individually. For this reason, the MPFA can only deal with the cases in a lenient manner according to the principles established by the Government and individual circumstances. However, the Government must handle the issue of the eligibility of recipients cautiously. Even though the Government has published detailed and clear eligibility criteria, a lot of grey areas or complications will surely arise in the course of actual application. Honourable colleagues have already cited various examples in the meetings of the Bills Committee, so I am not going to talk about them in detail. Since grey areas will be found all the time, a well-conceived and transparent consultation and review mechanism becomes all the more important, particularly given that the amendment exercise on this occasion has been a very hasty affair.

Deputy President, I feel very concerned because usually, after one or two years, problems would be found in legislation passed when a Session was coming to an end. Secretary, I also had some experience of this, so I advise Members since we are in the same boat, after the legislation is passed, if the Secretary gets into trouble in the future, all of us will have to assume responsibility. Therefore, if members of the public have doubts or complaints about whether or not they are eligible for the special contribution, a transparent consultation and review mechanism will be very important. If this is not handled properly, there will surely be repercussions in society. For this reason, I think the Government must handle this matter cautiously to avoid doing a disservice despite the good intentions.

Regarding the handling of complaints and the review mechanism, in the meetings of the Bills Committee, representatives of the Government said that the MPFA would put in place an administrative arrangement to handle cases of complaint and review. In fact, I believe Members of the next Legislative Council may have to deal with a lot of complaints of this kind. Those who are eligible will not complain, but there will definitely be many complaints of "If he is eligible, why am I not?". Since the special contribution this time around is paid out of public funds and the MPFA is only responsible for making the administrative arrangements for this one-off injection according to the eligibility criteria laid down by the Government, it seems it is not very appropriate for the MPFA to be also responsible for handling complaints or cases requesting review, as is the case under the present proposal. This is because if the MPFA can approve cases and at the same time, it is also responsible for reviewing the cases, in terms of the system, this will not give an impression of being seen to be fair.

I think that this time because in the future, should people complain about rejections by the MPFA, they will complain to the Financial Secretary, who will surely refer these cases back to the Secretary. I can foresee that this will definitely be the case. First, since this special contribution arrangement is financed with public funds, the final policymaking power on whether an individual is eligible for the injection should ultimately rest in the party who pays the money rather than the party responsible for implementation. Put simply, this party should be the Financial Secretary. The Financial Secretary will surely refer the cases to the Secretary for action rather than to the MPFA, which is responsible for such administrative arrangements as the details of the fund injection. For this reason, I wonder if the Bureau should actually handle certain special cases on its own and I call on the Secretary to consider this.

In addition, if the complaints and reviews are related to problems in implementation, it is all the more necessary to pay special attention to whether the situation will develop into one of the MPFA investigating itself. That means if a complaint is lodged to the MPFA, the MPFA may find a higher ranking colleague or a non-executive director of the MPFA to carry out a review, so ultimately, this will give people the impression that this is a case of the MPFA investigating its own people. In view of this, should a review mechanism be put in place or should a small number of cases be referred to people outside the MPFA for review? I ask the Secretary to consider this carefully.

As regards Mr LEE Cheuk-yan's amendment, it seeks to classify this special contribution as a voluntary contribution, which is not bound by the preservation rule, so that those entitled to it can have the flexibility of choosing to withdraw this special contribution before the age of 65. The original intention of this proposal is good because at present, society is in the grips of inflation and living expenses are soaring. As a result, the heavy burden of living borne by many low-income people is becoming even more onerous. If they can have the flexibility of choosing when to withdraw this sum of special contribution, it is indeed possible to provide immediate assistance to some people. However, this arrangement carries the price of reducing their retirement protection. The original aim of establishing the MPF System is to

provide retirement protection to the whole society, so that by saving at an earlier stage, the future living of the working population can have protection.

Deputy President, to a wage earner earning \$10,000 monthly, the special contribution made by the Government on this occasion is equal to the MPF contribution made by him in a whole year. If it is treated as voluntary contribution, so that eligible people can withdraw it freely, this will surely reduce the accrued interest in their MPF accounts in the future. We agree that inflation is imposing a heavy burden on the living of the public, but even as we solve the problems relating to the living of the public, we must also consider whether this measure will affect the post-retirement living of eligible people. Of course, the Government should also try its best to take various measures to ease the difficulties facing the public, for example, waivers of electricity tariffs and rates should rightly be offered. However, the special contribution made by the Government this time around is designed to boost the retirement protection for eligible people, so it seems the effect of the amendment on this aim cannot be overlooked.

Put simply, the Democratic Party will not support Mr LEE Cheuk-yan's amendment. According to Mr LEE Cheuk-yan's rationale, it would be best if MPF schemes are not available and we should let people save money on their own. However, in reality, most people would not do so. Without a mandatory system, people would not do so at all. Secretary and Deputy President, I once visited some CSSA recipients. Some of them told me — I have to stress "some of them" — that when they were young, they led a good life and were able to make some money. However, some of them probably did not prepare for the rainy days when they were young. As a result, once into retirement, they became rather down and out. Therefore, if there is a mandatory system, it is indeed possible to make people save money, particularly in the case of people in the lower class. In fact, in the face of short-term exigencies and long-term retirement, people will always choose to cater to their short-term interests. This is only natural. Therefore, Mr LEE Cheuk-yan's intention is understandable.

However, I believe that this system *per se* is actually I appreciate the originality and at the same time, I think the Government should deal with all cases with leniency. In addition, although I do not support Miss CHAN Yuen-han's amendment, I still hope that the Government can appreciate the original intent of her amendment. I support the original intent of Miss CHAN

Yuen-han's amendment. It is actually beneficial for the Government to inject money into MPF accounts from time to time. Why? Because this will make people care about their MPF accounts often. When people have money, they will spend it first, but when the Government hands out money, they will try every means to beseech the Government to hand it out to them. This is good because if the Government hands out \$3,000 or \$5,000 from time to time or once in every few years, in this way, all people will ask their employers when they will make contributions.

The original intent of Miss CHAN Yuen-han's amendment is commendable and I hope the Government can pay attention to her original intent by doing so from time to time, particularly when there is a fiscal surplus. This is actually desirable. Of course, I believe Miss CHAN Yuen-han's amendment is more technical in nature. Why should it be \$50 billion? In fact, there is some difficulty because the fluctuations in the budget can be really great. Although there was a fiscal surplus of over \$50 billion last year, our budget this year is actually a deficit budget. Therefore, according to her amendment, money cannot be handed out this year. Do we have to make it so mechanical by stipulating in law that whenever the fiscal balance in the previous year is over \$50 billion, money has to be handed out in next year's budget? I think it is necessary to discuss this issue because in fact, the market is volatile. I think the Government should adopt the spirit of her amendment by injecting money into MPF accounts from time to time.

In fact, the special contribution proposed by the Government on this occasion can only treat the symptoms but not the cause because the problem of exorbitant management fees has existed all along in the MPF System. Even if the Government plans to make special contributions for members of the schemes again in the future, with the exorbitant management fees nibbling away the funds, the remaining retirement funds will indeed be limited. The Government should consider how to induce MPF schemes to lower their management fees. The level of management fees has a bearing on the return on MPF. The higher the management fees, the less the return on the MPF and the MPF benefits receivable by employees upon retirement will also decrease, thus seriously affecting their retirement life.

Although the MPFA has recently put forward the proposal of a "semi-portable", so that employees can at least transfer their accrued interest

derived from employees' MPF contributions from the scheme selected by their employers to an MPF scheme of their own choice, this proposal cannot return to employees their right to make investment choices on MPF. The Democratic Party believes that a "semi-portable" is not enough, so it proposes that the Government implement a "three-quarter portable scheme" or a "full portable scheme", so that employees can make investment choices suitable to them in view of their individual needs, so that the retirement life of employees will not be affected on account of the exorbitant management fees of MPF schemes.

Put simply, the Democratic Party supports this Bill. As regards the amendments proposed by Mr LEE Cheuk-yan and Miss CHAN Yuen-han, we support their spirit but not the amendments themselves.

MR WONG TING-KWONG (in Cantonese): Deputy President, first of all, I will make a declaration of interest. I am an incumbent non-executive director of the MPFA and also a member of the Committee to Oversee MPFA's Implementation of the Government Injection Project.

As the Financial Secretary announced in February this year that the fiscal surplus last year was as high as \$115.6 billion, the highest of all years, and a number of measures to return wealth to the public were proposed in the budget and one of them is to inject a one-off sum of \$6,000 into the MPF accounts of low-income people earning less than \$10,000 monthly by means of the Mandatory Provident Fund Schemes (Amendment) Bill 2008. Those eligible include employees and self-employed persons who held MPF contribution accounts as at 29 February this year and members of MPF-exempted Occupational Retirement Schemes Ordinance (ORSO) defined contribution schemes.

Two months later, after listening to public opinion, the Financial Secretary was amenable to good advice and expanded the scope of the injection proposal to cover people who were members of ORSO defined benefit schemes and those who had recently terminated their employment, if the monthly income of their last employment between 1 March 2007 and 29 February 2008 did not exceed

\$10,000 and they are holders of an MPF preserved account. This increased the number of recipients from the original estimate of 1.3 million people to 1.7 million people.

In the course of scrutiny by the Bills Committee, its members raised many queries concerning the eligibility for the injection. For example, will people unemployed for some of the time or all the time in the period between 1 March 2007 and 29 February 2008, those who unfortunately passed away on or after 1 March 2008 and those who are 60 or over 65 years of age be also eligible? In addition, there were also questions relating to change of employment after 29 February 2008. The Government's reply was that as long as they meet the aforementioned criteria for the injection, they are entitled to the injection of \$6,000 by the Government into their MPF accounts.

In this way, on the one hand, this measure will greatly enhance the retirement protection for lower-income people, and on the other, even for people who had been working before 29 February 2008 but had not joined any MPF scheme, if they meet the income requirements and have reported their default cases to the MPFA, the MPFA will still assist them in taking follow-up action, until their employers have completed the registration procedures for their employees and paid the outstanding contributions. Afterwards, the MPFA will make a retrospective injection of \$6,000. Apart from benefiting more people, this measure will encourage some employees who know that their employers have not enrolled them into any MPF scheme and are thus owed outstanding contributions to take the initiative to report such cases to the MPFA. This will be conducive to further reinforcing the MPF System. Therefore, the DAB supports the Bill proposed by the Government.

However, it is undeniable that the eligibility criteria for the injection will change in different circumstances. The people concerned will have doubts as to whether they meet the criteria for the injection. For this reason, I urge the authorities concerned to further launch extensive publicity and promotion after the passage of the Bill to enable the people concerned to understand all the measures and enhance communication with the trustees, so that the fund injection exercise can be implemented properly and as quickly as possible.

As regards the proposal in one of the amendments on making use of this special contribution to offer immediate assistance, so that eligible people can choose to handle it flexibly and withdraw it freely before the age of 65, I do not

agree with the proposal in this amendment. This is because this injection proposal is a retirement measure aimed at helping low-income people and it is retirement protection initiative aimed at fostering and ensuring a stable and secure retirement life, so as to encourage more members of the public to prepare for their retirement and rainy days by making investments in their retirement funds. This is a long-term measure. This support measure for the development of the MPF System is not designed to provide immediate financial support to meet the pressing needs of needy people. In fact, the budget has proposed many short-term relief measures. For this reason, Members should not confuse this measure aimed at a long-term goal, that is, to inject \$6,000 into the MPF accounts of eligible people on this occasion, with other short-term requital measures. Mr SIN Chung-kai also mentioned this point in his speech just now and I agree very much with him.

With these remarks, I support the Bill and oppose the relevant amendments.

Thank you, Deputy President.

MR FREDERICK FUNG (in Cantonese): Deputy President, certainly, we all know that the aim of the Government in proposing this amendment is to give wage earners in Hong Kong earning a monthly income of less than \$10,000 a sum of money and \$10,000 is exactly half of the median income in Hong Kong. I believe this way of drawing the line will arouse less controversy. Instead, it is worthwhile to discuss how this sum of money should be used.

Obviously, the approach proposed by the Government now will make it possible for wage earners to use this sum of money only upon retirement. This is the Government's decision or choice. However, is this the best choice? In fact, I have also examined several options for using this sum of money. Deputy President, the Government's proposal is one of the options and the second one is the one proposed by Mr LEE Cheuk-yan, that is, to put this sum of money into the accounts of wage earners and let them decide when to use it before retirement. In fact, if they will be 65 years old this year or will be 64 years old soon, there is just one more year to go before their retirement. However, some workers may be 40 years away from their retirement. Therefore, if they choose to save up over a long period of time, this is also one method. The second method is the one proposed by Mr LEE Cheuk-yan, that is, wage earners will be

free to decide. At present, the Government's approach is that it will make the decision by thinking of the long term and stipulating that the money can be withdrawn only upon retirement. The thinking of Mr LEE Cheuk-yan is to let wage earners decide on their own. If one decides to keep this sum of money in one's account over the long term and wait until the age of 65 to use it, one should keep it in one's account in the meantime. If one thinks that this sum of money is urgently needed for some purpose, one can choose to use it now. I will explain again later why I support Mr LEE Cheuk-yan's amendment and why I support this option.

There is a third option and this one is the exact opposite of the Government's proposal, that is, each person will be given \$6,000 direct. As we all know, this method was also adopted in Macao. In other words, the Government will hand out the money right away and all people can use it in any way they like and the Government's expectation that this sum of money will be kept in their accounts for a long time before being used in retirement will not be an issue.

Today, I will not discuss the third option mentioned by me just now, that is, to hand out \$6,000 to each person but it does not mean that it is not feasible. Members can see that in the budget, there are many items involving one-off payouts, only that the aim of each one is different, for example, some involve the CSSA, fruit grant, tax reductions and rent waivers. However, there is not any item aimed purely at wage earners earning less than \$10,000 monthly. In fact, should a sum of money not also be handed out to this group of people? However, the fact is that this has not been done. Even if we really hand out money to them, I do not think there would be any problem, particularly given that such a policy has been implemented in Macao and this has been an impetus to wage earners in Hong Kong.

In fact, before I attended today's meeting, in my constituency, many members of the public also asked me on meeting me if I could ask the Government to consider handing out a sum of money to wage earners to resolve their present difficulties. Later on, when discussing the amendment proposed by "Ah Yan", I will talk more about the views of the public. I will now come back to my earlier analysis.

The Government says that in putting the money into the MPF accounts as a one-off measure and requiring that it can be used only after a long period of time,

the aim is to give wage earners protection after their retirement. However, I fully agree with the view voiced by "Ah Yan" just now, that is, you cannot fight a fire with water from far away. To wage earners, the inflationary pressure now is quite great and the greatest problem is that inflation is reflected in the prices of daily items, in particular, in the prices of food, that is, meat, vegetables, fuel, rice, oil, salt, and so on. However, the salary of wage earners is not pegged to inflation. As Members will remember, when the budget was published, the inflation rate was only a little over 3% but it is now 5%. Wages are lagging far behind inflation and the increases in the price of some items are as much as 30% to 50%. Therefore, if an amount of money can be handed to them immediately, their hardship can be eased more quickly and directly.

If they are allowed to make their own decisions, they can decide whether they want to use this sum of money immediately or leave it for the future use taking into account of their income, family circumstances and even the state of their savings. For example, to people with a habit of saving money or families with several members who work in society, basically, they can still withstand the present economic situation or inflation without having to use that sum of money. Moreover, if one wants to use this sum of money, one must go through certain procedures, so some people will not bother to use it in order to spare themselves all the trouble.

Another situation is that the financial situation or income of some people is not too good, so inflation is exerting a greater pressure on them. For this reason, this sum of money is like a thirst quencher that can provide relief to their present hardship immediately.

Deputy President, can this measure really help wage earners make good preparation for their retirement and encourage them to make MPF savings, as Mr WONG maintained? I think it can not. This is because if Members have ever paid attention, the approach adopted by the former Commission on Poverty was not to give people a sum of money but to give them one dollar for one dollar. Only in this way can people be encouraged to save money. The approach this time around does not encourage them to save. A sum of \$6,000 is simply deposited into their accounts. I cannot see how those people not in the habit of saving money or who have never made any arrangement for their retirement will change their behaviour or culture due to this sum of money from the Government and make long-term plans for their own future.

Deputy President, there is an even more important point. I find that in this injection exercise, only people with a monthly income of less than \$10,000 will be benefited. I agree with the general direction, particularly that of giving this sum of money to people in this income group, because we often say that the use of tax money often has the effect of narrowing the wealth gap or helping the poor. Obviously, this measure also has such an effect, but we may have to wait one year to 40 years to see the result. To young people in their twenties or thirties who have just started their working life, they have to wait until their retirement to feel the effect of an amelioration of the wealth disparity or that of helping the poor. That is really far too distant.

The Secretary may say that I have missed the point because his aim is not to help the poor, nor has he ever thought of narrowing the wealth gap, that he simply wants to hand out money to wage earners for them to use in their retirement. If this measure is totally unrelated to poverty, why is the money paid into the accounts of these people? Why are people with a monthly income of less than \$10,000 chosen? Obviously, choosing people with a monthly income of less than \$10,000 is attributable to the fact that they are low-income people, so it is hoped that it can be ensured they will have enough money to use after retirement. For this reason, my hunch is that this measure is related to helping the poor and the wealth disparity. However, why is it necessary to wait several years or several decades for the result?

Since this is an injection of funds, why does he not adopt two approaches at the same time? Just now, I said that I do not oppose this measure. However, if we can only choose one of the two methods, I will choose the one proposed by "Ah Yan", that is, to allow wage earners to make their own choices.

In that case, is it possible to adopt a 50-50 approach, Secretary? By a 50-50 approach, I mean that there will be two possibilities, one being \$3,000 in this sum of money must be kept until retirement before it can be used and wage earners are free to choose what to do with the remaining \$3,000. Another possibility is that the Government now gives you \$6,000, but it can be used only after several decades. However, I am worried that there may be another measure. I do not know if, when the Chief Executive comes here next week, he will say that another measure is to pay out some \$3,000 or \$5,000 for immediate

use. In this way, it is possible to achieve the effects of both using this sum of money now and using it in the distant future. The measure now can only address a long-term issue but not an immediate one. To put it not so nicely, "long term" means two or three decades later but a wage earner may have become rich and no longer needs any help from the Government, or God forbid, he may have passed away and gone to heaven. In this way, it is not possible for him to get this sum of money.

Therefore, several decades later, there may be a lot of possibilities. I think that since the Government wants to help these wage earners, in particular, low-income people earning less than \$10,000 monthly, the approach advocated by "Ah Yan" is preferable. However, there is another option that is both semi-long-term and semi-immediate and one can even offer another immediate payout. The Secretary can consider all these approaches.

Finally, I also agree with the comment made by Honourable colleagues just now, that there are two major drawbacks in this arrangement and hopefully, the Government can address them as soon as possible. One of them is that the management fees of the funds are really very high and this was discussed about a year ago. In fact, can the Government make improvements in this regard by exercising its influence or holding discussions with the MPFA? The Government will allocate a sum of money but wage earners cannot enjoy the benefit fully. Of course, Members can say that it serves dual purposes in that wage earners as well as fund companies can benefit from it. However, this sum of money is not intended to benefit fund companies. In theory, the benefit of this sum of \$6,000 should all go to the wage earners. The present arrangement of depositing all the MPF in fund companies has already to some extent given some of the benefits to fund companies. This is the first major problem that I can see, that is, the benefit of this sum of \$6,000 is not enjoyed by wage earners hundred percent.

The second issue relates to the question of what people can benefit from this measure because generally speaking, the public has a very vague idea about this or they have no idea at all. They often ask me the following questions: What does the previous three months mean? Does it mean the three months prior to making the last contribution or the three months prior to March last year? How should the income be calculated? How should the income for all 12 months in a year be calculated? Why are people holding accounts before 29 February eligible but those who open accounts after 29 February are not

eligible for the injection? Some people also asked me why people who opened accounts after 29 February are not eligible. Since the budget was passed in 2008-2009, why are workers not entitled to the injection this year? The public have many questions, so whatever the voting results today, I hope the Government can launch publicity on this matter formally, clearly and extensively to explain who are eligible for this sum of money.

Deputy President, I support Mr LEE Cheuk-yan's amendment.

MR RONNY TONG (in Cantonese): Deputy President, I think the Government and some Honourable colleagues have confused some concepts.

Deputy President, why am I saying this? Because when the Government announced this measure in the Legislative Council, its slogan was that this was a measure to alleviate people's hardship and return wealth to the public. Since the aim is to alleviate people's hardship, what sort of hardship are people having? Since the aim is to return wealth to the public, how can one do so? Deputy President, obviously, "people's hardship" refers to the financial difficulties facing the Hong Kong public now because this is a form of financial assistance. What difficulty is greater than the inflationary pressure facing the grassroots nowadays? The charges of various public utilities have increased one after another. The fares of bus, taxi, minibus and ferry services have increased and so will the fares of the MTR soon. Come to think about this. The price of everything has increased at the same time and the increases in food prices are even more drastic. May I ask what hardship can be greater than that they are facing now?

If we talk about returning wealth to the public, this is even more absurd. Deputy President, if we want to return wealth to the public, why do we impose the restriction that they can use it only upon retirement? Since the money belongs to the public, why are they not allowed choices?

I think Mr SIN Chung-kai has also made the mistake of confusing concepts in the speech he delivered just now. I hope that later, friends in the Democratic Party can think carefully about what kind of error in logic they have made regarding their position.

Deputy President, of course, if we were the Chief Executive, we probably would not use this channel to return wealth to the public. At present, this channel will have an effect on wage earners in the lower class. When the Chief Executive — sorry, it was not the Chief Executive — when the Financial Secretary spoke in the Legislative Council, he said that this was the best way to reach the largest number of wage earners. I do not dispute this. However, if we were the Chief Executive, we would not necessarily deposit this \$6,000 into the MPF accounts.

Deputy President, although we were not the Chief Executive, we are Members of the Legislative Council and the duty of Legislative Council Members is to use our power — even though this power is very small, sometimes, as in last evening, it can make the impossible happen — to improve the relief measures proposed by the Government, so that they can really attain their original intentions and aims, that is, to truly alleviate people's hardship and return wealth to the public, as I said just now. I think this is our duty as Members.

This explains why I said at the beginning of my speech that it seemed the speech given by Mr SIN Chung-kai on behalf of the Democratic Party exhibits a confusion of concepts and this is what I mean. Of course, if we prescribe the condition that this sum of money can be used only upon retirement and the aim is neither to ease the public's present hardship nor to truly return wealth to the public, his logic may be correct. However, since this is not the goal that we are aiming at, or even if the Chief Executive wants to attain this goal but we, as Legislative Council Members, have the power to change this goal, I think we, as Legislative Council Members, should exercise our power as far as possible to secure more interests for the grassroots and change the Government's position.

Deputy President, friends in the Democratic Party have made some mistakes in logical reasoning. The logic of the speech given by Mr SIN Chung-kai just now is that the money is intended for use by members of the public in retirement, so it is necessary to inject the money into MPF accounts instead of using it on other measures, groups or purposes intended to ease the public's hardship. However, Deputy President, this logic is based on the assumption that the MPF is inadequate in providing protection to wage earners in retirement, but I think this assumption may not be correct. Of course, Deputy President, the existing MPF system has many inadequacies requiring

improvement but the question is: Is it the case that if this sum of money is not injected into MPF accounts, in the future, all wage earners will not have adequate protection upon retirement? Deputy President, I believe this is not the case.

In the same vein, the amendment proposed by Miss CHAN Yuen-han has also made the same error in logic. Deputy President, if our MPF System is really worthless and whenever we reach a financial threshold, we have to allocate and inject funds, it is really problematic. I think that logically speaking, if the Government has the means, what it should do actually is to establish a system of universal retirement protection to supplement the MPF scheme, so that the MPF System can be improved and more members of the public can be benefited. Only in this way can the hardship facing the public or the financial difficulties facing members of the public after retirement be resolved, instead of tinkering with and patching up the existing framework and adopting an approach that is tantamount to a substitution of concepts to do something that cannot benefit the public direct.

Therefore, I think that logically, we should support Mr LEE Cheuk-yan's amendment — he is not present, still, I hope he can hear this outside — and the Civic Party supports his amendment. However, we find it difficult to support Miss CHAN Yuen-han's amendment because although it is technically feasible, it has the error in concept and logic that I pointed out just now. If the Government has the additional means, I would rather it establishes a universal retirement protection system immediately to supplement the MPF scheme, instead of allocating a sum of money whenever a certain level is reached.

Deputy President, I think considerable technical difficulty also exists in implementation, for example, how to do the calculation and who the beneficiaries should be in each injection. In fact, we had quite a lot of argument when scrutinizing this Bill, for example, on drawing the line. Later on, Secretary Prof K C CHAN may have to explain this a little. We must be very careful in drawing the line. On the one hand, we hope that a lot of people will be benefited, and on the other, we do not want any abuse of this system. At present, a lot of difficulties have already been encountered in making a one-off injection only. In view of this, if this has to be done almost every year, I believe the actual technical difficulties will be even greater.

Deputy President, I think that as Members, our duty is to fully support the proposals put forward by the Government if they are in line with the public's wishes. However, when there is room for improvement in the Government's proposals, I think Members are duty-bound to refine them as far as possible, instead of going along with the Government's stance and trying to help the Government achieve its ends.

For this reason, Deputy President, the Civic Party supports the amendment proposed by Mr LEE Cheuk-yan but I am sorry, Yuen-han, we oppose your amendment.

MR WONG KWOK-HING (in Cantonese): Deputy President, in the 2008-2009 Budget, the Financial Secretary proposed a one-off injection of \$6,000 into each of the MPF accounts of employees or self-employed persons with a monthly income of not exceeding \$10,000 and estimated that this would cost the Government \$8.5 billion. After the announcement of the news, I stated at a meeting of the Panel on Financial Affairs that members of ORSO defined benefit schemes would be unable to benefit from the Government's injection. Much to my delight, my advice has been heeded by both the Financial Secretary and the Government's senior echelons. In his concluding remarks delivered on 23 April 2008, the Financial Secretary undertook to make an injection into the accounts of these employees, that is, members of the ORSO defined benefit schemes. I welcome the Financial Secretary's undertaking because it demonstrates the Government's acceptance of the proposal made by the Hong Kong Federation of Trade Unions (FTU).

The Financial Secretary's response will also benefit the unemployed, that is, people whose monthly income did not exceed \$10,000 over the past year. We welcome the Government's move to allow these people, who have gone out of work for a short period of time, to be benefited because this indicates that the strong opinion of the FTU has been heeded by the Government.

It has also come to our attention that some employers have failed to open MPF accounts for their employees. So, will these employees receive the injection? The Government has undertaken to step up publicity to appeal to employees to report these employers. Employees meeting the eligibility criteria will be given an injection of \$6,000. We earnestly hope that publicity can be enhanced to encourage employers who have evaded their responsibility and

contravened the law to rectify their mistakes expeditiously, enable employees to receive their entitled MPF contributions as well as the Government's injection of \$6,000, and expose the hidden loopholes to enable wage earners to receive due protection under the Mandatory Provident Fund Schemes Ordinance (MPFSO).

Deputy President, on behalf of the Civic Party, Mr Ronny TONG said that he would not support Miss CHAN Yuen-han's proposed amendment to the Government's Bill, saying that it is illogical. Here I appeal to the Civic Party, as well as other Members, to support Miss CHAN's amendment. Mr TONG might not be aware that, more than decades ago, the FTU already exerted all efforts in and committed itself to the campaign for a universal retirement protection system. Mr TONG, as early as the 1980s, in view of the lack of universal retirement protection for wage earners, the FTU already made a lot of efforts and conducted a lot of studies, as well as exerting every effort in the campaign, only that the Government did not listen. At that time, we held lengthy consultations with workers in various trades and industries, visited university professors and invited experts from universities to assist us in conducting trial computations. We also negotiated with the Government for the establishment of a universal retirement protection system. In the 1980s, we published a very thick research report in which a proposal was made to the Government. The proposal covered not only retirement but also, targeting such areas as health care and unemployment, a model similar to the community-wide retirement protection system adopted in Singapore at that time. Our colleagues even made a number of trips to Singapore to gain an understanding of the country's experience in the hope of drawing up a universal retirement protection scheme with the tripartite participation of employees, employers and the Government.

But much to our regret, the golden opportunity was missed because the colonial government at that time did not heed our proposal. This is why Miss CHAN Yuen-han has proposed an amendment today in a bid to put forth our proposal, given the mechanism established by the Government for an injection of \$8.5 billion into the MPF in order to return wealth to the people. Not only is Miss CHAN's proposal logical, it is also a continuation of the FTU's campaign for the establishment of a universal retirement protection system. Here, let me give a brief explanation of the historical background of our proposal in the hope that Mr Ronny TONG and the Civic Party can, out of a sense of justice, support

the FTU's proposal and, like what happened last evening, for another "first" to be achieved.

Deputy President, Miss CHAN's amendment actually seeks to incorporate the proposals of two local academics whereby efforts should be made, when the Government makes an abundant surplus of \$50 billion, to inject funds into the MPF accounts of low-income people whose monthly income is below \$10,000, but not all MPF accounts, in order to help the low-income people. Why? Because the money accrued in the MPF accounts of these low-income wage earners is actually very little, which is simply not enough for them to support their retirement life in their twilight years. This is especially so for employees with a monthly income of below \$5,000. Since they do not have to make any contributions, their accrued benefits are small naturally. The MPF relies primarily on accumulation and investment returns over a long period of time to achieve the purpose of "storing up money against old age". But will the money accumulated over a long period of time be offset by the huge management fees? It is believed by experts that the MPF is being seriously nibbled away by the huge management fees. Apparently, low-income people with little savings can hardly rely on this sum of money to support their retirement life.

Miss CHAN Yuen-han's amendment proposes that the Government should, when it has a huge surplus of, for instance, \$50 billion, channel some of the water spilled from the reservoir to the accounts of low-income people for storage. In this way, it can help not only the people, but also the Government. This can also be adopted as a long-term measure. I earnestly hope that Honourable Members can support Miss CHAN Yuen-han's amendment.

Deputy President, the Government's injection, which can be seen as a milestone, demonstrates its commitment to offering better retirement protection to the people. While we support the Government's attitude, we all the more hope that further improvements can be introduced to help the low-income enjoy their twilight years with dignity after retirement. In this connection, Miss CHAN Yuen-han and I have separately organized in districts about 10 meetings to consult the residents of their views on any improvements to be made to the Government's initiative introduced for the purpose of "returning wealth to the people". I have received five improvement proposals and hope that the Government can consider them.

The first proposal points out that the Government's injection cannot help people cope with the current trend of price hikes and inflation, and it is a far cry

from the Macao Government's move to hand out money on a one-off basis. So, they feel that there is no instant assistance. Therefore, I very much hope that the Government can consider establishing a mechanism whereby people with special financial hardships can make applications to the Government — I believe only people with genuine hardships, not everyone, will submit the applications. Can the Government lend or allocate \$6,000 to them to meet their urgent needs? This is the first proposal.

The second proposal points out that it is already outdated to set the eligibility age for withdrawing MPF contributions to the age of 65, and it is hoped that the age can be lowered to 60. Furthermore, it is hoped that the Government can give consideration to this for it involves not only the granting of \$6,000, but also the MPF system. Now, many people will lose their jobs when they reach the age of 50. They can neither find a new job nor apply for the "fruit grant" because they have to reach the age of 65 before they are eligible for the "fruit grant" — even though the age threshold set for the "fruit grant" will also be lowered, this is yet another matter — what can they do if they cannot secure a job over these long 15 years? This is why we hope the Government can consider lowering the eligibility age for withdrawing MPF contributions to the age of 60.

The third proposal calls on the Government to give detailed consideration to enabling the contribution accounts of employers and employees to enjoy complete freedom, rather than semi-freedom. More often than not, wage earners will not stay with the same job and the same employer all through their life. Owing to such factors as the job market, personal preference or employers, wage earners often have to change employment involuntarily. A number of MPF preserved accounts will then be accumulated if a wage earner keeps his MPF account with his previous employer whenever he changes jobs. When a person holds too many MPF preserved accounts and each of these accounts has to pay exorbitant management fees, his meagre MPF contribution accumulated would be eaten up by management fees, and this is absolutely unreasonable. So, I hope the Government can expeditiously amend the legislation to allow wage earners' MPF accounts to enjoy complete freedom rather than semi-freedom.

The fourth proposal calls on the Government to expeditiously amend the legislation to include beneficiaries in the MPFSO. We have received a lot of relevant cases mainly because the existing legislation does not make the inclusion

of a specified beneficiary mandatory. Upon the death of an employee, his dependants therefore have to apply for his estate in order to get back his meagre MPF benefits, but it would cost them, on top of such fees as solicitor's fee, \$6,000 or \$7,000. In one of the recent cases received by us, the dependant of a deceased employee wished to recover the deceased's MPF contribution, which amounts to approximately \$8,000, but it was found after enquiries that the solicitor's fee charged would amount to \$5,000 or \$6,000. The dependant found it extremely ridiculous because, after completing all the formalities, only \$1,000 or so would be recovered out of the \$8,000 left in the MPF account. Why should the MPF be linked with the \$6,000 to be injected by the Government? This is because should the employee receive the \$6,000 injected by the Government without specifying his beneficiary, his dependant might be unable to get back the \$6,000, even if a huge sum of money has been spent to pay the solicitor's fee, and what is more, the dependant might even need to make up for the shortfall.

Lastly, the fifth improvement proposal calls on the Government to seriously address bogus self-employed persons. Nowadays, evasions and dissolutions of employment relationship are commonly found in various trades and industries. In order to alter such employment relationship, some unscrupulous employers turn themselves into bogus self-employed persons, in order to evade the legal liability that should be borne by employers and, in particular, making MPF contributions. Therefore, the Government must strive to combat these bogus self-employed persons.

The above five improvement proposals were collected from the community. I hope the Government can really listen and give detailed consideration to them. Even if nothing can be accomplished this time, I still hope that follow-up actions will be taken in future. Thank you, Deputy President.

MR ANDREW LEUNG (in Cantonese): Deputy President, the Liberal Party supports the Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill). In announcing the Government's initiative to make this special contribution, the Financial Secretary said to the effect that some people have to meet various expenses in living and so, except for their statutory MPF contributions, they might not have money to spare as savings for retirement purposes. And, in order to demonstrate the Government's commitment to enhancing retirement protection in Hong Kong and ease the pressure on social welfare expenditure on a long-term basis, the Government has decided to make a

special contribution to give them a helping hand. In our opinion, the proposal to make a one-off injection of \$6,000 into the MPF accounts of employees and self-employed persons earning a monthly income not exceeding \$10,000 can indeed achieve the purpose of enhancing retirement protection for low-income employees, as stated by the Financial Secretary earlier.

The Liberal Party, however, has reservations about Mr LEE Cheuk-yan's proposal that the special contribution made by the Government be injected into the voluntary contributions portion, rather than the Government's proposed mandatory contributions, because the injected \$6,000 should aim to enhance retirement protection for employees. Should it become part of voluntary contributions, as proposed by Mr LEE Cheuk-yan, employees will, in effect, be allowed to withdraw the money immediately. This is inconsistent with the principle of protecting employees' retirement life.

As regards the request made by Miss CHAN Yuen-han in her amendment to add the wordings "refers to the contribution paid into an account of a member of a registered scheme by the Government when the annual consolidated surplus of the budget is more than \$50 billion", although the wording of the amendment is merely intended to provide a definition for the current special contribution, and the Legal Adviser has also made it very clear that this amendment will not achieve the effect that a special contribution must be made whenever the consolidated surplus of the budget is more than \$50 billion in the future, it might still cost the Government nearly \$10 billion to inject \$6,000 into each of the eligible MPF accounts, as pointed out earlier by government officials at the meeting, and this would exert pressure on the SAR's future finance should this amendment be accepted. Actually, a surplus of more than \$50 billion might not be recorded in the 2008-2009 fiscal year. So, does it mean that the injection of \$6,000 per person can be saved? This is why the Liberal Party does not support this amendment.

During the deliberation of the Bill, Members expressed grave concern about how a monthly income not exceeding \$10,000 can be defined. Although the Government has made it clear that, should an employee remained unemployed for 12 months last year up to February this year, the wage level can be backdated to March 2007 at the most, we reckon that problems might still occur. Although a review mechanism has been put in place, the authorities have made it clear that the mechanism will not operate on a long-term basis. After the formal injection of \$6,000, only two to three months will be allowed

for a review to be conducted, and the special contribution will then be injected into accounts confirmed to be eligible. After that, the mechanism will cease to operate. I think the authorities should study in detail how further disputes arising by then can be dealt with.

Lastly, I wish to say a few words on the deliberation process of the Bill. Deputy President, some Members who spoke earlier also pointed out that the \$6,000 MPF bonus was proposed in the budget this year. However, the Administration has failed to table its legislative proposal before us within a short period time, and the Bills Committee was not formed until 20 June. As it was already near the end of the legislative session, the Secretariat can simply not arrange for meetings. As a result, the first meeting was not convened until 27 June, and the entire deliberation process of the Bill was conducted hastily. Deputy President, the Liberal Party hopes that better arrangements can be made by the Government when tabling Bills to this Council in future, so as to allow more time for discussion by Members and public officers.

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

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, my speech today will focus on several aspects of the Bill. But can I discuss one of the aspects first as I find that Mr Ronny TONG is present at the moment?

On behalf of the FTU, Mr WONG already expressed, earlier on in the meeting, our concern over the retirement protection received by wage earners, as we have followed up this matter for decades. Actually, the views expressed are not only the views of labour groups or wage earners; we have also solicited the views of many experts in society. We have also made a number of overseas visits and made reference to many different approaches. During a questionnaire survey conducted in the 1980s — many wage earners were still young at that time — it was found that they had certain needs in several areas. During the survey, we also brought in some ideas similar to the one implemented in Singapore at that time. Certainly, with the passage of time, new elements have been added in Singapore, but I do not intend to discuss them in detail here.

Why did the FTU pick Singapore? Because we like the Central Provident Fund (CPF) implemented there. There is a reality we must face, and that is, if

retirement protection is to be introduced to protect wage earners, there will definitely be a group of impoverished workers and low-income people. These people can actually be found in every corner of the world, including Hong Kong, Singapore, Japan, the United States, and so on. Faced with such a situation, how can protection be provided to these people? In our opinion, the merit of the CPF is that the significance of the contributions made by employees, employers and the Government are broadly similar to that of the current one-off injection of \$6,000, or the initiative adopted for people earning a monthly income not exceeding \$10,000, only that the current injection is a one-off, not regular, arrangement. As we have always advocated, government participation is vital to the implementation of the CPF.

The merit of the CPF is that it is no different from a capital preservation product, which is very much resented by many grass-roots wage earners Rafael HUI used to describe it as my brainchild, but the capital preservation product I was referring to was the one implemented in Chile, which means that protection would be offered by the Government when the market had problems with return. The CPF was implemented in Chile for the sake of protecting some elementary, low-income wage earners. When other people have money to contribute to the MPF, these people have no money to do so. Problems will therefore arise if there is no government support when they make investments. It is for these several reasons that we prefer the CPF whereby the Government implements a provident fund scheme to help these wage earners. The line of reasoning is based on the presence of a group of people among the wage earners making an extremely low income. The pay received by more than a million elementary workers in Hong Kong is indeed extremely low.

Just now, Mr Ronny TONG criticized that we had logical, technical and conceptual problems. Let me start with conceptual problems. Actually, the logic is very simple, and this approach is not invented by us. Just now, Mr WONG Kwok-hing also cited some articles. Before the unveiling of this year's budget, two local academics proposed in their article that the Government should inject part of its revenue into MPF accounts in times of satisfactory revenue as retirement protection for low-income people. One of the paragraphs of the article reads: "A fiscal surplus is not easy to come by. Although one-off tax and rates reductions and increased CSSA payments can supposedly win a lot of applause, the effect is going to be short-lived and there is a lack of new institutional initiatives." The two academics thus suggest: "The SAR Government should consider, in years of apparent fiscal surpluses, earmark part

of the surpluses as bonuses for economic development to be injected into MPF accounts." These comments, made by two well-known sociologists, were later echoed by some economists as well as other sociologists. They held the same view that when the surplus accumulated reaches a certain level, part of it should be used to provide for a rainy day.

For example, some of the low-income people are currently not required to make contributions because their income is considered by the Government to be too low, but their employers are still required to make contributions because the Government does not want to see them go without retirement protection in the future. It is thus evident that government assistance will be required in similar cases. Should the Government fail today to help them save up for a rainy day, funding would have to be provided in the future, like what the Government is now doing, to help impoverished workers or elderly people. These people, who were working in Hong Kong years ago, were once very powerful. Today, however, they do not have retirement protection because of their persistently low income. This is the conclusion drawn by us after decades of research.

Therefore, the recommendations made by these two academics are consistent with the FTU's idea that pensions should be contributed jointly by employees, employers and the Government. In other words, we do have conviction, and our conviction is logical, too. Our logic is, if nothing is done by the Government today, it will have to pay in the future. By then, a "safety net", that is, CSSA, will be required.

Deputy President, as pointed out by Mr WONG Kwok-hing earlier, some feasibility studies were already proposed in the 1980s, and a substantial amount of studies and questionnaire surveys were also conducted. In 1994, we contacted a large number of academics, including some of the Honourable colleagues who are currently teaching in universities, and they proposed an integrated retirement protection scheme as well as participation by the Government. We have also presented our calculations to Honourable Members for reference. This is why Mr WONG Kwok-hing said that an actuary had even been invited to do the computations. Should the rates of contribution made by employers, employees and the Government stand at 5%, 3% and 2% respectively a similar proposal has indeed been raised. The Government, I mean the then British Hong Kong Government, was also fully aware of this proposal.

So, similar suggestions were already raised by us back then. Furthermore, our suggestions were not confined to occupational retirement, they also covered working people, former employees and housewives. This is what Mr Ronny TONG meant by universal retirement protection. This is also consistent with the proposal currently raised by the people's panel and what has repeatedly been emphasized by one of the academics in the people's panel, also one of our colleagues at that time. In other words, a universal retirement protection system must be put in place before the retirement problem faced by Hong Kong can be resolved. This point has all along been highlighted during our campaign.

Given that a proposal for establishing an integrated retirement protection system was already raised in 1994 — it should be 1992 or 1993 — we are very pleased to see that the Government, after making reference to the academics' advice, is prepared to inject \$6,000 into the MPF accounts of the low-income people. I consider this a good start because I feel that the Government is prepared to make a breakthrough and listen to the opinions of the community.

Because of the absence of such a government policy, amendments must be made now. In the light of the Government's preparation to make an injection, it has submitted a voluminous paper to support the amendments made for the purpose of making a special contribution. Even though the Government originally proposed a private mandatory provident fund scheme, we still considered that it was better than nothing. Fine, after the establishment of the MPF System, the Government told us that it had no responsibility to make any contribution, for only employers and employees were required to contribute. As the Government's current amendments are consistent with the views of the community, academics, as well as the FTU, I believe they will definitely be acceptable to those people who are now advocating the introduction of universal retirement protection in Hong Kong.

Deputy President, I sincerely hope, should the Government come to realize today that people earning a monthly income of less than \$10,000 are indeed low-income earners and decide to help them, it should as I mentioned earlier, provide for a rainy day. The concept that one has to pay when the amount of profit reaped reaches a certain level is not raised today. It has actually been mentioned to the Financial Secretary before. We suggested that an injection be made when the amount of profit reaches a certain level. But much to our regret, the Government has failed to act accordingly despite our advice. Now, the Government is going to make an injection, though it is on a

one-off basis. We feel that the Government's half-hearted attitude is not adequate.

Furthermore, when the amendment was proposed, there was a whimsical turn of my mind — I was very angry with the Government in dealing with this Bill, Deputy President, as you should also be aware — as what you told the reporters at that time, what reasons were there for the Bill to be submitted to us on 26 June? Then, a black rainstorm warning signal happened to be issued on the day the meeting was scheduled to be held, and so the meeting could not be held as scheduled. Thereafter, the scheduled dates for the meeting kept changing. In the end, two meetings were held hastily. I have no idea if the Deputy President was present at that time. When I raised some policy issues, some colleagues challenged me, thinking that the Bill had to be passed urgently. I was very angry at that time, and I was even mad at those colleagues. We as Members were obliged to discuss this piece of legislation with the Government on the policy level. Why could we not discuss policy issues? I was really quite upset, but I think I should suppress my anger for the time being I must count one, two, three, four, five, six I am very angry. I was really very upset that day. However, I think that There was nothing I could say as some colleagues and even Members from the pan-democratic camp shared the same view. There was nothing I could say if someone criticized me on political grounds because of a policy discussed by me at that time. I really have no idea what this notion was. Were we targeted for the sake of politics? I do not wish to see opposition in this Council to the FTU because of the amendment proposed by us. I hope that Members can support our concept and logic. Our view is consistent with that of the community on this court.

Certainly, Mr Ronny TONG was right in pointing out the technical problem. Mr TONG, I know that my amendment, technically, is a bit problematic. However, Members should understand very well why there is such a technical problem. Although I want to keep it to myself, I appreciate the President's granting of permission for me to propose the amendment today. At least, I can air my grievances here. Obviously, the Bill is founded on good intentions. However, we were requested to complete our deliberation after two meetings. Even if I wished to say a little bit more, I was not allowed to do so. How annoying! Deputy President, the function of the Council is to monitor the Government. I think Mr XI, who had been talking about the separation of powers between the executive, legislature and judiciary, should understand that we should monitor each other. With mutual respect, we will be able to meet his

request in the end. But still, there must be a process. The process is very important. Why did the Government I do not know whether it will agree at the end of my speech. Most importantly everyone has his own view I hope you must understand my anger, considering the Bill was proposed under such circumstances and in such a context. Only two meetings had been held and the Bill being deliberated was so long, Deputy President. Compared with the Bill related to products and green tax to be examined this afternoon, this Bill is only a bit thinner. Come to think about this. Due to the addition of the third part, that is, the part related to "special contribution" — this part was originally missing because only employees and employers, but not the Government, were involved. As a result, the Bill has to be slightly amended, though reference must not be made to the Government. This is why a special name "special contribution" has to be added. Obviously, the injection is going to be made by the Government, but there is no mention of it in the Bill. How can I not have a whimsical turn of my mind, Deputy President? This is very annoying indeed. Apparently, people's opinions should be sought after the budget was unveiled in February, and preparations should already be made. So, why was the Bill not submitted to us until June? Apparently, this Council was subject to bullying. These colleagues sometimes, I do not wish to elaborate. Apparently, I will offend many people if I say so, but today I really hope to solicit the support of many people, though, I think, this is very difficult to do.

I would like to let the Government know my feelings. It is indeed a good thing for the Government to do this, for at least it is heading in a good direction. In the face of wage earners, low-income earners and the problem of retirement hardships faced by the community in the future, "Fatty Patten" proposed an Old Age Pension Scheme to be jointly implemented with retirement protection to become an integrated retirement protection package. Actually, this idea was nothing new. Throughout decades of disputes, every concept had already been raised. Right, Deputy President, there are some minor technical problems. However, as colleagues should have known, I greatly appreciate Mr SIN Chung-kai. He seldom praised me during this Session, though he said earlier that he supported my spirit. But on some issues, you still have my sincere gratitude. While you manage to give me spiritual support, you cannot give me technical support. However, I would like to point out that we have only held two meetings. Buddy, even though I wished to study the Bill in a more in-depth manner, I was not allowed to do so. You should understand why I wish to propose the amendment quietly. So, I hope you can give me support, in

addition to your spiritual support! However, I still wish to say that I will eventually lose. Please vote in support of me

DEPUTY PRESIDENT (in Cantonese): Miss CHAN Yuen-han, please face the Chair when you speak.

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, you are telling me not to look at him while I am speaking. Fine, I will stop doing it. Deputy President, I do know that only one of the three things mentioned by Mr Ronny TONG is right. The other two are wrong. If necessary, the FTU can exchange ideas with the Civic Party about our concept of retirement protection and its logic. I sincerely hope that we can exchange ideas.

Deputy President, in respect of this legislative amendment, as it involves a so-called private pension, therefore as I pointed out earlier, many people must have a job before they can receive pensions. How will the calculation be done if some people happen to be below the one-year threshold, their monthly income is just above or below \$10,000 or their monthly income is \$10,001? Many problems have not been dealt with here. How should the one-year period be calculated? How about hourly-rated employees? If there is substantial overtime pay on top of \$10,000, will the overtime pay be included in the calculation? If there is little overtime pay, how would the calculation be done? How would the calculation be done in the event that I am not a monthly-rated employee or I am doing a part-time job? Deputy President, all these problems have never been touched upon or discussed. Do you agree with me that this is annoying? I was so annoyed that I proposed an amendment, but then I was criticized for some minor technical problems. I do not mean to offend the barristers among us, but Members should all know what a game of chess we are playing. He tried to he then said, "Well, Miss CHAN, we support you, such that you can give somebody a good dressing-down here!" Ha! Ha! Deputy President, I very much hope that Honourable colleagues can appreciate our difficulties, but they are totally reluctant to let us discuss those specific issues. I very much appreciate the Government's change in demonstrating its sincerity in giving \$6,000, out of its own pocket, to each low-income earner. John TSANG is not going to tell you anything even if you ask him. Originally, I did not like him very much, but I have become quite fond of him because of this move made by him. You can tell the Financial Secretary about this. However, he has merely implemented part of the arrangement while the remaining part is left undone. Too bad! I think that the Government

when I am confronted with the present circumstances. Now that you have broken your silence, you should give holistic consideration to this issue rather than implementing only part of the arrangement.

Deputy President, I wish to repeat my appeal again. Right, I admit that there are inadequacies. But Mr SIN Chung-kai should not merely mention spiritual support; he should give us more support! Earlier on, I told the government official outside, "Secretary, if you promise me that you will think about this when the amount of revenue in future reaches a certain figure" Members should know that I did not believe the Government throughout the scrutiny of the Bill. If you are willing to give this undertaking, I will consider adjusting my position. Nevertheless, I still hope Honourable colleagues can support me. I am very thankful to Mr SIN Chung-kai for his spiritual support, as well as to Mr Ronny TONG for this healthy discussion we have today. I hope all Members can vote in support of my amendment for the sake of helping the grass-roots workers. Certainly, I will support Mr LEE Cheuk-yan. When Mr LEE pointed out my technical inadequacies, I asked him why he could have suddenly brought up such a high-level issue as technical matters. Never mind! I still hope Honourable Members can support my drive in engaging the Government's contribution to the MPF to help our impoverished workers. Deputy President, I so submit.

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

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the resumed Second Reading of the Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill).

Deputy President, unfortunately, I did not join this Bills Committee because the quota for me to join Committees was full, and so I was unable to join this Bills Committee. However, I absolutely agree that the President, in the press conference held on that day, and Honourable colleagues should express their anger because, despite the tabling of the budget on 27 February, the Bill was not gazetted until 13 June. Do Members not agree with me that this is ridiculous? During the initial discussion in the House Committee, it was decided that the Bill should not be allowed to be tabled to this Council. However, some of colleagues became soft-hearted and the tabling of the Bill was

subsequently allowed. This is why Miss CHAN Yuen-han had to struggle to get some of the work done during the two meetings.

I very much share Mr SIN Chung-kai's comments. Although he said he would not be back in the next term, I do not know if he would really not be coming back, given the rumours circulating around. Actually, whether or not he will come back is none of our business. But disregarding whether he will be back, he has done something with the two meetings. In the event that any problems arise in future, the Secretary would say that he has nothing to do with them. He would say that the Bill, passed by this Council on 10 July 2008 with an overwhelming majority, is now found to be riddled with problems. It would be terrible in that eventuality. I have no intention to shirk responsibility on the ground that I did not take part in the deliberations.

But I understand what Miss CHAN Yuen-han meant when she said when she had a point to make, Deputy President — I am talking about the Chairman of the Bills Committee, not you, Deputy President — she was not allowed to speak. How annoying! On top of the tight schedule, Members were not even allowed to speak. Like being spoon-fed, Members had to finish everything in two meetings. I believe Members who came forth to speak must find it proper to act in this manner, and we should therefore believe what they said. I also hope that everything is properly done. Furthermore, even the Secretary shared the same view that proper arrangement had to be made. Otherwise, in the event of irregularities in future, Deputy President, we, including you, will be in trouble.

Actually, my office had received a lot of enquiries since the announcement, and I would forward all the enquiries received to the Financial Secretary or the Secretary. As far as I understand it, even the Mandatory Provident Fund Schemes Authority (MPFA) is not clear about the relevant issues. But as the announcement was already made, the MPFA must take the baton and launch the work. Now everything seems to be in chaos. The arrangement made by the authorities is so domineering. So, I believe grievances are commonplace, and many aspects are involved, too.

In any case, Members have now agreed that it is time for the Second Reading to be resumed. Regarding the question raised by Mr SIN Chung-kai earlier concerning the occurrence of possible disputes in future on eligibility — actually, the Secretary should have received my letter — I hope the authorities,

whether the MPFA or the Policy Bureau, can deploy sufficient manpower to answer these enquiries because the people have indeed had many difficult questions. They really have no idea of whether they are eligible, and if they are not, they will certainly feel very upset. In any case, they definitely expect a prompt reply. I hope the MPFA, or the Secretary on behalf of the MPFA, can make it clear that all arrangements have been made in response to the expected avalanche of questions. Deputy President, why am I saying this? Because if the amendment is passed, 1.7 million people will be benefited. There are also some people who are not included but think that they should also be benefited. There is one thing I have mentioned many times, and a similar request has also been made by the people, though it is yet to be accepted by the authorities, and that is, some people cannot benefit from the Government's initiative because they no longer hold an MPF account because they are now out of work. They are not convinced because they think that any people who had once held an MPF account and earned a monthly salary of below \$10,000 should enjoy the benefit, and yet this is not accepted by the authorities. However, I think that their enquiries must be entertained.

Deputy President, how did the \$10,000 threshold come into being? It was based on the median monthly income for the whole year of 2000, which stood at \$10,000 at that time. This means that half of the population at that time was earning less than \$10,000 a month. During a recent discussion between some foreign consuls and Members of this Council on the wealth gap, they were quite shocked to learn of the \$10,000 threshold. They questioned how half of the population in Hong Kong could have earned such a low monthly income of \$10,000. On the one hand, Hong Kong has been described as such an affluent place, which is capable of earmarking \$21.6 billion for the West Kowloon Cultural District development as well as carrying out other projects. And yet, the monthly income of half of the population is less than \$10,000. They wondered how people could live on \$10,000, considering the exorbitant expenses on clothing, food, housing, transportation, medical treatment, and rents. In the eyes of foreigners, Hong Kong appears, at a certain level, to be full of glamour, with very high assets and income levels, but on average, half of the population is found to be earning less than \$10,000 a month.

Therefore, I very much agree that assistance should be given to people in need. Mr LEE Cheuk-yan wondered if the Chief Executive would come up with new initiatives when he appeared before this Council next Wednesday, given his sagging popularity ratings. However, the Chief Executive should

already be aware of this a long time ago. Although this Council has reached a consensus on many issues and requested him to adopt measures to help the people by, for instance, simply providing the "fruit grant", travel subsidy, transport subsidy for remote areas, and so on, he is reluctant to do anything. Even if he is going to introduce rescue initiatives now, some people will say, "I already told you a long time ago, and yet you chose not to do anything. Now you change your mind when your popularity rating is nosediving." I was shocked when I was told the details of Mr LEE Cheuk-yan's proposal. I said that was not the original intent of the amendment. There should be an original intent. However, instead of putting out a fire close at hand, he chose to take care of the business of others 30 years later — even though I believe they will not object if someone will give them assistance 30 years later — I wonder if there would be anything left (as various charges, such as management fee, are very high) in their accounts by then but, Deputy President, the existence of some urgent problems is thus evident.

This is why Mr LEE Cheuk-yan proposed to allow the public to withdraw money from their MPF accounts as they please, as if they are withdrawing money from automatic teller machines. From a certain angle, this is definitely not the original intent. However, Members would have to do something if the authorities are reluctant to do something to help, in the words of the authorities, low-income earners with a monthly salary of less than \$10,000, when they are in great financial difficulties. Therefore, the Secretary must be able to explain. Despite his argument that many initiatives have been proposed in the budget, public grievances would not have run so high should the initiatives prove to be effective, and there would be no need for Mr LEE Cheuk-yan to propose this amendment. Therefore, I think that it is worthwhile for us to seriously consider and support Mr LEE's amendment.

Deputy President, Honourable colleagues have advised me that Miss CHAN Yuen-han's amendment is technically problematic. May I ask the Secretary to tell us later what the technical and policy problems are? In my opinion, given the extremely low income of these people, they wonder if there would be anything left in their MPF accounts after decades of making contributions. Nevertheless, I am personally in favour of saving money. However, these people do not have any money to save; furthermore, most of the money put into their accounts will end up being eaten up. Given that the Administration has more than \$1,000 billion of fiscal reserves in the Exchange

Fund, can some of the money be allocated to helping the people? My answer will definitely be affirmative. So, why can \$50 billion, as requested by Miss CHAN Yuen-han, not be allocated? We are now trying to help the disadvantaged. I am not calling on the Administration to allocate money to I am not talking about the middle class because the line has been drawn at \$10,000. Therefore, I think the proposals are worthy of consideration.

Many people will get very annoyed whenever money, tax and retirement protection for the public are mentioned because all these problems are triggered by the poor arrangements on various fronts, despite that we are living in such an affluent society. Do not think that, after these issues have been raised, other people are making a deliberate attempt to distort your proposals or do something else. Actually, it is hoped that the Administration can exert its utmost to do something because of the long-standing aspirations.

Deputy President, I am really inclined to supporting Mr LEE Cheuk-yan and Miss CHAN Yuen-han. Although their amendments may not be able to thoroughly address the numerous problems before us, at least they can drive home the message that these problems do exist. Yet the Administration has apparently turned a blind eye to the problems. At this juncture, I think we must consider this proactively. Should the Bill be really passed, and if many people find that they have many problems and many things to deal with, I hope the Administration is capable of handling all this. Otherwise, the next Legislative Council will suffer terribly, and the Secretariat would be in deep trouble because of you. Because our Complaints Division will be flooded with people at any time because more than 1 million people will be affected. Even if only 1% of them come to lodge complaints — although Mr Ricky FUNG will soon retire — other staff members will still be in deep trouble because of you.

I hope the Administration can really address the problems properly. Otherwise, should there be an avalanche of complaints and enquiries and prompt action could not be taken to address them, what is supposedly good will really turn into something bad.

I so submit.

MS AUDREY EU (in Cantonese): Deputy President, first of all, as a Legislative Council Member from the legal sector, I wish to express my deep regret about the Government's attitude in enacting legislation. Very often, issues relating to the people's livelihood or controversial subjects were not tabled to this Council until the last minute, after all preparations had been made, as if every Member of this Council is a royalist or a rubber-stamp.

Deputy President, very often, it was not the case that we did not wish to scrutinize the legislation in detail, only that we could not hold different meetings in different places and at different times. Very often, we had already strived to achieve division of work but even so, we could still not attend to the large number of Bills tabled by the Government to this Council before its dissolution.

Meanwhile, Deputy President, I think that it is most unfair that the Government has often declared that it is a small government but actually, this is not the case. Instead, it is a big government. Not only does it have a sizable civil service, additional posts of Under Secretaries and political assistants have also been recently created under the accountability system. Therefore, in respect of everything, every government department has its own purview, and there is simply no need to take care of matters falling under the purview of another government department. Hence, each time when we consulted a government department on a certain matter, they would say that they were not responsible, that another government department should be responsible instead. However, this is not the case for Legislative Council Members, for we have to take care of everything. Therefore, it is extremely unfair to Members who have been concerned about a certain issue for the past decade or decades if the tabling of legislation to this Council comes so late. Deputy President, this is the first point I wish to make.

Deputy President, the second point I wish to raise is that Mr Ronny TONG had taken part in the deliberation of the Bill on behalf of the Civic Party and stated the position of the Civic Party very clearly. In this regard, there should be no need for me to make any repetition here. However, after listening very attentively to the speeches delivered by Miss CHAN Yuen-han and Mr WONG Kwok-hing just now, and as Mr Ronny TONG will not have another chance to speak and yet he wishes to clarify some of the misunderstandings of Miss CHAN

Yuen-han and Mr WONG Kwok-hing about the Civic Party, he has bidden me to speak to explain and provide additional information on the Civic Party's position.

Deputy President, to start with, I would like to make it clear to friends in the FTU that the Civic Party fully supports universal retirement protection. On this issue, both Mr Ronny TONG and Dr Fernando CHEUNG have done a lot of thorough and hard thinking and studied this issue jointly with many experts who are concerned about universal retirement protection, such as Dr WONG Hung. And the Civic Party will take part in any activities related to universal retirement protection, such as signature campaigns. On this issue, the FTU and the Civic Party do see eye to eye. Insofar as the amendment proposed by Miss CHAN Yuen-han of the FTU is concerned, we think that the most correct way is to look at it from the angle of universal retirement protection. The amendment proposed by Miss CHAN today, even if adopted, cannot necessarily resolve the problem.

Deputy President, I do appreciate the speech delivered by Miss CHAN Yuen-han just now, especially that she told Mr SIN Chung-kai, Mr Ronny TONY or the Civic Party that her amendment, no matter what, would not be passed, and thus she suggested that we had better vote in support of her, given our spiritual support for her, for doing so can at least demonstrate that we are on a united front. I can only explain to her that we must state our position clearly in our speeches but, Deputy President, this is different from the non-binding motion debates routinely conducted at the meetings of this Council.

Insofar as these issues are concerned, I have repeatedly stated expressly in my speeches that we will not examine the details involved in non-binding motion debates. So long as the general direction and principle are similar to that of the Civic Party, even if some of the contents resemble a Christmas tree and some parts are hardly acceptable to us, we would still vote in support because we hope to play the role of a facilitator and, furthermore, the motions are not legally binding and we are only required to state our position. If we have to examine the motions word by word, and if everything is taken as if they are law, then we must vote against every motion or abstain from voting during motion debates. Now that we have reached this stage, it is no trivial matter if we are talking about a legislative procedure.

I perfectly appreciate the grievances aired by Miss CHAN just now. She said that she had only attended two meetings, and even if she had a lot to say, she

was not allowed to do so. How can she have time to state her position? Even if she sought assistance from all barristers and experts, it was still impossible for the amendment to be drafted properly, and so there might be a lot of technical problems. I do understand this, and for this, she has my full sympathy. Even for the legal sector, to draft an amendment like this is time-consuming. However, we cannot endorse her view hastily for this very reason.

Ms Margaret CHAN has often advised the Civic Party not to regard voting as a mere declaration of stance, thinking that a certain matter cannot be passed no matter what. This is unpredictable, in the event that something happened like what happened last night. Right? One or two votes can already make a difference and be put on record forever. For the professionals, especially people with a legal background, we believe we must be very serious in treating these matters.

If we are going to support the amendment, we must examine it closely and very carefully to ensure that it stands up to challenges in law before we can render our support. We can expressly indicate to her in our speeches that she has our absolute support, whether in terms of spirit, direction or objectives. However, if we are to pass part of a law or a Bill, we must not act sloppily. We cannot render our support purely because it is merely a declaration of stance and the amendment will not be passed, no matter what. Therefore, in order to express the Civic Party's spiritual support for Miss CHAN Yuen-han, we can only abstain from voting on her amendment. Thank you, Deputy President.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply. This debate will come to a close after the Secretary for Financial Services and the Treasury has replied.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I would like to express my sincere gratitude to Mr CHAN Kam-lam, Chairman of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill), and members of the Committee for their support and efforts in completing the scrutiny of the contents of the Bill to enable the Second Reading of the Bill to be resumed within this Session. During the discussion, members of the Bills Committee offered a lot of valuable advice on the implementation of the Bill.

Actually, since the proposal was put forward by the Financial Secretary in end-February, discussions have been held between Honourable Members and the Government on the details, contents, policy and qualifications in respect of the injection. Having listened to Members' views, the Government has, as mentioned by Members in their speeches just now, heeded many suggestions in respect of different issues, including inclusion of ORSO scheme members into the injection scheme, ways to address the short-term unemployment problem, and ways to calculate the wages earned within the three-month period, and so on, and discussions on all these issues have been held. During this period, the Government and Honourable Members exchanged a lot of valuable views on important livelihood issues and such a brand new proposal, and the Government also found the views very useful and constructive.

As we all know, the Bill proposed today is intended to provide a legal framework to empower the Mandatory Provident Fund Schemes Authority (MPFA) to inject a special contribution into MPF accounts for the implementation of the proposal raised in the budget as mentioned just now by injecting a one-off contribution of \$6,000 into the MPF accounts of eligible persons who are earning a monthly income of not more than \$10,000. The Bill also empowers the MPFA to require MPF scheme trustees and employers of MPF-exempted Occupational Retirement (ORSO) schemes to provide information of the accounts of scheme members to enable the MPFA to verify the eligibility of individual members for the injection for the compilation of a name list of eligible persons and require the trustees to inject funds into the relevant accounts according to the list.

Just now, a number of Honourable Members raised the point that the time available for the scrutiny of the Bill was too short as the Bill was not tabled to the Legislative Council until 18 June and queried whether the Government had fully discharged its duty in this aspect. I would like to explain that, as the proposed

injection involves the handling of the information of more than 5 million accounts, the Government and MPFA must carefully consider and prudently study various specific details of implementation. Since the announcement of the relevant proposal in the budget in February this year, the MPFA has immediately liaised with trustees and employers of ORSO schemes to discuss various implementation arrangements, including the complementary actions required to be taken, the adjustments required to be made to the operation of the system, and ways to revise the existing legislation to confer on the MPFA appropriate executive powers, and so on. Upon the consideration of the views of Honourable Members and the public and the announcement made by the Financial Secretary in end-April to expand the scope of the scheme, the MPFA has immediately communicated with trustees again in respect of the scope and contents of the proposed legislative amendments to ascertain that there is an adequate legal basis for the trustees to handle the special contribution and that they have a clear understanding of the relevant powers and responsibilities. In early May this year, the Financial Services and the Treasury Bureau immediately consulted the Panel on Financial Affairs of the Legislative Council on the implementation of the relevant eligibility criteria of the injection scheme and the proposed legislative amendments, and the Bill was introduced into the Legislative Council for the First Reading on 18 June.

(THE PRESIDENT resumed the Chair)

I would like to point out that we have collected views from a large number of Members during the period from the raising of this brand new proposal to the tabling of the Bill today to empower the MPFA to collect information and inject funds. Our colleagues have also made their best efforts, including liaising with the Department of Justice, and managed to introduce the Bill within such a short period of time. Otherwise, it will not be possible for us to collect information from trustees and employers of ORSO schemes and, as a result, our proposal to inject funds within the current financial year will be impeded. In this connection, we certainly understand that Honourable Members did not have much time scrutinizing the Bill, but still I am very grateful to them for making their best efforts and giving us their greatest support to make the resumption of the Second Reading of the Bill within this legislative year possible.

I understand that, apart from scrutinizing the clauses of the Bill *seriatim*, the Bills Committee has also expressed concern about the eligibility criteria adopted in implementing the proposed injection. We have explained clearly to members of the Bills Committee the specific application of the relevant criteria and, in the light of members' response, submitted a comprehensive paper for their reference. Subject to the Bill being passed within this legislative year, the MPFA will be able to issue notices to trustees and employers of ORSO schemes within the month of July requiring them to submit information of the accounts of scheme members. Given that the information of more than 5 million accounts will be involved, the MPFA has to give the trustees and employers ample time to make preparations. It is expected that the MPFA will finish collecting the information to be submitted by them by the end of this year and a list of persons eligible for the injection will be compiled according to the published eligibility criteria to complement the Government's application to the Finance Committee for funding in the hope that funds can be injected into MPF accounts starting from this year.

The MPFA will establish a review mechanism to allow persons who have not received the injection to apply for review of their cases. In formulating the detailed arrangements for the operation of the mechanism, the MPFA will take into full account the views expressed by members of the Bills Committee and submit further information on the timetable and detailed arrangements for the handling of the review applications when funding applications are made by the Government to the Finance Committee. The MPFA will also publish leaflets and undertake publicity to inform the public of the implementation of the entire injection scheme.

One of the important appeals made by the MPFA to the public is that if an employee already commenced employment on or before 29 February 2008 but his employer had all along failed to enrol him in an MPF scheme and make the relevant contribution in accordance with law, he should expeditiously inform the MPFA of the default case so that the MPFA can expeditiously take follow-up actions to rectify the employer's irregularities and verify the employee's eligibility for the injection. Upon the completion of the follow-up actions and the registration formalities by the employer for the employee and the payment of

the default contribution by the employer, the employee will receive the injection if it is confirmed that he meets the income criteria for receiving the injection.

Madam President, I am very pleased that the Bill is supported by the Bills Committee. I would like to appeal to all Honourable Members to support the passage of the Bill to enable the MPFA to embark on a series of work to implement the proposed injection. It is estimated that the scheme can benefit 1.7 million persons earning a relatively low income and, in the long run, help enhance their retirement protection.

I note that individual Members hold slightly different views on some of the specific proposals concerning the injection, and Mr LEE Cheuk-yan and Miss CHAN Yuen-han will move amendments under their names later in the meeting. As the contents of Mr LEE Cheuk-yan's amendment run counter to the Government's policy objective of enhancing retirement protection for low-income earners through the implementation of the proposed injection, the amendment is not supported by us. Furthermore, we do not agree with Miss CHAN Yuen-han, who hopes to introduce an amendment to make it mandatory for the Government to make an injection into MPF accounts whenever the surplus reaches a certain level. Therefore, the Government does not support this amendment, and I also appeal to Honourable Members to not to support these amendments. I will explain the Government's stance and justifications in detail when the amendments are proposed later in the meeting.

Thank you, Madam President.

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

Council went into Committee.

Committee Stage

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

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2008

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mandatory Provident Fund Schemes (Amendment) Bill 2008.

CLERK (in Cantonese): Clauses 1, 2, 3, 5, 6, 7 and 9.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4.

MISS CHAN YUEN-HAN (in Cantonese): Chairman, I move the amendment to the Government's Bill in order to incorporate my views.

Just now, I gave a detailed explanation on the amendment moved by me to add the proposed section 19AB to clause 4. We express our support for the Government's willingness to make a special contribution to the MPF accounts of wage earners. However, I hope this is not a one-off injection. As a covert door has been opened in this policy, why does the Government not — let me leave "該年" aside for the moment — perhaps a certain sum of money can be injected whenever there is a surplus within a certain period of time. If this can be done policy-wise, the Government can underline its commitment towards wage earners frankly speaking, insofar as contributors earning a monthly income of less than \$10,000 are concerned, making contributions is a heavy burden. The injection of a little bit of money can at least offer some assistance to their retirement life in future.

We can see that there are a large number of retired grass-roots workers in Hong Kong. What would happen to them in the end as they basically did not have the means to prepare for their retirement protection when they were still working? In the end, they might have to obtain CSSA or rely on the "fruit grant" for a living. The Government is actually aware of this situation, and these people are called the impoverished elderly.

Given a covert door has been opened, I would suggest that further discussions on its policy be held. The purpose of my amendment is to encourage the Government to give consideration because this is actually feasible.

Should the Government be willing to open this covert door, it will absolutely be able to do what it should do under section 19AB.

Madam Chairman, I am very thankful to you for giving me leave to propose this amendment and allowing me to give an account on the contents of the amendment here, as well as putting forth the DAB's analysis of the entire retirement protection issue. So, I do not intend to repeat them here.

Madam Chairman, the Secretary has already heard my speech. In the response he makes later, I hope he can appreciate the difficulties faced by grass-roots workers in buying themselves a meal. Why does the Government not fulfil its responsibility in making contributions to their MPF accounts and in order to provide for a rainy day the Government can deposit a certain sum of money into their accounts whenever a surplus of \$50 billion is recorded. I think it is very important for the Government to do so.

With these remarks, Madam Chairman, I appeal to Honourable colleagues to support my amendment.

Proposed Amendment

Clause 4 (See Annex II)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment jointly.

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

MR SIN CHUNG-KAI (in Cantonese): Chairman, I would continue to speak in response to Miss CHAN Yuen-han and give her my spiritual support.

Actually, she should not feel down-hearted. Although she is second on the list and her return to this Council in the next term remains uncertain, I believe colleagues from the FTU will be able to make it.

Chairman, you have granted Miss CHAN leave to propose the amendment. In terms of logic, which is much favoured by Mr Ronny TONG, the FTU can do this in the next term in the form of a private bill because the President of the next term of the Legislative Council might refer to the ruling made by the President of this term and rule that there is no charging effect.

But, Chairman, why did I say that I will give my spiritual support? This is because everyone might probably see where the problem lies. Actually, this is related to Mr LEE Cheuk-yan's amendment. While the pressure of living and inflation faced by wage earners or the grassroots should be evident to everyone, the overall population structure of the territory might be less prominent. Twenty or 25 years from now, uncovered protection will become a very serious problem. If Members have a chance to read the financial reports compiled by the IMF for Hong Kong in respect of 2006 and 2007 — I suppose the Secretary has read them — they would find that the most-discussed new problem is the structure of Hong Kong's retired population in the future, including the pressure exerted by health care and social welfare.

The MPF scheme, launched in 2000, will certainly produce a cushioning effect in 20 years' time. But frankly speaking, the contributions made by wage earners with a monthly income of less than \$10,000 currently are simply inadequate. Actually, Miss CHAN Yuen-han's amendment can serve two purposes: First, it can achieve a social effect by mentioning the MPF from time to time. Should the Government hand out money to the people by depositing it into their MPF accounts from time to time, wage earners, particularly elementary wage earners, will naturally be contemplating all day what benefit they will receive from the Government. Should the Government really give them benefit, they will certainly and frequently keep a close eye on their accounts. This will definitely prompt employers and employees to make regular contributions. Why did I say that I support Miss CHAN's spirit? Actually, should an exercise be practised and a ruling made at an interval of three or four years, or at a certain interval, things will become a lot easier next time.

For the general public, a repeat of the exercise at a three-year interval (because the Government's budget is bound to fluctuate) or a certain interval will enhance their awareness of saving. I think this is a good thing. However, I do not think although just now I encouraged you to raise your proposal in the form a private bill, we will not necessarily give you support because I do not think the matter should be handled in such a rule-based manner. Although I

belong to the opposition party, we must still adopt a holistic, not necessarily a rule-based, approach in considering the problems, including taking into account the Government's finances, no matter who is the government head. Actually, the Government has already made a lot of commitments. So, should the Government be required to make another commitment in legislation in respect of pensions? There are indeed difficulties. Nevertheless, I agree to the underlying arguments.

Therefore, the Democratic Party will abstain from voting on your amendment later because I consider that your starting point is good. However, I also share Ms Emily LAU's earlier remark, that the entire process has been rushed through. Actually, during the scrutiny of the Bill, Mr LEE Cheuk-yan questioned whether there was a need for this Bill to be tabled in this legislative year. Actually, there is no need for doing so because, strictly speaking, the "photographs" were already taken on 26 June. Even if the Bill were not tabled until October next year, only a small fraction of people, that is, people passed away before the legislation took effect, would be affected — they might probably not be affected because their family members would become the beneficiaries — otherwise, the impact would not be enormous because most of the people would not be able to use the money until after they have reached the age of 65. Therefore, it would be even better if more time could be spent on detailed discussion.

Actually, we have already evaluated the risks involved before deciding to support the Bill today — Ms Emily LAU reminded us to examine if major risks will be involved — the risks will actually lie with the operation instead of the legislation *per se* — I already discussed this point during the resumed Second Reading debate just now.

Frankly speaking, the responsible government division or the division tasked with the handling of the MPF will very likely be in a mess. As I stated during the resumed Second Reading debate, we hope the Government can come up with a better system. I shall stop here.

We will abstain from voting on Miss CHAN Yuen-han's amendment. We also hope that, after the Government has listened to our speeches today, there will be a second chance for this exercise to be conducted (Members have at least four years' time), and this is a good thing. While the Government's budget for this year might run into a deficit, and probably another deficit next year, but the

year after next might record a surplus. Having said that, I think the people, especially the grassroots, can thus be encouraged to save more money and pay more attention to their MPF accounts.

I so submit.

MR LEE CHEUK-YAN (in Cantonese): Chairman, like Mr SIN Chung-kai, I can only render my spiritual support. It is really pathetic that only spiritual support can be given. But, what is the problem actually? We think that Miss CHAN Yuen-han's intention is to bring the retirement problem faced by low-income workers to our attention, and that we absolutely agree. However, it is most fundamental that the Hong Kong Confederation of Trade Unions (CTU) and the FTU share the basic stance that the implementation of universal retirement protection is most preferable.

Basically, universal retirement protection resembles a pension system, which is totally different from the existing MPF System. According to our proposal, half of the MPF should be set aside and contributions can then be made the Government, so that pensions can be obtained by elderly people. If this idea is adopted, an injection should be made into the universal protection pool rather than the MPF, whenever there is a surplus. Insofar as low-income earners are concerned, the MPF actually has a fatal shortcoming because, even if they participate in MPF contributions, the money saved by them up to the age 65 is still inadequate because of their low income, and the money can only last 10 years at the most. If they have no income, they will have to rely on CSSA. This means that they will have to obtain CSSA a decade into their retirement.

Therefore, we have all along considered it inadvisable for a MPF System to be launched for low-income people. Instead, a universal pension system, which offers the most fundamental protection, should be established first. Actually, it is most ideal for a pension system to be established before launching a voluntary provident fund system.

If the Government has money, it should launch a universal pension system rather than a MPF System and allocate funds when there is a surplus. We simply do not hope to see the MPF being used as the system that offers basic retirement protection.

Chairman, I think it is good that Miss CHAN Yuen-han's entire proposal is, in terms of spirit, concerned about the retirement of low-income people. As for the question of whether this method must be used, I think we can actually consider a number of different options and do not necessarily adopt her approach.

Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I very much agree to Mr LEE Cheuk-yan's remarks just now. I recall that, a long time ago, when I was very young, I could often be found distributing leaflets at a Mass Transit Railway exit near the footbridge leading to Yue Man Square, Kwun Tong. Recently I came across the people I met back then again. They were already very old, and they said to me, "Long Hair, what have you done after entering the Legislative Council? We used to buy your newspaper and receive your leaflets. So far, what have you done?" I could only reply, "I have tried my best."

I recall that, in the light of our discussion on how to protect wage earners and low-income people, a MPF System was set up before the reunification. The system itself is seriously flawed. When Mr Martin LEE delivered his speech yesterday, he quoted the Government as saying that gradual improvements would be made in future when policies were introduced. Have improvements really been introduced? No such cases have been found so far.

Just now, Secretary Prof K C CHAN apologized to Members for the hasty tabling of the Bill, but he said this had to be done. He further explained that the money handed out, which was meant to be used in the future, could not be withdrawn now. Given that the \$6,000 injected could only be withdrawn in the future, there should be no urgency. How could the Secretary explain that the withdrawal of the money could be delayed if prompt action was not taken? The Secretary's remarks hold water only if the money is now deposited into MPF accounts and could be immediately withdrawn by wage earners. This means that the Secretary "thinks what people think" and realizes that they are short of money. Given the current market situation, the injection of \$6,000 can actually be taken as a monthly salary raise of \$500, or an extra bonus. Even though the Government has decided to hand out money to the people, the money cannot be withdrawn. So, how can the Secretary justify his hasty tabling of the Bill while Members must not delay its enactment?

What is the crucial point? When the MPF system was initially launched, we simply assumed that low-income people did not know how to save money and would use up all their income. This is right for two reasons. First, they simply do not have any money, and so how money be saved? For instance, I have \$1 in my pocket, and when I am hungry, I would definitely use the money to buy some bread to eat. There is no point in putting the \$1 away and wait three years before I buy some bread to eat. This is particular so given the current inflation. What sort of bread can I buy three years later? Unlike what many sociologists say, this is not the people's problem; instead, it is a social problem, because their money cannot generate more money. It is used primarily for direct consumption, not investments for the pursuit of profits generated by society or residual value.

Fine, what is the spirit of the Bill? It is really weird. While the Administration seeks to hand out candies, the candies are not allowed to be taken away for the time being. Why? It is explained that the Administration does not hope to see the money being used up once it is made available to the people, thereby inducing inflation. This is right. But the existing problem is, imported inflation cannot be solved. For instance, the rise in oil prices has nothing to do with you. Based on its assumption, with the sudden surge in the amount of money available in the market, if the people can withdraw it for spending, inflation will be fuelled. But actually, this will not happen because factors leading to inflation are unpredictable.

Insofar as this issue is concerned, first of all, in the long run, it is impossible for us not to review the MPF System — I will not discuss this here as the Chairman might find my speech deviating too far, and so I will bring this up again in due course — but I still feel that it is actually wrong to say that wage earners cannot be benefited if the Bill is not passed expeditiously. Actually, if the authorities really want to benefit wage earners, the proposal should be revised to allow instant withdrawal of the money. I have been scolded by the grass-roots people who said that the \$6,000 offered by the Government could only be used in the future, but there might be no money left after it had been offset.

I know I might have digressed too far, and so I will stop for the time being. I will seek the Secretary's advice when we come to debate Mr LEE Cheuk-yan's amendment. Thank you, Chairman.

MR FREDERICK FUNG (in Cantonese): Chairman, some of our colleagues who belong to trade unions or who are engaged in grass-roots work would definitely feel sensitive and nervous whenever the MPF and pensions are raised for discussions. First of all, I must also express regret about the tabling of this Bill to this Council within such a tight schedule, and as a result there is no time for colleagues to hold discussions (especially on policy issues). While I fully sympathize with and understand Miss CHAN Yuen-han's feelings and reaction, as well as her indignation, I maintain that, as the Bill has already been tabled to this Council, discussion must be held, and this must be done today. This might, however, result in the technical problems encountered by Miss CHAN Yuen-han's amendment, especially problems concerning the wording and drafting of the provision. This is why, even though I very much agree to her amendment, I still find the problem, to a certain degree, difficult because of the technical problems with the clause — I also agree with Audrey who said just now that caution must be exercised when it comes to discussing the clause.

Chairman, when it comes to the MPF, over the past decade or two I still recall that, in 1994, we in the Hong Kong Association for Democracy and People's Livelihood, the Hong Kong Confederation of Trade Unions and the Hong Kong Federation of Trade Unions, also known as the "three minor parties" at that time, staged a march in support of a universal pension system. During the march, an old man collapsed and was certified dead upon arrival at the hospital. He could be described as the first elderly person who sacrificed for the long-term cause of fighting for retirement protection.

Let me come back to the current amendment. Actually, it was the Government's plan to make a one-off injection into the MPF which had led to Miss CHAN Yuen-han's proposal that an injection be made whenever the Government records a surplus or reaps a profit. Of course, this is evidently a technical change to the MPF System. This amendment is different from discussing ways to handle the problem of an ageing population in Hong Kong and ways to deal with the retirement system set up for the elderly. Of course, according to this major direction and principle, there is certainly no cause for argument, because a universal retirement protection system must be adopted. This system, which has all along been supported by us over the past decade or two, is considered to be the ideal system. However, the Government has still not heeded our advice.

Nevertheless, this is not what we want to discuss today; instead, we want to discuss the Government's proposal of making a one-off injection of \$6,000, and Miss CHAN Yuen-han's proposal to the Government to provide funding whenever a surplus is recorded. Actually, as far as the logic and direction are concerned, Miss CHAN Yuen-han is merely hoping that the one-off funding can be turned into repeated funding, only that there is an additional condition that funding would need to be provided whenever there is a \$50 billion surplus. So, if we look at the matter from this angle, unless the Government indicates that there is no room for discussion and the funding would be provided only on a one-off basis, and no more discussions would be held in future, conflicts will arise should the Government act in this manner. The Government might also say that the injection will be made only on a one-off basis, and it will not consider the injection if not for the surplus of up to \$120 billion. If this is really what the Government thinks, it will basically not consider providing funding for a second time. Therefore, Miss CHAN Yuen-han is actually proposing in her amendment that, given the Government's current injection of funds, funding should be made for a second, third or fourth time when similar situations arise — of course, the surplus needs not reach \$120 billion, for a surplus of up to \$50 billion will already suffice. The amendment has nothing to do with the issue of the entire retirement system or whether there is another system which can work better than the existing one. Instead, it merely seeks to turn the Government's funding proposal from once to many, or even infinite, times.

From this angle, I think that Miss CHAN Yuen-han's amendment seeks merely to extend the Bill proposed by the Government. If Members support the Government's decision to inject \$6,000 into MPF accounts, I cannot see why we cannot support Miss CHAN Yuen-han in principle, so that when surpluses are recorded in future, funds can be injected again and again. Therefore, from this angle and direction, I think that if we look at the matter merely from this angle while putting aside the long-term retirement system for the time being, the amendment can be supported.

I think my hesitation lies merely with the expression in the clause because the expression I personally agree that, within such a short period of time, Miss CHAN Yuen-han is required to are there ample opportunities for Members to properly address the amendment? This is why I will blame only the Government, but not Miss CHAN Yuen-han. Why? I have actually discussed this issue with government officials before. In my opinion,

regardless of the number of Bills required to be tabled to this Council upon the passage of the budget, be it 10, 20, 30, or even 100, I would rather have the Bills submitted to us in one go so that we can make our own arrangements and manpower deployment. Should we fail to deal with the Bills, the Legislative Council should be held responsible. But now, the Government is responsible for making its own schedule. I have no idea why there has been such a long delay in tabling the Bill before us, for Members were given only two weeks to deal with the work related to the Bills Committee and the amendments and make preparations for the Second Reading debate to be resumed today. The Government is therefore responsible for our lack of time and ample opportunities to focus our attention on the amendments to certain Bills according to the priority accorded by Members to different bills. Therefore, the problem really lies with the Government, not us.

Hence, Chairman, in the event that similar situations arise in the future — I have no idea if we should discuss with the Government through the President of this Council or the Chairman of the House Committee — the Government should strive to inform us of all the Bills required to be tabled before this Council so that we can make our own arrangements. As the present arrangement is made by the Government, we have no time to deal with the Bill, and the degrees of attention paid by different Members to different bills also vary. To put it bluntly, the Government has done a disservice to Miss CHAN Yuen-han.

Chairman, I would like to point out after these remarks that the issue of a long-term retirement system can be brought up again for discussion when we come to discuss the amendment proposed by "Ah Yan". However, as I stated just now, insofar as the principle is concerned, I cannot see why we cannot render support to Miss CHAN Yuen-han who hopes that, when a surplus is recorded again, the Government can allocate funding again if we support the Government's present move to inject \$6,000 into each eligible MPF account, especially when the Government has such a substantial surplus, because the fund allocations are based on the same logic, values and approach. Therefore, we agree to this. However, it is purely for the problems with the clause that, even if I support Miss CHAN Yuen-han's amendment, her wish might not necessarily be fulfilled, and I am also not in the position to support the amendment proposed by her to the clause.

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, just now, the leader of the Civic Party already expressed the views of the Civic Party, and stated our voting preference clearly. Spiritually, I support Miss CHAN Yuen-han's amendment, and we also support the implementation of universal retirement protection. I also agree to Mr SIN Chung-kai's remarks, but regrettably he will not be coming back to this Council after September, and we will surely miss some of the financial advice from him.

Under the accounting principle of fiscal prudence, a budget will be prepared every year. But how should our surplus be used? Priorities must be set. If we pass this amendment to make it mandatory for the annual surplus, when it reaches a certain level, to be allocated for retirement protection, no surplus might then be made available when funds have to be allocated to meet emergency needs, such as the medical needs mentioned by Mr SIN just now. Actually, an opinion poll has been conducted by the accounting sector on how the budget surplus should be used. As revealed by the views collected by the accountants, the surplus should be used, as a matter of priority, in such areas as health care, education, environmental protection, and so on. The passage of this amendment would therefore mean that a certain amount of money must be allocated for retirement protection, that is, to wage earners and, as a result, other important matters would probably be neglected.

Meanwhile, we are also required to decide on the budget depending on the situation each year. This explains why the Government has to work so hard each year to draw up the budget. Furthermore, we are also required to decide how our surplus should be used depending on the situation each year. Should this amendment be passed, the utilization of funds might be subject to constraints in the future.

Furthermore, this will give rise to another problem, and that is, the passage of this amendment will give the Government an excuse that funds have already been allocated to wage earners whenever there is surplus in a year. The Government can even come up with another excuse, that there is no need for reviewing universal retirement protection for it is no longer necessary to do so. This way, the problem will become even more serious. As this will give the Government an excuse to delay reviewing or implementing universal retirement protection, which is strategically not a good thing.

Actually, the ultimate message we wish to send out is that we hope the Secretary or the Government can expeditiously review universal retirement protection to examine what ways or schemes can be adopted, or how the surplus can be used, to protect all the people of Hong Kong. Most importantly, the Government must receive this message and expeditiously undertake the work in this regard.

Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, please speak.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I understand Miss CHAN Yuen-han's intent of proposing the amendment. However, the amendment basically seeks to make it mandatory for the Government to make an injection into MPF accounts whenever the Government's consolidated surplus records a surplus of more than \$50 billion. First of all, I think it is conceptually important that we must absolutely not, through amending legislation, impose limitations on the Financial Secretary as to how the budget should be formulated.

Each year, the Financial Secretary will, having regard to such factors as the financial condition, people's needs, social and economic considerations and the views expressed by members of the community, draw up appropriate fiscal measures. If the Government is required, by legislation, to make an injection into MPF accounts when its surplus reaches a specific amount, the flexibility enjoyed by the Government and the Financial Secretary in using the surplus to address the people's livelihood problem as well as other issues of great importance will be greatly reduced. Imagine, if it is mandatory for the Government to make an injection into the MPF scheme when its fiscal surplus reaches a certain level, and at the same time, there is another social group in the community who is in greater need of assistance, the Government might not be

entirely capable of meeting other needs which are even more urgent due to the constraints in law. I believe Honourable Members can understand the reasons and, from these reasons, realize our justifications and imagine the relevant situation.

As pointed out by a number of Members earlier, this amendment is technically problematic, for it merely serves to provide a different interpretation of "special contribution" rather than obligating the Government to make a special contribution under specified circumstances. Therefore, the amendment simply cannot achieve the objective stated by Miss CHAN earlier. I believe Miss CHAN and Honourable Members will understand this. As Honourable Members have already mentioned other details, such as technical problems, I do not want to waste Members' time and so I will not repeat them here.

For the reasons stated above, I maintain that Members should not support this amendment. So, I urge Honourable Members to vote against the amendment.

Thank you, Madam Chairman.

MISS CHAN YUEN-HAN (in Cantonese): First of all, regarding the reply given by the Financial Secretary just now I also hope that through my amendment I am sorry, but I am extremely tired. Because I may Secretary

I mainly want to respond to the remarks made by the Secretary just now. If the Government aims to achieve strong governance, it must be guided by some convictions and concepts. If not, it will just be like a capricious "street-smart fellow", failing to solve the problems in the end. For example, with regard to the Hong Kong economy, which falls within the Secretary's portfolio, I have been making the same criticism all the time. I have always asked, "Should we rely solely on our traditional economic activities and ignore the development of a diversified economy as a means of tackling global competition?" I am talking about the same point here. What will happen if we simply dodge and duck, rather than facing up to the problem of an ageing population in Hong Kong? Mr SIN Chung-kai has made a very good point, and I agree strongly with him that our ageing population will pose a very great problem around the 2030s.

The problem will plunge the Government into serious financial difficulties by that time.

If the Government also agrees, it is of course best for it to "get it all done in one go" by introducing universal retirement protection. But I think there is still a way long ahead. We have been fighting for this for a very long time since the 1980s. We once put forward the idea of a comprehensive retirement protection scheme, but the Government simply ignored our proposal. Then, Chris PATTEN put forward the Old Age Pension Scheme (OPS). My rough calculation is that we have been struggling for such protection for 20 to 30 years. Including the time spent by my predecessors, it should be as long as 30 years.

We like the idea of "getting it done all in one go" the best, but I think it is very difficult to do this in reality. But I still want to ask how we are going to tackle the problem of population ageing. There are at present more than 1 million low-income earners. And, if the line is drawn at an income of below \$10,000, there are 1.7 million people. In other words, some 1.7 million of all the 3 million or so employees in Hong Kong can each earn less than \$10,000 only. A family of four which earns less than the CSSA rates may choose to live a life of hardship rather than applying for CSSA. There are many such problems which the Government must tackle. The Government of the Special Administrative Region (SAR) has commenced the groundwork of legislating for a minimum wage and agreed to make preparations for the enactment of legislation. However, we must still wait until October and try to assuage the anxieties of the business sector in the meantime before deciding whether to go ahead, though the objective circumstances are such that actions must be taken. The Government has taken actions to launch some new policies to tackle Hong Kong's poverty problem and the dilemma faced by those who cannot keep abreast of the mainstream economy in the globalization of world economy. The Government has already started to take actions.

The working poor today will grow old and in time become elderly persons, the very people under discussion today. The budget this year has aroused concern about the "fruit grant". The discussions on this issue are very meaningful. It is clear that the living standards of many elderly persons are even lower than that of those elderly persons living on CSSA. Many elderly persons must depend on the "fruit grant", and cannot make ends meet even if they return to their hometowns in the Mainland, as shown by many cases handled

by the FTU. These elderly persons are all Hong Kong residents who made many contributions to Hong Kong in the past. Now, they are all very old and living in extreme poverty. The Government now says that we must wait until the end of this year. I hope that this time Madam President, next week, the Chief Executive is attending the last Chief Executive's Question and Answer Session in the current Session. He will tell us what new measures he has in mind. Increasing the "fruit grant" will be one of the very important issues. He has already promised to study the problem of elderly poverty at the end of this year. This is a problem the Government must tackle.

On the basis of what we see today, we can forecast that by the 2030s, the situation will turn even more serious. At present, the number of people under employment is larger than that of retirees. But by that time, the situation will be reversed, meaning that the number of retirees will equal that of people under employment. Or, this may even mean that retirees may outnumber people under employment. What are we going to do? Since we have always depended on the taxes paid by people under employment, what are we going to do? The Government must really plan ahead. Therefore, since the Government has already taken such a step I think this is really a very good step. We once also raised this idea, and so did some academics. The Government has now also accepted the idea. I agree with what Frederick FUNG said just now. He said that if the proposal on \$6,000 is supported today, he will also support my amendment. However, he has also said that he will abstain from voting. I am not angry with him. Frankly speaking, since this Bill has been put forward in such great haste, I also think that it is necessary to conduct thorough discussions. It has already made a covert door for a change in the policy (that is, the special contribution), but why are there not any discussions? If there had been more time for me to work on my amendments (In the case of the West Kowloon Cultural District project, for example, I had time to work out two amendments), I would have been able to have interaction with the Government and other Members, and in that case, I would have been able to write up a more well-thought-out amendment. But this was not the case in reality, right? There were just two meetings, Honourable colleagues. But I will not blame the Members concerned, for I fully realize what role "lackeys" are supposed to play. I just want to blame the Government. Well, I do not want to use the adjective "humble" anymore. This is an issue of very great

dimensions. Since an opening for change has already been made, why are they reluctant to further explore the issue I am discussing?

Madam President, in the Ante-chamber just now, some Members expressed concern about me and thought that my amendment today would not be passed. They advised me, "How about this? If the Government agrees to consider your amendment further, you may withdraw it for the time being." I am a very tough person, and I am not prepared to do so. But I was a bit swayed. From the Secretary's speech just now, I know that he has not changed his mind even the slightest bit. He simply said that he had no control over the Financial Secretary. Frankly speaking, my proposal is just meant to prepare for a rainy day. In very much the same way, the Government must prepare for a rainy day by putting forward a proposal on a mandatory health care fund. It must make preparations. It was mentioned just now that health care spending would increase. The reason is just the same. Faced with the problems with the public-sector health care system, health care expenditure will certainly increase incessantly.

I also wish to mention Miss TAM Heung-man. She is an accountant, and I do not mean to offend her. But I totally disagree to her viewpoint. According to her, if the special contributions are increased to a certain level, we will in fact be putting our surplus into MPF, and other government expenditure items will thus be affected. I am sorry to tell her that if the expenditure is not incurred today, it must still be incurred next year, the year after next, and even in future years. All will depend on the Government's accounting principles. Are we going to save for a rainy day, or are we going to wait until we must increase our CSSA expenditure drastically in the future? And, we must bear in mind that there may be a change in social culture I am now speaking to an empty seat. I am sorry, but when I am in the right mood, I cannot stop speaking. I think we may have to incur a very huge expenditure in the future. Hong Kong people's mentality may change by then. What I mean is that many people may simply decide to apply for CSSA once they run into any financial difficulty. We must therefore remember that there are more than 1 million people who have not applied for CSSA. I must point out that I do not agree to such an argument. It is simply not tenable at all.

This is also the case with universal retirement protection. I do not believe that in the case of universal retirement protection I dare not talk about the Civic Party, because the remark was made by Miss TAM Heung-man

..... I do not believe that in the case of universal retirement protection, the Government will not get involved. Even in the case of the comprehensive retirement protection scheme proposed by the FTU, it is necessary to get the Government involved. Madam Chairman, I have said all this because I cannot accept the Government's specious argument and piecemeal approach of governance. The SAR Government clearly faces an imminent danger, but it still chooses to evade all the problems. I am really exhausted, Madam Chairman, because I took only four hours of sleep last night. Rather than attending to the business of the legislature, I did other work, though. I suffer from habitual insomnia. I am very upset because many academics have tendered their advice to the Government. Some academics have said that this is not their idea but that of WONG Chack-kie. Many academics agree to this. Many academics want to take part in the construction of Hong Kong, in useful construction, and in helping it to prepare for a rainy day.

Having said all this, I wish to tell Honourable colleagues, including Frederick FUNG, that Frederick FUNG will think of a way for me. I understand that he takes issue with the technical problem. Therefore, I do not blame him. But I wish to point out that I cannot see any long-term I fail to see that we are going to The Government is now willing to make an opening for change in its present policy. Frederick FUNG is right. If we endorse the decision to deposit \$6,000 into the MPF account of every low-income earner, will the Government also set aside a special sum of money? These are the words used by SIN Chung-kai. This is what I mean to say. All is just meant for their well-being. Yes, I agree that this cannot enable us to "get universal retirement protection all in one go". But have we ever been able to "get it done all in one go" when it comes to all the labour rights we have fought for? In the case of long service payment, if our offensive was not so strong that the British Hong Kong Administration could no longer resist, it would not have introduced long service payment in 1985 or 1986. In the past, there was not any paid maternity leave, and the Government was only willing to recognize that there would be no discrimination against women. But we insisted that there must be maternity leave, paid maternity leave. And, eventually, we even managed to get 10 weeks of paid maternity leave. In the past, under the law, there used to be two criteria for maternity leave, commonly called "the two medals". What were they? One was a medical certificate confirming pregnancy. There was no problem with that, and the employer could be notified as soon as pregnancy was confirmed. But there must also be another medical certificate specifying the expected date of confinement. How could

there be any doctor who was bold enough to specify the expected date of confinement as soon as pregnancy was first confirmed? No doctor was willing to do so, as could be expected. So, in the end, it was impossible to get any proof. If no proof could be obtained, meaning that "the two medals" could not be obtained, a woman who notified her employer of her pregnancy would be dismissed right away. We managed to change the situation only after several years of efforts.

I wish to tell Members that our present struggle for a minimum wage will similarly bear fruit. The FTU has long since set down an objective. We asked for the formulation of a poverty line in Hong Kong. The Government refused. We therefore made a concession. We then advocated the formulation of a subsistence line. The Government again refused. We made a concession again. Then, we also said that a line based on the Gini Coefficient should be drawn. The Government refused all the same. What other strategies do I still have? I do not mind the Government's disagreement with me, because its position is different from mine. Hong Kong people at first did not understand our position on a minimum wage, nor did employees. We then explained our position to them, especially the lower-middle classes. They could not understand us because they still had some competitiveness in the labour market. For this reason, they could not understand our position. Then, when the first motion on this issue was moved during this term of the Legislative Council, that is, when the motion on legislating for a minimum wage for two sectors, namely, the cleansing and security guard sectors, was moved, KWONG Chi-kin visited various academics and discussed the matter with them. They then began to understand. They could see clearly that some people could only earn around \$4,000 a month after working for more than 10 hours a day. Some may still criticize me for not adopting the standards of national retirement protection. Some did criticize me in this way at that time.

However, people have gradually started to understand our position. In all places, it is necessary to adopt an approach of strategic demands at times. That explains why in 2006, I forced the SAR Government to conduct a mid-term review of the Wage Protection Movement in 2007. At that time, some people chided me, and I literally punched the table in extreme outrage. I think if people are really logical in their thinking, and if they are true to their convictions as we do, then they should allow a middle-of-the-course approach. Now that the Government has agreed to make an opening for change in the policy, (as rightly pointed out by Frederick FUNG) we should allow it to deposit \$6,000 into each account. Why should we refuse to let the Government give out money

whenever it has the means? Some have opposed my proposal on the ground of long service payment. I do not mind at all, because they are political opponents of the FTU. I have been serving the Legislative Council for 13 years anyway. Let me also respond to Mr SIN Chung-kai's remarks. What is going to happen in the future is not important at all. I believe I will continue to have many friends, including Mr SIN Chung-kai. If all of us here who share the same conviction can be re-elected to the Legislative Council, we should join hands to think up some ways of helping all those poor employees in the lower strata of society to cope with their needs after retirement.

Honestly, I have been a social activist for more than 30 years. But I have never been able to "get it done all in one go" on any single issue. Madam Chairman, I have never been able to do so. We never managed to get any paid holidays of various kinds or even the protection of wages against insolvency fund "all in one go". Every time, it was like the present fight for a minimum wage. Had we not forced the present SAR Government to make an open promise of conducting a mid-term review of the Wage Protection Movement (He had to yield because he was running for re-election as Chief Executive at that time), there would be no achievement at all even now. And, even if it did make a promise, it might delay the whole thing for a few more years. If we had not done so, it would not do so much now. It would not be willing to hold so many meetings and invite the participation of the several labour unions. It would not make any advance preparation for the enactment of legislation. The Chief Executive would not agree to submit the legislation as promptly as possible during the 2008-2009 Session if the Wage Protection Movement fails. We will continue to press the Government to submit the required legislation in March or April next year.

Madam President, Mr SIN Chung-kai and I may not be here by that time. This is not important. The important thing is that we have already laid a very solid foundation. The Department of Justice has already commenced the work of enacting legislation, and the Chief Executive has promised to take some actions, including the submission of a Bill in March or April next year. It is alright as long as there is a timetable. Battles are invariably fought with different tactics.

Honourable Members, in this Council I do not wish to say that this is the last time I discuss this issue in this Council or the like. I do not wish to talk

about what is going to happen in the upcoming election. But I do hope that we will not allow our differences in political convictions to distort our perceptions of certain issues. I do not agree to such a practice. I appreciate Frederick FUNG and SIN Chung-kai very much because like me, they can also see where the problem lies. It is also my wish to achieve perfection, but we must realize what kind of government we are facing. I even say that as long as it agrees to give us what we want, I will accept the whole thing even in the absence of any legislative provisions. But it still refuses. I think it is really necessary for us to prevent it from evading its responsibility on any excuses.

Madam President, I have served in the legislature for a very long time, as long as 13 years. It is not yet the time for me to deliver a farewell speech. But I have been fighting for the people's retirement protection for several decades. I must first tell the Government that I welcome its move to make an opening for change its policy. I also hope that what I said just now can happen once again. The Government was once reluctant to introduce any retirement protection. Later, due to the championing by the labour sector, the Government was forced to introduce long service payment in 1985. Following this, we launched a series of further offensives. Chris PATTEN therefore came up with the OPS, and tested our responses in 1993 and 1994. Afterwards, Chris PATTEN gave up the idea. Alright, I must stop talking about him. He was very good at political tricks and appeared very shrewd. In the end, he put forward a Mandatory Provident Funds scheme. The struggle for OPS was such a long one. This is the case with everything. Some people may think that the labour sector in Hong Kong is very powerful. But I must ask them in return, "How powerful?" We have always been caught in a disadvantageous position. Yesterday, when I chatted with Ms LI Fung-ying, we both shared this feeling. We have always been caught in a disadvantageous position. Everything we now have is the result of our own struggles.

I do not know what to say, but I very much want to serve the grassroots and the more than 1 million low-income earners in Hong Kong. Now that the Government is willing to make an opening for change in its policy, I very much hope that Members can also give some thoughts to the whole issue. Can they cast aside all their differences? They do not necessarily have to support my proposal, but at least, I hope that they will not put forward any absurd reasons for opposing my proposal, because this will hurt me very much, because I have always respected all the different political stances upheld by Members. And,

all the Members belonging to the FTU have always been trying to address all problems squarely.

With these remarks, Madam Chairman, I hope Members can give me a positive reply. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss CHAN Yuen-han be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew LEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew LEUNG has claimed a division. The Division bell will ring for three minutes.

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 stop and the result will be displayed.

Functional Constituencies:

Ms LI Fung-ying and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr CHIM Pui-chung voted against the amendment.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr Joseph LEE and Mr WONG Ting-kwong abstained.

Geographical Constituencies:

Miss CHAN Yuen-han, Ms Emily LAU and Mr LEUNG Kwok-hung voted for the amendment.

Mrs Selina CHOW and Mr Jasper TSANG voted against the amendment.

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mrs Anson CHAN abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment, 10 against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, three were in favour of the amendment, two against it and 15 abstained. 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.

CLERK (in Cantonese): Clause 8.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the further amendment to clause 4 and the amendment to clause 8.

Chairman, during the resumed Second Reading debate earlier, I already expressed the hope that the \$6,000 can be accounted to the voluntary contribution portion of registered scheme members, so that employees can make their own choices. When responding to my request during the resumed Second Reading debate, the Secretary called upon Members not to support my amendment. His reason was very simple: the special contribution was meant to enhance the retirement protection for low-income employees. He said that this was the original intent of the special contribution. However, I must point out once again that the Government is very, very hypocritical. Why do I say so? Is the Secretary aware that under the existing ordinance, there is a section providing for the offsetting of severance payment and MPF contributions? If the Secretary is really concerned about the retirement of workers, if he is really so concerned about the retirement of low-income workers, he should not allow the offsetting of severance payment and MPF contributions.

For instance, with offsetting, if a person is dismissed four times in his working life, at intervals of 10 years, then after 10 years, his MPF contributions will be pocketed because he pays the severance payment for his employer. This government is willing to pay severance payment for employers at the expense of workers' retirement benefit. However, when I propose to let workers make their own choices, the authorities are so hypocritical as to claim that they are very concerned about workers' retirement. I must therefore say that the authorities are just a hypocrite, a real villain.

If the authorities are really so concerned about the workers, they should think about their retirement protection and repeal the provisions allowing the offsetting of MPF contributions and severance payment. The Secretary must not explain once again that since the Legislative Council at that time only wanted to pass the Mandatory Provident Fund Schemes Ordinance, Members decided to make a concession and accept the opinion of the business sector. In order to pass the legislation, Members must make this concession. The Secretary may once again offer this explanation later on. It is true that such was the request of the business sector. The business sector's request for offsetting was unequivocal. But we are talking about the Government. Is the Government part of the business sector? Does the Government not agree that it must work for the well-being of workers? If it listens to whatever the business sector says,

the outcome will be collusion between the Government and business. I do not know whether he will admit the existence of such collusion. It will be slightly better if he so admits, because he is at least honest in that case. But if he denies such collusion, he will be a hypocrite, a real villain. Therefore, honestly, whatever answer he is going to give, the Secretary will be in great trouble. But I suppose the Secretary may simply refuse to give any reply in the end.

Chairman, I must reiterate my hope that they do not have to wait until they are 65 before they can claim the sum of money concerned. There is already a need for immediate "relief". They must be allowed to decide how to "rescue" themselves right now. Let them make their own choices. Therefore, Chairman, I hope Members can render me their support.

Thank you.

Proposed Amendments

Clause 4 (See Annex II)

Clause 8 (See Annex II)

CHAIRMAN (in Cantonese): Members may now debate the original clauses and the amendments jointly.

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

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I live on the same floor in the same building as Mr LEE Cheuk-yan, only that my flat is on the far end of the floor. That is why I am also aware of what he has been doing. I live in the same building as Mr LEE Cheuk-yan, only that I do not have any frequent contacts with him.

This is actually a moral issue. Why? We know that low-income workers in Hong Kong have never enjoyed any retirement protection. To put it somewhat crudely, one can say that they were once so fit, but they are now spent

and reduced to begging in the streets. This is no doggerel. If Members bother to look around in the streets, they will certainly see many elderly persons scavenging cardboard and aluminium cans. I do not know whether the Secretary has ever walked past Wellington Street when he dines out in the evening. Wellington Street is full of restaurants and a popular place for many people. Opposite a restaurant famous for its roasted geese, we can see many elderly persons scavenge cardboard and litter.

If a government really wants to ensure that people will not have to scavenge cardboard in the small hours when they grow old, one should always appreciate its good intention. But where does the problem lie now? The problem is that labour is regarded only as something that can generate profit, meaning that doing household chores is not counted. Well, I do not intend to argue over this for the time being. But I must point out that although many people have a job, they will not be able to enjoy any protection in their old age. Before the reunification, the Government claimed that this problem must be tackled.

As a matter of fact, what the labour sector asked for at that time was not such a "rotten orange". Miss CHAN Yuen-han is not present now, but she described the whole thing as a "rotten orange" at that time. What she wanted was an eatable orange. The point is very simple, and I have explained it many times before. To begin with, under the present MPF System, the Government requires an employer and an employee to each contribute 5% of the employee's monthly earning. And, the proceeds are handled by a trustee, an insurance company. This is simply the same as giving the insurance company a sum of capital, right? Is there anything better than this? One may not agree that this is charity, but at least, one must admit that this will give all those insurance companies additional capitals for no good reasons. And, although the administrative fees are so high, the Government simply remains indifferent. Even if the Government does not want to introduce universal retirement protection, it should at least pay the administrative fees mentioned above. This is the very least it must do. Ten years have already passed. But the Government has not done anything in these respects. Can the Government not hear that workers have been grumbling, saying that the management fees are too high, causing them to incur losses? If the Government does not want to do anything, there is nothing we can do, right?

What then is the problem? All is about what the Government has been saying today. And, I have already talked about it briefly. The Government says that it is very anxious, anxious about people's protection. What is its concern? The whole problem stems from the fact that the money can only be used in the future. In this connection, I think the Government can actually do something good for people. Mr LEE Cheuk-yan has done the right thing. He says that his proposal is based on the Government's own logic. Rules were indeed already set in the past, but there is now an additional \$6,000. How can anyone present a post-dated cheque to another person as a birthday gift? Will anyone present a post-dated cheque as a gift to mark the one-month birthday of a baby, saying that the cheque is for the use of the baby when he reaches the age of 30? No. The host will simply turn such a person away from the birthday banquet, right? "Congratulations on the baby's one-month birthday. Here is a gift cheque, but it can only be cashed 30 years later." The host will certainly ask, "Are you out of your mind?" "No, I only have the well-being of the child in mind. How can I be sure that he will not have to beg 30 years later?" Such an explanation will not do, right? Will anyone do anything like this? The whole thing is so absurd.

Mr LEE Cheuk-yan is very reasonable, right? Though he proposes to amend the legislation, he does not put forward any fundamental changes. He just wants to make some amendments relating to the present issue, giving people a choice between saving the money and withdrawing it for immediate use. Secretary, will you agree if your bank tells you that you can only withdraw your account deposit 30 years later, and that there will be no interest accrual? No, of course. You will certainly ask them whether they are sick. Yes, this Government is indeed sick. It does not pay any heed to others' pressing concerns. What is the rationale behind its measure? The rationale is the avoidance of inflation.

But they must not try to take me in. What are the causes of inflation in Hong Kong? Inflation in Hong Kong is largely the result of capital flows. Ours is a kind of imported inflation, caused by the depreciation of the Hong Kong Dollar, even to a level lower than that of RMB. It is a structural problem. Can Members imagine the amounts of capital flows into and out of Hong Kong (This is the Secretary's major at university)? The situation is also the same in the Mainland. Owing to huge capital inflows, the Mainland is affected by inflation. How do they deal with the situation? I am not quite sure, but I suppose the Secretary also knows that they have sought to increase the capital

reserve ratio of banks. This is how they have sought to control inflation, right? If Hong Kong follows suit, banks will certainly criticize the Secretary. They will certainly challenge the measure, saying, "We have to keep our business going. How can we still maintain our lending business in that case?"

Actually, there are many ways to combat inflation. But the Government wants to hand out money while making sure that people cannot spend it. This is given out as a "candy", but it is in effect no "candy" at all. It is because they do not want to boost inflation. And, they are also worried that people may spend the whole sum of \$6,000 once they receive it. But no matter what, the Government has already handed out the money, so how people are going to spend it should no longer be its concern, right?

Therefore, people in my constituency approach me practically every other day, asking me whether Donald TSANG is sick. He claims that he has handed out money, but people simply cannot receive any. Mr LEE Cheuk-yan is actually trying to do the Government a favour by helping it to relieve people's plight. If the Government agrees to his proposal today, people will receive instant cash and they will chide the Government less. In this way, its popularity rating will not nosedive so much. If its popularity rating continues to nosedive, mounting hydraulic pressure may stop it from rising to the surface again. When this happens, there may be sore legs because one's legs will come under increasing pressure as hydraulic pressure rises. The consequence of sore legs is very serious, especially in the case of the Chief Executive.

If the Government can decide to do good to people today, all wage earners will be able to make their own choices. Frankly speaking, LEE Cheuk-yan has been trying to think it over and over again, and he has come up with the idea of letting them make their own choices. If A wants to spend all the \$6,000, just let him do so. If, however, B does not want to do so, also just let him decide. Why can't we let people make their own choices? Why? In a word, therefore, they are actually insulting the lower strata of society, and they cannot appreciate the plight of these people. He thinks that they will certainly squander the \$6,000. But, buddy, are you aware that even the price of a pineapple bun has soared? What then is so wrong with allowing them to use the money for coping with inflation? I notice that even the restaurant in the Government Secretariat has also increased its prices. Has he ever been to the restaurant there? He has never, of course. He always claims that he must seek to understand people's

situation. The prices of set meals have all risen. Is it wrong for people to use the \$6,000 to cope with inflation? No.

What is the rationale behind the Government's measure? The rationale is all about ignoring the people, aiming to hand out a bogus "candy". In other words, it simply tries to deceive all of us. Many grass-roots people have asked me whether it is possible for me to ask Donald TSANG to reduce the amount by 20%. This means that as long as people can receive instant cash, they are prepared to accept \$4,800, rather than \$6,000. They are prepared to accept this amount, and in this way, the Government can also save some money. But the Government is so ignorant of the people's plight, totally unable to realize the immense pressure of inflation. It is not aware that inflation is rising like the water level of a swelling river. It cannot see that people are on the verge of being drowned. We ask the Government to increase wages. The answer is "no". We ask for a minimum wage. The answer is "no" again. All those people out there are struggling in the water. One day, they will be exhausted, and they will all sink to the bottom of the river after all their vain struggles.

But they simply turn a blind eye to the people's plight. They just keep chanting Buddhist scriptures, saying that their disregard for people is based on the philosophy of governance. What is their philosophy of governance? It should be all about addressing people's concerns and meeting their needs, right? If the Government commissions an opinion poll today — they like this practice very much — asking people to vote on LEE Cheuk-yan's proposal today I am prepared to make a concession here. If his proposal fails to command the support of more than 70% of the respondents, I will not request the Government to accept it. I will instead support the Government's proposal.

I can actually conduct a very straightforward opinion poll myself. I am convinced that seven out of 10 wage earners will certainly say to me, "Long Hair, this government is sick, so please fix it." But I must say that I cannot fix it. Because I cannot apply for the posts of Under Secretaries, nor will I be appointed as Political Assistants. Am I correct? Despite all my wishes, I cannot give it any help. We are therefore caught in a dilemma, in which something regarded by all as desirable is turned into something bad.

I do not know what the Secretary thinks. Secretary, you are a true academic. You are an academic and do not have to work as a Bureau Director. Maybe, like Faust — I am talking about a different version of soul-selling here

— you can ask God to give you back your soul again for just three days. Maybe, you can just tell Him that you can give it back to Him when all is over. Faust was certainly a villain, for he sold his soul to the Devil. When you pray tonight, you may say, "Lord, my Lord, please let me have my soul again for just three days. I shall return it to you when all is over." Oh, I am sorry. You must say this to the Devil rather than God. All will be fine if you can just say this in the Government's so-called "morning prayer", "No, we are not right. What LEE Cheuk-yan and Long Hair advocate is right. It is only right for us to give people instant cash."

Secretary, I hear that your popularity rating is on the low side according to opinion polls. Provided that you can do this good thing today, I can promise you that your rating will rise immediately. All will be fine if you can just say, "It is not necessary for us to do so. Mr LEE Cheuk-yan is right." LEE Cheuk-yan is not saying that all people are required to claim the \$6,000 and spend it all. Rather, he is only saying that people should be allowed to make their own choices. We are all the time talking about choices, aren't we?

When Chief Executive Donald TSANG was criticized by others during his election campaign, didn't he say that he wanted to get the job done? What did he say about getting the job done? He vowed that penniless people at the moment would have money in the future, and that those who had no vote at the moment would be allowed to vote in the future. Buddy, we expect instant results. We are right now asking him, "I do not have any money at the moment, but will I have any tomorrow?" What is wrong with him? He has set aside the money, and the money is already there. I must now ask the Chief Executive When the Chief Executive dines out, there may be live broadcast, so he may see the whole thing, but then, he may also choke. All is very simple. Donald TSANG, are you going to instruct your subordinates that those people who are already given a sum of money but who cannot use it at the moment must be enabled to receive more money in the future? And, are you going to instruct your subordinates that they must respect the choices of all these people, allowing them to decide whether or not to withdraw the money? This is the key point.

This Government is much too arrogant. It thinks that it has already handed out the money, so people should not grumble about the lack of choices. "Food handed out in contempt will cause diarrhoea." These were the words of the Chairman — I mean, Chairman MAO. What was he talking about? At

that time, he refused to eat the relief food handed out by the United States. Mr ZHU Zi-qing died precisely of starvation after refusing to eat the relief food handed out by the United States. We do not intend to ask people to follow suit today. We do not think that we are able to refuse the "food" offered by the Government either. I only ask the Government to do one good thing today, so that we do not have to follow Mr ZHU Zi-qing's example of refusing to eat food handed out in contempt. It only needs to put down a bowl of rice properly on the table and say, "I am sorry that it is really not much of a big meal, but please eat it anyway." However, the Government has instead invited people to a big banquet, saying at the same time, "You cannot eat it now. You must wait 30 years." This simply will not work.

Chairman, I am beginning to raise my voice. I do not want to do so. But I am really very upset. I hope that the Secretary can give a reply to all wage earners in Hong Kong. I hope that he can do something good on behalf of Donald TSANG.

MR FREDERICK FUNG (in Cantonese): Thank you, Chairman. There are so many chairmen here. I am addressing the Chairman of the Committee of the whole Legislative Council.

Chairman, the Government claims that its present proposal to inject \$6,000 into each eligible MPF account is meant for providing people with some assistance upon their retirement. If this is indeed the Government's real intention, or if the Government truly hopes that once into retirement, people can have enough money to spend and look after themselves, without having to rely on CSSA and the assistance of others, I must say that I cannot see how the \$6,000 can ever achieve all such purposes.

The MPF System is unable to achieve the desired result. If the Government truly wants to achieve the purposes mentioned above, it should tell us that it now plans to establish a system, whereby retirees can be helped to live a satisfactory life. But it has not mentioned any such system.

Therefore, the Government's claim that the \$6,000 can help people in retirement is simply an exaggeration, or an overstatement, because the money simply cannot achieve such great results. There will be no miracle, because it

is basically impossible for people to turn the \$6,000 they each receive into something that can tackle the problems they are going to face after their retirement at 60 or 65. This is totally impossible. From this perspective, therefore, I can say that the proposal of injecting \$6,000 is far from being able to achieve the intended results. And, we simply cannot imagine how the proposal can ever be workable in that sense.

Some Members have pointed out, and the Secretary may think, that the money can help people save money, or encourage them to do so. They say the proposal is purely meant as a mechanism or incentive that encourages people to save more money and increase their MPF savings for ensuring a better retirement life. According to them, this is the main purpose of the \$6,000 injection. But that again, is this amount enough for the purpose?

The first point, as I have mentioned, is that the measure concerned is applicable to people earning less than \$10,000 a month. A monthly income of less than \$10,000 is below the median wage level. These people are mainly low-income earners who cannot save any money easily. I believe the Secretary is also aware of the Commission on Poverty's proposal on establishing a Child Development Fund. The Labour and Welfare Bureau has put in place a measure, calling upon low-income families to make savings for their children in order to receive a matching grant from the Government. The aim is to encourage low-income families to save \$200 a month for each child. At present, it is invariably very difficult for low-income families to put aside \$200 a month for each child. That being the case, can they be encouraged to increase their savings? If they do not have any income at all, if they do not have any money to spare, they will not be able to increase their savings.

The second point is that this measure cannot encourage them to save more money because, as I have explained, a one-off injection of money into an MPF account is essentially different from the case of a Child Development Fund mentioned above. Under the fund, one dollar of savings is matched with a grant of \$1. When a family saves \$1, the Government will inject \$1. When the family saves \$1 more, the Government will inject another dollar. This can serve as an incentive for making savings, resulting in behavioural changes.

But the Government's present proposal cannot lead to any behavioural changes. After the Government has injected the money, the account holder will simply note an increase of \$6,000 when updating his account at the bank. He

will not be induced to put any spare money into his MPF account of his own accord. Once again, the desired purpose cannot be achieved. I therefore fail to see how the proposal can in any way help people cope with their retirement problems. The Secretary should know that on the basis of the median wage adopted at the time of our discussions on MPF, if an average employee started making contributions at the age of 25, he would receive only about \$3,000 a month 40 years later, at the time of his retirement. It is sad to note that with this sum of \$3,000 or so, a person will not be eligible for CSSA.

In other words, after making MPF contributions for 40 years, the only thing a person earning an average income will get is that he is not eligible for CSSA. I must therefore ask once again, "What is the chemical effect of this \$6,000?" The amount of injection is \$6,000; assuming that a person earns \$10,000 a month, it can be computed that the authorities will be making one year of contributions for the person. When \$6,000 is divided by 12, the amount will be \$500 a month, exactly 5% of the monthly income of \$10,000. This therefore means one year of contributions. With this additional year of contributions, how much can one get on top of the \$3,500 already mentioned? As computed at the time of discussing MPF, the amount will be roughly \$3,500, and given the additional year of contributions on a one-off basis, I guess the monthly amount will just be \$3,600, or \$3,700, or in any case less than \$4,000. Therefore, how can the authorities tell me that this \$6,000 will enable employees to enjoy substantially better retirement protection when they reach the age of 60? Even a small improvement is not at all possible, let alone any substantial improvement. I have said so much, and my only purpose is to tell the Secretary that I fail to see how the injection of \$6,000 can enhance the retirement protection for elderly persons.

CHAN Yuen-han's amendment is slightly better, as the injection it proposes varies from year to year. But what we are offered now is not any annual injections but just a one-off injection. Even the Secretary himself has pointed out in his speech that the Government is not prepared to make any commitment in respect of when there may be another injection. He has also remarked that there is no plan to tie up the money. There is going to be just one injection, so how can they tell me that it is a form of retirement protection? Mr LEE Cheuk-yan's amendment is thus regarded as a violation of this principle. But the authorities' principle simply cannot achieve the desired result.

All the computations are very clear, unless they can prove that Frederick FUNG is wrong, unless they now say that the performance of our MPF schemes is superb and \$6,000 can be turned into \$600,000 and then \$6 million, and unless the Government can assure me that it will make up for the shortfall if the target cannot be reached. In that case, all elderly persons can put their minds at ease. If not, how can it still claim that its proposal is workable despite all the clear and concrete statistics?

Chairman, there is another point, but I do not know how to explain it. I think the Government should conduct a review. The sum of money involved is by no means small. As many as 1.7 million employees will be affected. How much is required in total if each of them is going to receive \$6,000? I hope my computation is not wrong, for I was an arts student, and I did not study the sciences. The total amount should be \$10.2 billion.

The sum of \$10.2 billion is roughly 8.5% of last year's surplus. I did not use any calculator or computer. I only did some manual calculations, so I hope I have made no mistakes. It is 8.5% or \$10.2 billion. In pure statistical terms, the amount is very big. I really wish to ask the Secretary and the Chief Executive how they feel when the spending of \$10.2 billion cannot even buy for them any positive public responses. The spending of \$10.2 billion cannot even win them any labour sector support in the legislature — though support is just slightly better than nothing, and the whole thing is not warmly welcomed and perfect and cannot win the applause of the public.

With regard to the responses to this \$10.2 billion in the districts, Mr LEUNG Kwok-hung has pointed out that people are prepared to accept a 30% discount if they can get instant cash. I dare say that people are prepared to accept even a bigger discount. All people I have met with and come across have told me, "Frederick, please tell them that what we now want is not any pension which we can receive only several decades later. What we are concerned about are the pressure of living costs and inflation and rising food prices. This is the problem. I won't thank the Government for giving me this \$6,000." Such is the opinion of employees in the districts. The spending of \$10.2 billion cannot even win any applause of the salaried classes. Why?

Why did some people feel happy about the granting of one extra month of CSSA payment? Why did the one-month rental waiver also make some people

happy? The amounts of money involved in these two cases were very small indeed, but the point is the right remedies were administered. The spending of so much money this time around has not received any positive responses, because it is not the right remedy. I hold that economically and politically, this measure cannot give us any benefits. We will only suffer losses as a result, so it is not worthwhile to spend the money that way. I of course know that our existing laws do not allow us to make any legislative amendments which can enable us to follow the example of Macao and hand out the sum of \$6,000 all in one go.

Mr LEE Cheuk-yan's amendment can open the door for the Government and the Secretary. People can be enabled to decide, on the basis of their financial conditions and abilities and practical needs, whether they are going to withdraw the entire sum of \$6,000, or just withdraw \$1,000, \$2,000, \$3,000 or \$4,000 for the time being. Once this door is opened, those wage earners in urgent need will be able to tackle the livelihood problems and difficulties arising from inflation and most importantly, wage freeze. As a result, when these people can tackle their problems, they will think that the Government has done a good job, and that the \$10.2 billion has been spent appropriately. They will not wait until they are 65 before they thank the Government for the \$10.2 billion and the \$6,000. The injection of this \$6,000 will only lead to an increase from \$3,500 to \$3,600 a month. An increase from \$3,500 to \$3,600 is entirely different from the granting of \$6,000 in one lump sum. An increase of \$100 and the granting of \$6,000 in one lump sum are entirely different in terms of effect. They will lead to two different types of chemical and political effects.

Chairman, I can actually go on talking. But this time around, I have sought to persuade the Secretary by presenting concrete evidence and describing the actual effects. If he still insists on spending the \$10.2 billion in his own way, refusing to accept Mr LEE Cheuk-yan's proposal, others will throw stones at him and spit on him all the same. Thank you.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, as I pointed out earlier in the meeting, the Government opposes Mr LEE Cheuk-yan's amendments.

As explained by the Financial Secretary in the budget unveiled in end-February this year, the Government's proposal of making a one-off injection into the MPF accounts of working people with lower income is aimed at demonstrating the Government's commitment to enhancing retirement protection in Hong Kong and reflecting, in a positive and direct manner, the Financial Secretary's notion of leaving wealth with the people and the relevant measures. During the debate held just now, a number of Members expressed support for this idea, that is, the idea of supporting enhanced retirement protection in Hong Kong. I believe there has been a general consensus in the community on how retirement protection should be enhanced and the introduction of such an innovative measure of the Government injecting funds into MPF accounts.

To achieve the objective of enhancing retirement protection, we propose to specify in the Bill that the special contribution received by the beneficiaries be deposited into their MPF accounts and, in order to reflect our policy objective, accumulated until they retire.

According to Mr LEE Cheuk-yan's amendment, however, withdrawals of the relevant payments can be made by MPF members at any time, after the injections are made. If this is allowed, most of the \$11.5 billion earmarked for the implementation of the proposed injection might well not be saved for retirement purposes and this will prevent the policy objective of enhancing retirement protection, which is shared by the public, from being achieved.

Both Mr LEE Cheuk-yan and some other Members have mentioned some problems relating to people's livelihood. Actually, the injection of funds into MPF accounts is only one of the initiatives proposed in the budget. As pointed out by Mr Frederick FUNG earlier, many other initiatives will be adopted, too. Having regard to the economic hardships to be faced by Hong Kong and the imminent inflation, the Government considers that there is a need to introduce

short-term and long-term initiatives. The short-term initiatives focus on ways to ease the hardship of the people. For instance, we have proposed electricity tariff subsidies, which is an innovative initiative. There are also many other initiatives which have yet been implemented, including rates waivers, additional CSSA payments, disability allowance, old age allowance, and so on. These initiatives, if implemented, will certainly help relieve the burden of living on the people. Meanwhile, the Government also has to take into account the long-term needs of society. Actually, enhancing retirement protection is a matter of concern to many people and Honourable Members. In the opinion of the Government, long-term commitments should be made if the overall financial arrangements permit. This is why it has come up with the proposal of launching this injection scheme to enhance retirement protection for the lower income group. This proposal has also gained extensive public support.

I believe most Members will agree that every financial initiative adopted by the Government has its own focus. We must take into account both short-term and long-term measures, and cannot say that only a single objective will be considered for everything. Each measure has its own underlying notion and focus.

When Mr LEE Cheuk-yan expressed his views just now, he mentioned the existing problems of the MPF, such as the problem with the offsetting mechanism, and so on. Our decision to inject funds into the MPF this time around has induced much discussion. Honourable Members have also continued to reflect their views to us regarding the many inadequacies and shortcomings of the MPF. While I understand this, I do not consider this an adequate reason to have reservations about this proposal raised by the Government. Our proposal is highly focused. We hope to inject funds into the accounts of the low-income group to bolster the Government's commitment to retirement protection, and this is our policy objective.

I believe this will definitely not be the last time the issue of MPF is debated in this Council. We still have plenty of opportunities to listen to Members' views on, for instance, how the provisions concerning the other aspects of the MPF can be enhanced, ways to make improvements, and so on. I believe discussions on these will continue. However, Members should not confuse these issues with today's topic. Hence, I hope to appeal to Honourable

Members here to vote against this amendment and support the Government's original motion.

Thank you, Madam Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, the Secretary said just now that the first point commanded widespread social approval. But I think this will only be the case among people living in the Ivory Tower. People living in real society all hope that they can be free to choose whether they are going to spend the money immediately or save it for future use. Therefore, speaking of social approval, I think the whole thing must be an "idea" that occurred to them in the air-conditioned comfort of their offices. If this is regarded as a good "idea" by those sitting in air-conditioned offices while others who toil and sweat under heavy rains and the scorching sun still think that the "idea" can be improved, then I suppose they must accept my "idea".

Chairman, it was also mentioned just now that the Government would implement both short-term and long-term measures. It was said that some short-term measures, such as government electricity subsidies, had been implemented through the budget, and other short-term measures were in the pipeline. Secretary, I always tell myself that my proposals can help Donald TSANG restore his popularity. If the Secretary insists on what he has said today, he will be doing a disservice to Donald TSANG. Why? The public are presently clamouring for government actions to help low-income earners and poor elderly persons. The Secretary's reply just now is in a way a message to the public, telling them that the Government has already implemented short-term measures. Will the public be satisfied? How about the feelings of the public? I dare say that if Donald TSANG speaks like the Secretary when he comes to the Legislative Council next Wednesday, refusing to implement any short-term measures I think the Chief Executive will not dare to say something like this. Members can imagine that in order to arrest the nosedive of his popularity, he will likely put forward some short-term measures next Wednesday, in marked contrast to what the Secretary has said today.

The Government is frequently self-contradictory, saying something today and denying it next Wednesday. It may suddenly say that it can appreciate people's dissatisfaction and sentiments. It may say that it can appreciate the plight of the public in the midst of inflation, so it is going to do something. But

it may just take some piecemeal actions, benefiting just some people and excluding others. In the end, some may think that it is still better than nothing, but others will be outraged. In this way, the Government will be in deep trouble once again. What is the point of all this anyway? I always say that my proposal is the best way to help Donald TSANG restore his popularity.

Chairman, the third point mentioned was that the Government would consider both the short run and the long run. But as I mentioned just now, it has never considered the long run in dealing with the offsetting of severance payment and MPF contributions. The worst that can happen is the failure to consider the long run when it is necessary to do so. But I do not want to say anything more on this. I know the Secretary can already catch my point and realize our discontent. I hope that the Secretary can soon review the Mandatory Provident Fund Schemes Ordinance and tell us whether there is any justification for the offsetting of severance payment and MPF contributions. Why does the Government consider only the short run, not the long run, when dealing with this issue? When it does consider the short run, what it considers are not the short-term interests of employees. Rather, it will only consider the short-term interests of employers. This is an extremely unreasonable system. I hope the Secretary can conduct a review promptly.

Chairman, finally, I call upon Members to support my amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEE Cheuk-yan be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for three minutes, after which the division will 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 stop and the results will now be displayed.

Functional Constituencies:

Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendments.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr CHIM Pui-chung voted against the amendments.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendments.

Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mrs Anson CHAN voted against the amendments.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendments, 14 against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 10 were in favour of the amendments and 11 against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 4 and 8 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.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2008

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

Mandatory Provident Fund Schemes (Amendment) Bill 2008

has passed through Committee stage without amendment. I move that this Bill be read the Third time and do pass.

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Air Pollution Control (Amendment) Bill 2008.

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008**Resumption of debate on Second Reading which was moved on 20 February 2008**

PRESIDENT (in Cantonese): Ms Audrey EU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS AUDREY EU (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Air Pollution Control (Amendment) Bill 2008 (the Bills Committee), I now report to the Council on the deliberations of the Bills Committee.

Power generation is the largest emission source in Hong Kong. To ensure that Hong Kong can achieve the 2010 emission reduction targets set down jointly with the Guangdong Provincial Government, it is essential for the power companies to substantially reduce their emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and respirable suspended particulates (RSP). The Administration therefore proposes to amend the Air Pollution Control Ordinance, so as to cap the emissions of the three specified pollutants in Hong Kong in 2010 and beyond, and facilitate the use of emission trading as a means of complying with the emission caps for power plants.

Under the Air Pollution (Amendment) Bill 2008, the Secretary for the Environment is empowered to set out, in a technical memorandum (TM), a cap on the maximum emissions of the specified pollutants and also the emission allowances and the methodology for allocating these allowances to individual power plants in relation to each emission year commencing on or after 1 January 2010. The Bills Committee notes that to ensure that all power plants will receive the same quantity of emission allowances per unit of electricity generated, emission allowances will be allocated to individual power plants on a pro-rata basis in accordance with their respective share of the total amount of

electricity generated for local consumption. To provide sufficient time for power companies to adjust their operation, an advance notice of no less than four years will be given by the Authority for any change in the allocation of emission allowances. However, such arrangement does not apply to the first TM since the power companies are well aware of the emission allowances to be allocated under the first TM.

In view of the significance of the TM, the Bills Committee has studied the procedures of amending the TM. Members note that the TM may be amended by the Legislative Council through the vetting procedure as stipulated in section 37B of the Air Pollution Control Ordinance, which follows the same way of how subsidiary legislation may be amended under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). However, such amendment must adhere to the applicable restrictions with regard to the scope and nature of the TM. A TM may not commence to have effect before the expiry of the period for the Legislative Council to pass a resolution to amend the TM or before the day of the publication in the Gazette of any such resolution. The first TM will be published in the Gazette for introduction into the Legislative Council at the beginning of the 2008-2009 legislative year.

Power plants are required under the Bill to ensure that the actual emission of specified pollutants is not greater than the allowed emission in an emission year. However, a power plant may make adjustments to the quantity of allocated allowances under certain circumstances: a surplus from the preceding year; the occurrence of special events or failure to acquire emission credits; acquisition from or transfer to other local power plants; and acquisition from or transfer to cross-boundary power plants under a recognized emission trading scheme.

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

A power plant with surplus of allocated allowances may apply for increasing the quantity of emission allowances. In order not to upset the Administration's capability of achieving the 2010 emission reduction targets, any such increase is limited to the quantity of the surplus, or 2% of the quantity of the allocated allowances of the preceding year, whichever is the lesser. The Bills Committee is concerned that such a restriction may discourage power companies

from achieving further reductions of emission. In view of this concern, the Government has included in the post-2008 "Scheme of Control Agreement" signed with the two local power companies a provision to allow for an award of 0.05 to 0.1 percentage point in permitted return as an incentive to encourage power companies to "over-achieve" the emission caps imposed under the Air Pollution Control Ordinance.

As for the provision that a power plant may apply for increasing the quantity of allocated allowances as a result of the occurrence of a special event, the Bills Committee holds the view that the Administration should specify in the Bill the scope of special events, and limit this to events which occur for reasons beyond the control of and unforeseen by the applicant. In this light, the Administration agrees to move Committee stage amendments (CSAs) to make it clear that the occurrence of a special event must not reasonably have been foreseen by an applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, he must have exercised all due diligence to prevent the occurrence of such event. In addition, an applicant is required to notify the Authority within five working days after the occurrence of a special event, and to promptly exercise all due diligence to minimize the quantity of pollutant being emitted as a result.

Under the Bill, a power plant may acquire from or transfer to another power plant any quantity of allocated allowances for the purpose of increasing or reducing the quantity of the allocated allowances. The Bills Committee does not object to this arrangement because it will not affect the emission cap of Hong Kong. However, the Bills Committee has expressed concern about the arrangement that a local power plant may partner with a qualified power plant in the Pearl River Delta to implement an additional emission reduction project under a recognized emission trading scheme (ETS), and the emission credits generated by the ETS can be used for increasing the allocated emission allowances. Since the costs of implementing an emission reduction project in the Mainland are far lower than those required by similar projects in Hong Kong, the Bills Committee is concerned that local power plants may incline to implement various emission reduction projects, rather than striving to reduce their own emissions, thus producing adverse impacts on the air quality in Hong Kong. In view of this concern, the Administration will move a CSA to stipulate that in any emission year, a local power plant may only acquire a total quantity of emission credits which is no more than 15% of the quantity of emission allowances allocated to it at the beginning of that emission year. Miss CHOY

So-yuk will also move a CSA to limit the validity period of an emission reduction project to five years.

The Bills Committee is also concerned that the regulation of emissions trading under the Bill is too lenient. In view of this concern, the Administration will move CSAs to specify that the Authority shall consult the Advisory Council on the Environment (ACE) upon receipt of an application for transfer of emission allowances. An applicant must make an application on or before 30 June in the emission year, and the Authority must notify the applicant of the decision as soon as reasonably practicable, but in any event within 180 days after receiving the application to allow sufficient time for consultation with the ACE. The Secretary for the Environment will also state in the resumption of Second Reading debate on the Bill that the consultation with the ACE in respect of an application will be conducted in accordance with the established procedure of the ACE, under which all relevant papers will be made available for public inspection, and that the Legislative Council Panel on Environmental Affairs will also be consulted accordingly.

Under the Bill, if a power plant exceeds the allowed emission, it shall be prosecuted under section 30A of the Air Pollution Control Ordinance. A fine of \$100,000 will be imposed on conviction for a first offence and \$200,000 and imprisonment for six months for a second or subsequent conviction. In addition, if the offence is a continuing offence, a fine of \$20,000 will be imposed for each day during which it is proved to the satisfaction of the Court that the offence has continued. The Bills Committee has pointed out that section 30A only sets out the general penalty arrangement for contravention of terms and conditions of specified process licences, which may not be appropriate for non-compliances with the emission caps. By way of illustration, the fine of \$100,000 for a first offence is far too low to have a deterrent effect on excessive emissions, or reflect the impact of excessive emissions on public health. Members consider that a separate penalty arrangement should be provided for non-compliance with the emission caps. In view of this concern, the Administration will move CSAs to include a new penalty section such that on conviction, a fine of \$30,000 will be imposed on each tonne of actual emission in excess of the allowed emission. On a second or subsequent conviction, a fine of \$60,000 per tonne of actual emission in excess of the allowed emission and imprisonment for six months will be imposed. In addition, a new offence with a fine at level 6 will be included for the provision of incorrect information in relation to a type of specified pollutants.

The Bills Committee has also raised concern whether a fine for non-compliance with the emission caps by a power plant will be treated as its operating expenditure and passed onto consumers. In view of this concern, the Administration will move a CSA to ensure that payment of fine will not be passed onto consumers.

The Bills Committee notes that apart from the specified pollutants, power generation is also the major source of greenhouse gas (GHG) emissions, and GHG emissions, especially carbon dioxide (CO₂) emissions, are a major cause of global warming. Given that the Bill aims at capping the emissions of power plants, Members consider it opportune to include CO₂ under the regulation of the Bill and set down caps of carbon dioxide emission by power plants, so as to help alleviate the climate change problems brought about by global warming. The Administration explains that CO₂ is not one of the air pollutants specified in the emission reduction targets. Besides, there is no mature and commercially viable technology in the world that could reduce, capture and store CO₂ discharged from the burning of fossil fuels by the power sector. The Administration also explains that in Hong Kong, changing the fuel mix for power generation is probably the most promising technical option for significant reduction of CO₂ emissions. However, this would involve important and complicated issues, such as energy policy, stability in power supply and tariff levels. Therefore, the Administration does not support the inclusion of CO₂ in the regulation of the Bill. The Bills Committee is not convinced of the Administration's explanation. Members pointed out that the inclusion of CO₂ as one of the specified pollutants in the Bill will demonstrate the Government's commitment to tackling climate change. Besides, the control on CO₂ emissions will only take effect four years from now, so power plants will have sufficient time for making preparations. Following discussions, the Bills Committee agreed to ask me to move a CSA on its issue in its name. However, since the President has ruled that the proposed CSA is not relevant to the object of the Bill, I am unable to proceed.

The Bills Committee agrees in principle to the CSAs to be moved by the Administration.

Deputy President, in the following part of my speech, I shall express my personal views on the Bill. The two major objectives of the Bill are of course the formulation of emission caps for power plants and cross-boundary emissions trading.

Deputy President, I wish to say a few words on the amendment which cannot be proposed today — CO₂ emissions. Deputy President, before the meeting today, when I met the many petitioners outside the Legislative Council Building, they gave me all these balloons which symbolize CO₂. Deputy President, during the scrutiny of the Bill, six major environmental groups in Hong Kong issued their respective statements, requesting us to take the opportunity of scrutinizing this Bill on air pollution control and bring CO₂ under the scope of regulation

DEPUTY PRESIDENT (in Cantonese): Ms Audrey EU, what is the gas inside these balloons? Is it dangerous?

MS AUDREY EU (in Cantonese): Deputy President, I believe it is not dangerous. The environmental groups have made these balloons and given them to us because, Deputy President, as you can see, these balloons are all black in colour, with the term "CO₂" written clearly on them. Deputy President, I hope the Secretary can also realize that this is the view of Hong Kong people (especially environmental groups and environmental activists) on the Bill presented by the Secretary.

And, Deputy President, not only environmental groups hold such a view. All members on the Bills Committee also hold the same view. Deputy President, we know that the commencement date of the legislation is 1 January 2010, which is many years from now. It is only 2008 now, but the commencement date is 2010.

Besides, Deputy President, under the Bill, the Secretary as the Authority is empowered to set emission allowances, and in setting the emission allowances for every emission year power plants must be given an advance notice of no less than four years. In other words, even after the commencement of the legislation, power plants must still be given four years, during which power plants will have sufficient time for preparations. Not only this, Deputy President, the legislation also empowers the Secretary to set emission allowances according to reasonable and practical standards. In other words, Deputy President, we are definitely not trying to hastily introduce any regulations, requiring power plants or Hong Kong not to do something. Rather, we simply

urge the Secretary, or empower the Secretary, to set down targets and directions for the emission of CO₂ in Hong Kong.

However, Deputy President, I frankly cannot understand why the Government of the Special Administrative Region (SAR) is so very reluctant to make any commitment in respect of this important mission or responsibility, which concerns not only Hong Kong but also global warming. Deputy President, I can only say that the Government is reluctant to show any commitment and also devoid of any vision and international outlook.

Members can observe that very serious discussions are being held in many other places on global warming. People living in Hong Kong are well aware of all the abnormal weather conditions these days. Very often, torrential rains do not come at the usual times. There are unusual gusts. And, seasons may come earlier or later than usual. There are many such abnormal weather conditions. According to many experts, they are caused by global warming. We can see on television that the ice floes in many places We should put in place protective measures in respect of the temperatures and ocean currents in Hong Kong and all over the world. In many cases, all is because mankind has done many things that should not have been done, thus bringing forth drastic climate changes. If we take early actions, it may be possible to avert the situation.

Very often, the SAR Government simply expresses the position that we are just a very tiny city in the whole world, adding that we do not have any serious problems with our energy intensity, and so on. However, Members must realize that if all places in the world, especially a fast-developing and economically advanced city like ours, are reluctant to show any commitment, human societies will only head gradually for destruction.

Our request is therefore most reasonable, and this request is endorsed by all Members. Besides, the environmental groups and members of the public outside all agree that global warming is an issue that must be tackled as early as possible. But I regret to say that the Government has been adopting a stalling tactic on this matter, saying that it must still conduct studies on our energy mix and whether there will be any impacts on tariff levels.

Deputy President, during the scrutiny of the Bill, we repeatedly questioned the Secretary whether the Government was already conducting studies on tariff increases. In other words, we want to know the increases in tariffs in case we

use cleaner fuels. Deputy President, the Government has failed completely to give an answer, and it cannot explain clearly, for example, how much more we will need to pay in electricity tariffs if we use liquefied natural gases or other renewable energy sources as fuel. This is the duty of the Government, and it must present to us the required information, so that we can discuss whether society as a whole can bear the related costs. Besides, Deputy President, as I have mentioned I do not wish to repeat that anyway. But I must still explain that we are not asking the Government to implement all these measures immediately. We are just asking it to set some targets and directions for society to follow, and to bring the matter to the attention of power plants as early as possible. However, the Secretary has not given any responses. I hope that when the Secretary speaks later on, he can tell us when he will start to tackle this concrete and pressing problem of global warming.

Regarding CO₂ emission, the Secretary must not tell Hong Kong people that he is at his wits' end, that nothing can be done, and that he will not do anything. The Secretary should give us a timetable on when they will set emission allowances for CO₂. He must not tell us that studies are required, and he will inform us of the outcome as soon as possible because studies Deputy President, we are going to scrutinize the bill on plastic bag duty. Deputy President, you are very experienced, and you know only too well that in many cases, even after the formulation of a timetable, the Government will still fail to proceed as scheduled. So, the present situation is even worse, as we do not even have a timetable yet. Therefore, I hope that when he speaks later, the Secretary can make it a point to tell us when they will set emission reduction targets for CO₂

DEPUTY PRESIDENT (in Cantonese): Miss CHOY So-yuk, the object you have brought into the Chamber is blocking the aisle. Please remove it. Ms Audrey EU, please continue.

MS AUDREY EU (in Cantonese): Deputy President, I wish to call upon Hong Kong people that although we are unable to move the relevant amendment today, they must not despair, because the prevention of global warming is the key to the survival of human civilization. Deputy President, I believe that on this particular issue, while the Government must play the leadership role, each and every Hong Kong resident must also play an important part. We must remind

the Government continuously that it must proceed with the task as early as possible.

Deputy President, in the United Kingdom, many studies have been conducted, and in many other places, private bills have been put forward in the hope of enacting climate change laws. Even though the Government refuses to enact any legislation for financial and other considerations, the public still have the duty to continue to apply pressure on the Government.

Therefore, Deputy President, I am very happy that I can receive all these black balloons today and bring them into the Chamber, so that Members can actually "see" the problem. I also hope that when Members discuss air quality problems in the Legislative Council next time, they can follow up this matter. The reason is that in common law jurisdictions such as the United Kingdom, Ontario in Canada and New Zealand, laws have been enacted. And, in the case of the United States, even though the government is unwilling to take any actions, a Senator named LIEBERMAN has nonetheless drafted a private bill, in the hope of initiating discussions. Deputy President, in case Members of the next Legislative Council cannot succeed in making the Government take any actions on this issue, I still hope that they can consider the possibility of introducing a Private Members' Bill as a means of following up the issue.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Honourable Members, I wish to remind you that the objects you have brought into the Chamber should be used for helping you to make your points in your speeches. Therefore, Members

(Three persons on the public gallery unfolded a yellow banner)

DEPUTY PRESIDENT (in Cantonese): Please take away your banner. Please leave the public gallery.

(Security personnel escorted the three persons out of the public gallery)

DEPUTY PRESIDENT (in Cantonese): We shall continue with the meeting now. I wish to remind Members that the objects you have brought into the Chamber should be used for helping you make your points in your speeches. Therefore, if you want to show the objects, please do so only when you are speaking. We now continue with the meeting.

MISS CHOY SO-YUK (in Cantonese): Deputy President, I am going to show this object. Members need not worry, because it is all safe. There is only air inside, and even if there is any carbon dioxide (CO₂), it will not burn. By showing this object, I mean to illustrate that CO₂ will pollute our air and even our health continuously. A moment later, I shall express my dissatisfaction with the Government's refusal to include CO₂ in our air quality objectives.

Deputy President, over the past few years, air pollution has remained a major concern and worry of Hong Kong people. I am very grateful to the public, for they have shown an increasing understanding of the environmental duty Hong Kong should discharge and of the inadequacy of the Government's environmental efforts. Society's understanding of environmental issues has been increasing, but this does not mean that we have managed to take any step forward. As a matter of fact, there is still a long way to go in our efforts to tackle air pollution. Some Members have been talking about universal suffrage. In this particular case, there is at least a timetable now. But I cannot see any timetable on tackling air pollution and environmental problems.

Deputy President, today's motion aims to enable power plants which have exceeded their emission allowances to continue their operation through the implementation of emission reduction projects. This is the piece of legislation we are discussing. I have no objection to the broad direction of the legislation. In November 2002, I even moved a motion debate requesting the Government and the Pearl River Delta to adopt "emissions trading" as one of the possible means of tackling the air pollution problem in the two places. But when this Amendment Bill is now put before the Council, I find that it is highly unsatisfactory, to the extent that its existence or otherwise will not make much difference. I wish to raise several points here.

First, the best solution to air pollution is naturally the use of renewable energy. To encourage the use of renewable energy, there must be

interconnection of power grids. But the Government has not done so. The Government now proposes to set emission caps as a means of tackling the air pollution problems in the two places. Secretary, I have long since told you that this is actually the worst, the slowest and the most unviable measure. The United Kingdom has been implementing this measure for some two decades, but to date the proportion of renewable energy in the country's energy mix is just 3% or 5%. In contrast, in Continental Europe, in Germany, for example, the "feed-in tariff system" is adopted, whereby fixed tariffs are used to encourage the use of renewable energy. This system is also adopted in the Mainland. In the case of solar energy, the government seeks to encourage its use by providing a 15-year guarantee period, during which electricity generated by solar energy is purchased at a price of \$3.5 per unit. In the case of coal-fired electricity generation, the government will make purchases at eighty cents or sixty cents per unit and re-sell the electricity at median prices. This is the most effective means of encouraging investments in the use of renewable energy. Over a short span of five years, Germany has already managed to boost the proportion of renewable energy to more than 15%. In Denmark, 28% of the electricity it uses is now generated by renewable energy. I have given a book to the Secretary, and I have asked him many times whether he has read it. But so far, he has not given me any answer. If we really mean to tackle the problem, we must not rely solely on the enactment of an ordinance like this one. And, I must also add that this ordinance is simply unable to tackle many problems. Therefore, we should really set up a sound system. This is one of the most unsatisfactory areas.

Second, Members have mentioned that CO₂ is the main culprit of global warming. This is especially the case in Hong Kong, where the main greenhouse gas is CO₂. There are of course other greenhouse gases, such as methane. Methane is an emission from landfills, but the proportion is very small. Power plants are the main source of CO₂ emission. The present Amendment Bill aims to impose regulation on the emission caps for power plants, so it should have presented the best opportunity for bringing the emission of CO₂ under regulation. But the Amendment Bill fails completely to do anything in this regard.

The third big problem is that the Amendment Bill permits power plants to discharge free of charge the pollutants they deem to be suitable for discharge. In many other places in the world, including the Pearl River Delta in the Mainland, all power plants are required to pay charges according to their

volumes of emissions. And, in any case, their volumes of emissions must not exceed the prescribed levels. If the prescribed levels are exceeded, a power plant must reduce its emissions to the required levels through "emissions trading" before it can continue to hold its licence. But the main point is that even if the prescribed levels are not exceeded, power plants must still pay charges. Our legislation is different. Power companies need only to say how much pollutants they must discharge in the course of electricity generation, and the Government will give them a cap, so that they can discharge all the pollutants free of charge. This is generosity at the expense of the public. Power companies will benefit, but our health will suffer.

The fourth big problem is that even though "emissions trading" is included as a means of tackling emissions in excess of the allowances, there is no validity period. At the very beginning, there was even no limit to emission credits. Deputy President, following our requests, the Government has agreed to impose a limit, but there is still no validity period. Later on, I will move an amendment. This amendment touches upon many outrageous and absurd issues. The absence of any validity period is unacceptable.

Fifth, our impression during the whole process is that the Government is obviously trying to defend the interests of power companies, rather than doing anything to ensure people's health or abate air pollution in Hong Kong. For example, power companies are permitted to file an application any time during a long period of four years. But once the Government receives an application, it must reply in a very short time — I cannot remember clearly whether it is two to three months, or several weeks. Besides, no intermediate emissions targets have been set so far. The targets already set only cover the period up to 2010. We do not know anything about the targets for 2010-2015 or 2010-2020. What will happen after 2020? The Government has never said anything on this. This is actually meant to pave the way for power plants, so that they can now hasten to get some "emission credits" from the Pearl River Delta through "emissions trading". In this way, they will be able to exceed the prescribed emissions levels for prolonged periods in the future without having to worry about any tightening of the emissions allowances by the Government. They are indeed free of any worries.

Moreover, the penalties proposed at the very beginning were also very "absurd". As originally proposed, even if a power plant intentionally submits wrong information, the penalty will just be \$50,000. Of course, following the

expression of disagreement and opposition by Members, the Government has agreed to tighten the relevant provisions and increase the penalties. Overall, the legislation is meant entirely to protect power plants. No matter how much it has exceeded the emission allowances, and no matter how long that goes on, a power plant can always tackle the problem at very low cost. I find this very heartbreaking. And, President, there is something else which is even more heartbreaking. If the one who submits this Bill, who refuses to make the required amendments and who rejects bringing CO₂ emissions under the regulation of the Bill is the Secretary in charge of economic affairs or the Secretary for Development, I may as well swallow my dissatisfaction. But it is the Secretary for the Environment.

Deputy President, for 10 years, I have devoted plenty of time and efforts to urging the Government to establish the post of Secretary for the Environment with sole responsibility for environmental issues. I can remember that when the former Chief Executive, Mr TUNG Chee-hwa, put the environment and transport under one Policy Bureau, I raised strong objection. Later, the environment was grouped with development under one Policy Bureau. I again raised strong objection. Now, after so many difficulties, there is now a Secretary for the Environment. I initially thought that it was "wonderful". But it has turned out that it is instead very "miserable". Therefore, this post is largely useless.

Deputy President, if the Environment Bureau had not failed to devote itself fully to the environmental protection efforts, I would not be so angry now. Maybe, later on, I shall still mention many other things which are even more outraging. To sum up, why is it that a Policy Bureau set up by the Government is so unwilling to discharge its responsibilities? Miss CHAN Yuen-han frequently remarks that this Government is untrustworthy. I will not say so. But, Deputy President, I will certainly talk about the credibility of this Policy Bureau a moment later. I so submit.

MR SIN CHUNG-KAI (in Cantonese): Deputy President, I actually have something to say to the President because she is retiring very soon. As for you, you are not retiring, and you will run in the upcoming election. I actually want to recommend to her a film produced by National Geographic which is entitled "Six Degrees Could Change the World". I believe the Secretary should have watched this film. Members should have watched Al GORE's documentary

"Inconvenient Truth". "Six Degrees" is about global warming, about how a rise of one degree in the average temperature will affect the Earth. This film tells of how many ice floes in the Antarctic will melt when there is a temperature increase of four degrees. It also mentions that in that case, it will even be possible to cross the North Pole by boat. The film goes on to predict that many places will be "covered by flooding", and that low-lying places in Hong Kong may well be flooded.

Deputy President, people from Greenpeace have given us some balloons. Many Members have also been given such balloons. The gas inside these balloons is CO₂, a greenhouse gas and the culprit of global warming.

Members all know that in June and July this year, it rained practically continuously. The main reason for this was the El Nino Effect. Global warming or global climate change has created very big problems. To put it simply, what we need to deal with now are no longer confined to the four pollutants mentioned in the Bill, that is, sulphur dioxide, CO₂, nitrogen oxides (NO_x), and so on. And, the most important one should be carbon.

In regard to "emission trading", the Secretary may take a look at the information on the Internet. According to the European Union, the most important concerns of "emission trading" are not NO_x or any particulates. What should be the most important concern then? It is carbon. He has created a scheme, and admittedly, he can do what he likes, but the point is that the caps set down do not apply to CO₂. Since it is not put under regulation, there will be no need for any trading. Of course, trading may still be possible, but the Government has not offered any incentive.

Secretary, when it comes to this issue Miss CHOY So-yuk is not in the Chamber now, and I do not quite understand why she is so angry, because there is actually a point here. The Secretary's colleagues explained in this Council that if a cap is introduced for CO₂ emission, the result will be tariff increases. The reason is that whether coal or natural gases are used for electricity generation, there will not be much difference in carbon emission. The only difference is that renewable energy is used. There will not be much difference in carbon emission, whether we switch from oil to natural gases or from coal to natural gases. Even if there is any improvement, it is bound to be very small.

The incentive relating to renewable energy is that the use of it is something like mobilizing the country for steel smelting. What do I mean by this? What I mean is that energy can be generated by installing the required facilities in schools. A certain school applying this technology can even upload the know-hows onto the Internet. Miss CHOY So-yuk has also mentioned this point.

Last month, at the annual debate of the Housing Authority, I remarked that since there were several hundred housing blocks and some 60 estates under the Housing Department, making a total of some 600 000 flats, the Department could at least consider the possibility of generating renewable energy on the rooftops of all these buildings. Any possibility should be considered, whether it is the installation of solar panels or the use of wind power. Of course, one problem is that housing estates do not have too much surplus. But as long as there is an incentive for management schemes, as long as power companies are required as a matter of obligation to buy back the electricity generated by renewable energy, there will be room for reducing carbon emission.

Deputy President, that air pollution in Hong Kong has turned increasingly serious in recent years is an undeniable fact. Many local studies have pointed out a close relationship between serious air pollution and various respiratory diseases and cardiovascular diseases, which lead to hospitalization and even deaths. The impacts of air pollution on children and the elderly are even greater.

Apart from adversely affecting public health, air pollution will also dampen the desire of foreign talents and organizations to work or invest in Hong Kong. According to the surveys conducted by some foreign chambers of commerce in Hong Kong, some foreign talents are unwilling to work or make investments in Hong Kong due to our serious air pollution.

Power generation is a main source of air pollutants in Hong Kong. The volumes of CO₂, NO_x and respirable suspended particulates emitted by local power plants account respectively for 89%, 44% and 32% of the total emission volumes of these pollutants in Hong Kong. Therefore, the Democratic Party welcomes this Bill, which seeks to cap the emissions from power plants.

Of all the air pollutants which the Bill proposes to regulate, the emission of sulphur dioxide (SO₂) is the most serious. The total emission volume of SO₂ in 2006 rose by 12% when compared with the corresponding volume in 1997. But according to the emission reduction targets agreed by the Government and Guangdong Province, by the year 2010, we are supposed to reduce the emission of SO₂ by 40% against the volume recorded in 1997. The Democratic Party fears that the Government may not be able to attain the targets as scheduled.

The Democratic Party also supports the introduction of an emission trading mechanism. In the United States, in a bid to tackle the problem of acid rain, an emission trading mechanism for SO₂ and NO_x was introduced when the Clean Air Act was amended in 1990. Under the law there, an enterprise with excessive emission must pay a fine of US\$2,000 per tonne if it cannot buy the emission allowance for its excessive remissions. This is equal to 10 times the market price of the emission allowances. The main targets are power plants emitting huge volumes of SO₂. It is expected that by 2010, as a result of the measure, the annual emission volume of SO₂ will see a decrease of 10 million tonnes against the level in 1980. This means a drop of 50%.

Besides, the Government has accepted the Bills Committee's suggestion on limiting the emission credits which a local power plant acquires from emission trading to 15% of the emission cap of an emission year, with a view to preventing local power plants from relying solely on emission trading as a means of compliance. The Democratic Party supports this amendment.

Deputy President, in the rest of my speech, I shall focus on regulating the emission of CO₂ by power plants. I believe many environmental groups want me to say something on this issue. Although the President has ruled that the Bills Committee's proposed amendment on bringing CO₂ under regulation is not relevant to the Long Title, and the amendment cannot be discussed in this meeting as a result, I must still point out that the Government must learn from the bitter experience and make determined efforts to bring CO₂ under regulation.

The Government should realize that the public are very concerned about the gravity of global warming. As shown by the recent studies of the Hong Kong Observatory, the temperature in Hong Kong may rise by an average of 4.8°C by the end of this century. This is 1.3 degrees higher than the projection made in 2004. And, it is also cautioned that winter in Hong Kong may

disappear by 2020. Therefore, we can no longer think that global warming is a problem for our children. It is a problem for this present generation.

Local power plants are the greatest source of CO₂ emission, accounting for 64% of the total emission in Hong Kong. Therefore, imposing control over emissions from power plants should be one key measure to alleviate the problem of warming. The Government will certainly argue that such control will surely necessitate changes to the energy mix, thus resulting in tariff increases which may amount to 300%. But what the Government has overlooked is that if choices are available in the local power supply market, or if some market players are willing to use cleaner fuels (such as renewable energy) for power generation, tariffs may not necessarily increase by as much as 300%. At this very time when oil prices have risen to some \$140 per barrel, or maybe, even \$170 or \$200 in the time to come, I believe that there should be greater viability for the use of renewable energy. Or, if the Government can open up the power grids, follow the example of Japan and allow the trading of electricity between power companies and people, then tariffs may not necessarily rise drastically even though the emission of CO₂ by power companies is also brought under control.

It has also been pointed out at the current G8 Summit in Japan that attempts will be made to reduce the emission of CO₂ by 50% against the baseline of 1990 by the year 2050. As a city described by the *Times Magazine* as Nylonkong (New York, London and Hong Kong), we should focus on tackling climate change, attach great importance to global warming and respond positively to the problem by formulating targets and integrated strategies for the reduction of greenhouse gas emissions. Former London Mayor, Ken LIVINGSTONE, vowed to turn the city into a centre of financial activities and research on combating global warming (It is a pity that he was not re-elected). The New York City Government is also determined to make the city a vanguard of combating global warming. All this shows that these two cities have gone far ahead of Hong Kong in terms of their commitment to tackling climate change. I hope that the Secretary for Financial Services and the Treasury are not the only one who talks about Nylonkong. Our Secretary for the Environment should also talk more about Nylonkong, especially in respect of our commitment to combating climate change.

Last year, the United Kingdom introduced the Climate Change Bill, under which the country is to reduce its total CO₂ emission by 50% before the year

2050. There is not yet any such agenda in Hong Kong. Although the United States refuses to rectify the Kyoto Protocol, some of its State Governments, such as the California State Government, have still adopted positive measures to tackle climate change. The Regional Greenhouse Gas Initiative jointly launched by the seven States of New York, Connecticut, Nevada, Maine, New Hampshire, New Jersey and Montana is meant precisely to tackle CO₂ emissions from power plants. In New Jersey, one of the participating States, its Department of Environmental Protection once amended the law in 2005, classifying CO₂ as an air pollutant Secretary, I wish to remind you that your colleagues all the time argue that CO₂ is not an air pollutant, so no amendment will be introduced. However, some other countries have already classified CO₂ as an air pollutant. These examples are all very clear and scientific and can pave the way for bringing CO₂ emission under regulation. Besides, in Europe and the United States, some emission trading schemes are based primarily on CO₂. Deputy President, as I mentioned just now, you may take a look at some relevant websites on the Internet. There, you will see that CO₂ is the most important element of their emission trading. Secretary, when you give your reply later on, please tell us how the Government is going to impose regulation in case emission trading is adopted in the future. The European Union has actually uploaded some documents of great transparency onto its website.

Although we cannot regulate the emission of CO₂ under the present Bill, I believe that when the Government completes its study on greenhouse gases at the end of this year, it will certainly propose measures on reducing greenhouse gas (GHG) emissions. First, Hong Kong must set down mid-term and long-term reduction targets. At the same time, it must impose regulation on power plants, which are the biggest source of GHG emissions. In the last two public consultation exercises on opening up the power market, the Democratic Party already pointed out that as a licence renewal condition, power companies must be required to reserve a fixed proportion for renewable energy in their energy mixes. To put it simply, a fixed proportion in the entire electricity generation portfolio must be reserved for renewable energy.

Early this year, the CLP Power Hong Kong Limited (CLP Power) mentioned that the average carbon emission intensity of the whole group would be reduced by 75%. This should not be regarded as a real target for reducing the emission of CO₂ because carbon emission intensity refers only to the amount of CO₂ emitted as a result of generating one unit of electricity. In brief, it can be said that even though CLP Power pledges to reduce its carbon emission

intensity, the total emission of CO₂ will still rise if it continues to increase power generation.

I believe many Members have also received the balloons I mentioned just now. In November last year, Worldwide Fund, Friends of the Earth, Clear the Air, Green Sense, Greeners Action and us drafted a joint statement and organized a signature collection campaign, requesting the Government to bring the emission of CO₂ by power plants under control. I believe the Secretary will understand that the public have become increasingly concerned about global warming. At this very time when the temperature in Hong Kong keeps rising and many abnormal weather conditions start to emerge, the public all hope that the Government can act as our leader in making efforts to alleviate the problems.

As an affluent and developed city, Hong Kong must go ahead of others in the alleviation of global warming. It must go ahead of mainland cities and set an example for them. We hope that in the next term of the Legislative Council, the Secretary can put forward more concrete measures and targets for reducing GHG emission in Hong Kong (though I will not be on the Council by that time).

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

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the Air Pollution Control (Amendment) Bill 2008 (the Bill). Mr SIN Chung-kai mentioned a book entitled *The Inconvenient Truth* written by Al GORE, former Vice President of the United States. Just last week, I brought this book with me to an event on pollution held in a shopping mall in Tseung Kwan O. With this book in hand, I performed a one-man show. While I was making a speech there, a crowd of over two hundred people had gathered before I was aware of it. Actually, Al GORE's book is not especially big, and with this book in hand, I turned to the pages with illustrations and explained them to the audience.

Deputy President, among the members of the audience that filled the entire place were people whose age ranged from below eight to over 80 years. Of course, one of the reasons why they were attracted to the event was that they would receive gifts from the organizer. However, members of the public also care for the environment. In order to become an international city, culture,

among other things such as financial development, is vitally important. Some people may laugh at us and opine that Hong Kong does not have any culture. The British Consul-General in Hong Kong who had just finished his tour of duty made a similar remark, that Hong Kong was hardly comparable to London and New York. However, air quality and the general environment are also very important. More and more people are saying that in order to attract talents of high calibre to invest or work in Hong Kong, we must provide them and their families with quality cultural activities and a good environment.

Therefore, looking at the issue of air pollution from this perspective, actually the Secretary has no cause for concern because everyone will fully agree with and support him. Besides, I do not understand why Miss CHOY So-yuk was so furious, so I really have to listen to her elaboration on the measures she would propose. Actually, I was also very annoyed when Miss CHOY So-yuk said something about untrustworthiness, and so on and so forth. However, is it really very trustworthy? Regarding emissions trading, first of all, I have to confess, Deputy President, that although I am a member of this Bills Committee, I did not attend some of its meetings as I have also joined many other Bills Committees. Although I have gone through the relevant papers, frankly, even now, I do not fully understand emissions trading. However, we said at the meetings that we were actually gravely concerned about the adoption of this approach because companies may purchase credits across the border — as credits there will be cheaper — and the purchase of credits across the border will result in more serious pollution here. No matter what the Secretary tells us about how much effort have been made and how many new power plants have been built in the Pearl River Delta Region, I have no chance to visit the place. Deputy President, we really want to visit the place. Are there really so many of them, or is there still much room for improvement? Therefore, if Hong Kong trades with and purchases credits from them without exercising due diligence in emission reduction, will a more polluted sky be resulted in return? Should this be the case, I believe the public will really be very furious.

Secretary, I do not know whether you are trustworthy or not. However, the public deserves a guarantee. In this connection, the Administration should ensure that the public understand what is going on because at a meeting, a question was raised on why allowances should be allocated free of charge. Regarding this, the authorities advised that it would not be desirable to charge for these allowances because after all the cost would eventually be transferred onto

consumers, so it would make no difference to charge for them. It followed that there would be inadequacies whichever approach was adopted. But then, the authorities disagreed and opined that this approach should work. Anyhow, despite all these exchanges, when the air across the border is so polluted — while ours is not really very clean because of the CLP Power and the Hongkong Electric Company Limited, and so on — if it is more polluted across the border, what do you think we should do? I really do not know, perhaps the two sides are just "doing equally bad". May I ask whether a cleaner sky will really come about? I am not at all convinced personally.

Actually, Ms Audrey EU has, on behalf of the Bills Committee, clearly expressed our various requests just now. In this regard, we agree with each other, and the Secretary knows this as well. Actually, all of us would like to give the Secretary our unanimous support but he is unwilling to take actions. Therefore, I understand this point. Ms Audrey EU, Miss CHOY So-yuk and Mr SIN Chung-kai have also raised the question as to why CO₂ is not included. Therefore, everyone has become very furious, and Ms Audrey EU also mentioned her intention to propose a private bill, but how can she? It is not allowed under the Basic Law, and neither will the executive authority approve of it. Therefore, Deputy President, I also raised a question at the meeting. The Chief Executive attended the Asia-Pacific Economic Co-operation (APEC) Leaders' Meeting held in Sydney in September last year, Deputy President, and he signed a document with an extremely long title, that is, the APEC Leaders' Declaration on Climate Change, Energy Security and Clean Development, which states that signatories will have to achieve a reduction in energy intensity of 25% by 2030, with 2005 as the base year. This is very clear. As a matter of fact, one month later, that is, in October, Hong Kong also joined the C40 Large Cities Climate Leadership Group and worked together with London, New York, Tokyo, Beijing and Shanghai to address the issue of climate change. Recently, at a meeting held in Hokkaido, some well-off countries also entered into some agreements. On the television, we learn about floods, draughts and fires happening even in the United States every day. Actually, as I said at Hau Tak Estate last week, nature is now reacting and telling us that if human beings do not do anything about it, the Earth will be in great trouble.

Therefore, here we are keenly requesting the Secretary to do something about it. Deputy President, as we had definitely signed some agreements and made everything clear and straightforward, then at the meetings we asked the Government about the details of the timetable and roadmap so that we would

have some ideas about how the authorities would deal with this issue to ensure that by 2030, the energy intensity would be reduced by 25%. Do you know how he replied? He did not give any reply, Deputy President, because, as a matter of fact, he had no idea. What happened after he had gone through the information for a period of time? It was decided again that a consultant be engaged. Now a consultant has been commissioned to launch an 18-month study at a cost of \$8 million. Regarding the amount to be spent, he had clear ideas. I really find it very strange that the Government had no idea about what should be done after attending the meetings and signing the documents. In fact, I do not know whether the situation is the same for the other places after their representatives have signed the documents. No wonder no one is able to tackle the air pollution problem after agreements were signed one after another. Therefore, they just thought that the ordeal was over after they had signed the agreements in black and white, and it turned out that nothing happened after they had returned. When I asked the Government whether it had any timetable or roadmap for, say, the continuous reduction of emission, so as to show everyone a clear picture, it turned out again that nothing had been formulated, pending the completion of the consultancy report. If the consultant advises after 18 months that it is not achievable because of certain problems, then another consultant will have to be commissioned to follow up the report of this consultant, and half of the time will have been passed before we are aware of it.

Deputy President, I believe everyone will support this Bill because everyone hopes that the air pollution problem will be ameliorated. However, some of the issues raised are very complicated, and we are not yet able to understand them, and neither do we know whether the measures will be effective. There is something we can do for sure and there is something which should be included, but the Government is reluctant to do so. When asked how improvement can be made after the documents were signed, it had no idea. Actually, this is indeed a hard problem. I hope the Secretary — actually he brought the Under Secretary with him to the meetings, but I do not know why he has not brought her here, after all the money has been spent and their team has been strengthened. Somebody commended this Secretary as being young and competent and enthusiastic as well. No matter what qualities the Secretary has, I just hope that he can address the air pollution problem expeditiously.

Deputy President, I support this Bill but I hope the Secretary will tell the public definitely why it seems that many of our measures are fraught with

loopholes and many efforts are far from perfect. I hope the Secretary will give a clear explanation on these questions. Thank you.

MR HOWARD YOUNG (in Cantonese): Deputy President, along with the expeditious economic development in the South China region, air pollution has become a long-standing problem haunting both Guangdong and Hong Kong. In recent years, the air quality has been deteriorating, which has not only created significant impact on and posed a serious threat to public health, but also endangered the tourism industry and the investment environment of Hong Kong and even hindered efforts to attract or retain talents. As pollution knows no boundaries, the Liberal Party holds that in order to effectively solve the air pollution problem in the Pearl River Delta (PRD) Region, a sole reliance on Hong Kong will only achieve little result despite a Herculean effort. To tackle the problem at root, the only way out is to foster collaboration between Hong Kong and Guangdong through regional co-operation.

Although Hong Kong and Guangdong reached an agreement as early as in 2002 to substantially reduce the emission of four air pollutants, that is, SO₂, NO_x, respirable suspended particulates (RSP) and volatile organic compounds (VOC), by 2010, with the reduction targets for SO₂ and NO_x being 40% and 20% respectively and those for both RSP and VOC being equally 55%, regarding the above targets, the Liberal Party has all along been calling on the Government to achieve them expeditiously. Unfortunately, as 2010 is only one year or so away, everyone is very concerned about whether these targets can really be achieved by then.

According to The Pearl River Delta Regional Air Quality Monitoring Network — A Report of Monitoring Results in 2007 published by the Environmental Protection Department in April this year, except for NO_x, the emission of the other pollutants, namely SO₂, RSP and ozone in the air, have increased instead of decreased. The number of hours in which the air quality of the entire region had exceeded the National Air Quality Standards accounted for one third of the total number of hours in the year and the number of exceedance days recorded in the Tung Chung monitoring station also amounted to 86 days.

In other words, the exceedance hours accounted for a quarter of the total number of hours in the year, which is a cause of concern.

At present, emissions from power plants are the largest source of air pollution in the PRD Region. Take local power plants as an example, their emission of SO₂, NO_x and RSP accounted for 89%, 44% and 32% respectively of the corresponding total emissions in Hong Kong in 2006. In order to tie in with the regional emission reduction targets, the Liberal Party supports the Air Pollution Control (Amendment) Bill 2008 (the Bill) to introduce legislation requiring power plants in Hong Kong to reduce emission substantially by 2010.

Deputy President, in order for power plants in Guangdong and Hong Kong to achieve the emission targets by 2010, enhancing the emission reduction technology for generation units is definitely the first step to take. However, we have to admit that there is a certain gap in the emission reduction standards of the power plants in both places, and the difficulties faced by them are also different. As local power plants have higher emission reduction technology and better facilities, it is less likely that further substantial emission reduction can be achieved, and a huge amount of expenditure may be required. On the other hand, some power plants in Guangdong Province are facing the problems of funding shortage and inadequacy of technology, resulting in the lack of cost-effectiveness in power generation and difficulties in emission control. Under such a difficult scenario, the Liberal Party has previously proposed to resolve the problem with "emissions trading" because we believe that given the same amount of investment, the results achieved will actually be greater and more obvious when emission reduction is carried out in power plants in the Mainland than those in Hong Kong, which will hopefully improve the air quality of the entire region with a cost-effective approach within a shorter period of time. Therefore, the Liberal Party supports the introduction of an "emissions trading" mechanism under the Bill.

Nevertheless, regarding the amendment proposed by Miss CHOY So-yuk to limit the validity period of an emission reduction project to not more than five years, the Liberal Party considers this questionable because emission reduction projects generally involve huge investments on emission abatement facilities and participating power plants have already borne certain investment risks. It is afraid that the addition of a validity period may only add another uncertainty to the co-operation of power plants and will inevitably reduce their willingness to

participate in the projects. If this validity period ultimately causes "emissions trading" to have unsatisfactory results or even vanish into oblivion, it will do more harm than good to the progress of the emission reduction projects of the entire region.

Having said that, the Liberal Party also agrees that in order to prevent local power plants from shifting their responsibilities, the Government should honour its undertakings to the Bills Committee and exercise effective gatekeeping, including allowing local power plants to engage in "trading" only if they are not able to meet the emission requirements "with all due diligence"; consulting the Legislative Council Panel on Environmental Affairs and the Advisory Council on the Environment before granting approval to local power plants for engaging in such "trading"; ensuring that the increase of emissions from local power plants as a result of such "trading" will not give rise to any adverse impact on the air quality in the vicinity of these power plants; and working with Guangdong authorities to continuously enhance the emissions standards of power plants to ensure that "emissions trading" will not create any adverse impact on the air quality of both Hong Kong and the entire PRD Region or even become a "convenient excuse" for power plants to evade the issue of enhancing their emissions standards.

Deputy President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, in his recent visit to Hong Kong, XI Jinping mentioned a decision made by the Political Bureau of the Communist Party of China (CPC) Central Committee and then dwelt on this decision in his teaching to Chief Executive Donald TSANG. This reminds me of the remarks on CEPA made by ZHANG Dejiang during his visit to Hong Kong in his capacity as CPC Guangdong Committee Secretary. When he first mentioned this term, Mr TUNG even extolled and hailed it. He introduced himself as ZHANG Dejiang, Member of the Political Bureau of the CPC Central Committee, before mentioning that he was a CPC Guangdong Committee Secretary. Why do I have to mention this incident? In the first place, Mr XI Jinping was very impolite because decisions made by the Political Bureau of CPC Central Committee have nothing to do with the people of Hong Kong. Decisions made by the Beijing Organizing Committee for the Games of the XXIX Olympiad (BOCOG) or the Standing Committee on National People's Congress (NPCSC) are of course somehow related to us, but under "one

country, two systems", they actually do not have too much to do with us. The BOCOG may simply let us know whatever they would like to do, for example, whether they are satisfied with the arrangement for the equestrian events and whether they would take charge of the events or attend to the details themselves, and so on.

Why do I want to talk about this issue? Actually this is relevant to the subject in question. I do not know whether the Political Bureau of CPC Central Committee has made any decision on emission reduction, and neither do I know whether the CPC Guangdong Committee has made any effort in this regard. As we all know, we are geographically very close to the Mainland. Though we may not say that we are separated from the Mainland by a mere strip of water, we are still very close to it. When we are saying that we have to reduce, reduce and reduce emissions, have they ever thought of the need to reduce, reduce and reduce emissions? This is one thing. All Honourable colleagues are saying in their speeches that, "Well, we know this as well, but if the north does not reduce their emissions, we will not be able to do so at all." Do we have the courage to tell the Mainland this situation? That is, to tell them with regret that it will not be possible for them not to reduce their emissions. This is a matter of the Emperor's New Clothes. One day Members may be requested to discuss emission reduction in the Mainland again, and then one of them may be removed from the list for he/she has made some public remarks in Hong Kong on this and that and also remarked that the people of Guangdong Province, including the people in the proximity of these and those factories, have strong views, and then he/she will again not be allowed entry to the Mainland, and so on and so forth.

What we are facing is a structural problem. Of course we know that: first, the power plants of Hong Kong are power giants, which is evident to all. They are monopolistic public utilities. However, they have to submit to the Government's pressure, inconsistent though it is in intensity. However, this approach does not work in the north. Frankly, there might be a reason why CO₂ is not included. Perhaps someone knows that the target will be unachievable when CO₂ is included, right?

What situation are we facing now? We have made lots of undertakings. Mr Howard YOUNG and Ms Emily LAU also mentioned this just now, and I did not even bother to jot down the years, including 2010, 2030, and so on. What is our Government doing? It is like a bad student with poor examination results

"all marked in red". Thus, he was put in detention class and deprived of his pocket money. Then he pleaded with the others not to do this to him and promised to get a pass for all subjects in three years' time, and he even said that he would get three distinctions and four credits. When asked how he would obtain these results, he said it would not be a problem. When asked how he would achieve these targets and whether he would spend three additional hours on his homework every day, he said he had no idea but reassured that the results would definitely be achieved. As a matter of fact, he is afraid of being put in detention class. This is exactly the practice currently adopted by the Government. It has no idea how it can achieve the targets in the future, and as the community is saying that it has to be put in detention class, it then begged for mercy and issued a post-dated cheque, saying that it would definitely be good both academically and in conduct. However, it has no idea of what to do, and neither has it any plan to read certain books or draw up a study plan for the next semester. Instead, it is just telling the others that it will speak very fluent French in the future although it has no idea whether or not it will learn French or go somewhere in order to be exposed to French. The legislation in question is like this. The authorities have excluded CO₂, why do they have to do so?

When I went out for a meal just now, I saw my friends staging a demonstration upstairs. They did not inform me of it. Had they done so, I would definitely have stayed here to applaud him. Why? Because when this Council can no longer keep the Government in check, they have to find a way outside this Council. How can you blame the others for bothering you, my respected madam? Therefore, as all of us can see today, there is an avalanche of complaints not only inside this Council but also upstairs. I believe they do not know him, and therefore there is no question of collaboration between internal and external forces. When I went to the restroom, I heard a Member ask the others whether they had run into the person who staged the demonstration at the end of the last session and comment that they were "out of their mind". They are not "out of their mind", but as this Bill has already been introduced and a stamp will soon be put on it, with CO₂ being excluded, is this acceptable? Let us come back to this point later.

Let us just focus on electricity and forget, for the time being, about other sources of pollution and issues of the pollution of water sources and electroplating. Regarding those issues, frankly speaking, Secretary Edward YAU, you were a member of the media before. Just by buying all issues of the

South Weekend or browsing the Internet, you will find that there is an avalanche of complaints now. Those are genuine voices from the community. We are unable to tackle the problem at root now. I do not intend to create the impression that people in the Mainland are incompetent, just on the contrary, I think if we Hong Kong people are already incompetent and we also think that it is very likely that the Mainland is the source of pollution, what should our compatriots in the Mainland do? I know everyone is talking about "one country, two systems" and we do not have any ground to intervene in matters in the Mainland. However, we are also Chinese. Viewing this issue from the perspective of Hong Kong, that is, when we know that the north is the source of pollution, we have the duty to work on this. Being the Secretary, you are an appointed government official, while the Under Secretary is not. Do we have any plan to discuss with the mainland authorities? If not, sorry, this is just "empty talk". If we do, it will then be alright. Whether or not I can visit the Mainland does not really matter as long as Secretary Edward YAU can tell them that this will not really work.

Secondly, looking at the issue from the perspective of a Chinese, when so many compatriots are suffering, we have a responsibility; or when it so happens that we are playing this role, we can inform the Mainland in passing that their approach does not work. However, what we can see now is an even more daunting phenomenon, that is, the alliance of power giants. We do not know whether the power giants in the Mainland will be listed in Hong Kong and whether they will become the power giants of the Mainland and Hong Kong through mutual holding. This is a very powerful force. With affluence comes influence, and with high official rank comes even greater influence. Then it follows that the influence of affluent high ranking officials is great, great and great. I do not just make this remark without any ground, for the daughter of Premier LI Peng has shown strong interest — and their company is known as "CP" in short, which is really appalling. In that case, will they become "CLP" and "CP"? One may not know which stock to buy when investing in stocks — she has indicated strong interest in the power industry in Hong Kong.

Just think about it, our worries may surface in different forms and on different fronts, yet no solution is available. However, at the higher echelons of the Government, in the first place, the legislature and the Government of Hong Kong do not really have the authority to make any decision in the Mainland. Do we have the courage to voice out this situation? This is vitally

important. The fairy tale of "The Emperor's New Clothes" by Hans Christian ANDERSEN has been told *ad nauseam*. Although the fairy tale does not tell what happened to the child who told the truth in the end, we can easily make up some endings for him and say that he was minced to death, or we might as well say that he had been regarded as a God-sent child appreciated by the king. The point is that we can give an ending to it. If "God-sent child YAU" tells "adolescent TSANG", that is, Donald TSANG, about this — Donald TSANG is more than duty-bound to take up this task because when he competed with Mr Alan LEONG for the position, his selling point was to enable everyone to see the blue sky. One can go out and find out for oneself how many days of blue sky we have. He even said that Mr Alan LEONG did not have the know-how. Does he, my respected sir, require me to instruct him what to do? Today, I have pointed out all the things he should do. Actually, the fact is not that the others do not have the know-how. In the first place, when Mr Alan LEONG does not have the authority, how can he perform this task? In the second place, if Mr Alan LEONG tells you today that the problem actually comes from the north and so we have to solve the root of the problem in the north before we can achieve any success, or that we have to do something for the north, I will agree with him because it is us who have put them in such misery. Frankly speaking, many businessmen from Hong Kong and Taiwan act recklessly in the Mainland and instead of complying with the requirements laid down by the Municipal Environmental Sanitation Administration Bureau, they just act recklessly through collusion between business and the government. We are also involved in it. Mr Abraham SHEK, the stocks you have acquired may also be involved in doing such evil deeds in the Mainland. The Hong Kong Government is responsible for governing the territory, and we know we have a role to play in it. I think we have the duty to, first of all, pluck up our courage to reflect the truth to the mainland authorities, and secondly, lend them a helping hand if they are going to take any measures. Blood is thicker than water and we should be mindful of the well-being of our compatriots.

Unfortunately, however, I have been listening all along but Secretary Edward YAU, do you have any plan? How many visits have to be paid? Which Secretary or Director of Bureau will be responsible for them? If the Chief Executive has an opportunity to act as the leader of the visits, who will he invite to go with him? Will he convene a meeting with the power giants in both the Mainland and Hong Kong and sit down and check each others' "bottomline"? Will they "have a cup of tea and a bun, sit down and get things done"? Not at

all. Frankly, does it not mean another "empty talk"? Nevertheless, one has to wrap things up even after engaging in "empty talk".

At present, the authorities are criticized for their poor handling of the issue of CO₂. When we were lighting the Bunsen burner in chemistry class in primary school, the teacher also said that CO₂ was lethal and must not be played with. At that time I was naughty and eventually given the punishment of standing outside the classroom, prohibited from laying my hand on it for four weeks after playing with it on impulse. Buddy, do you want to be punished for four weeks now? In order to avoid being put in detention and given a "black pig", you just introduced a project without any concrete details of implementation. You told us that you would speak five languages very fluently but, Secretary Edward YAU, you said you would not learn them or you said you would just study Chinese. This just does not work. I know you started out as a member of the media, did you not? Then forget about it.

(THE PRESIDENT resumed the Chair)

Actually, HU Shih once said that it is just very simple, it all lies in inquisitiveness. All one has to do is to be inquisitive about everything. Do you think HU Shih is very remarkable? HU Shih is Socrates, and whenever he came across something he did not know, he asked about it. Secretary, just assume that I am a layman in this respect. May I ask again whether you have considered the approaches suggested by me just now? For example, have you convened any meeting with the power giants? Have you considered discussing this issue with the local government in South China so that an agreement can be reached between Guangdong and Hong Kong? Has it ever occurred to that you will be put in detention class if you fail to submit your homework? I hope the Secretary will not engage in "empty talk" anymore and I also hope that he will really wrap things up. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for the Environment to reply.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam President, I move that the Second Reading of the Air Pollution Control (Amendment) Bill 2008 (the Bill) be resumed.

Here, I would like to express my gratitude to Ms Audrey EU and members of the Bills Committee for their effort and discussion on this Bill, which has made the resumption of the Second Reading and Third Reading of the Bill possible today.

A few points can be deduced from the speeches made by Honourable Members. First, everyone agrees that the problem of air pollution has become very acute and must be solved without delay. As a matter of fact, the Government did make many undertakings and concrete recommendations on air pollution legislation and work on air pollution as a whole over the past year.

Secondly, it has been pointed out very clearly in Members' speeches that Hong Kong would not fare better on its own. To solve the air pollution problem, regional co-operation is required, and in order to achieve regional co-operation, we cannot just focus on Hong Kong without paying any attention to opportunities for co-operation within the entire region.

Thirdly, everyone hopes that concrete measures will be taken so that policies will truly be implemented instead of engaging in empty talk. Regarding this, I think both Members and the Government have all along been in agreement.

The SAR Government has all along been committed to working together with the public and enterprises to promote environmental protection and ecological conservation, and it has always been hoping that the air quality of Hong Kong can be improved. Sometimes, such work has to be conducted by way of legislation.

As we all know, among all the local sources of air pollution, the power sector accounts for the highest proportion of emissions. Therefore, whether power plants can substantially reduce the emission of SO₂, NO_x and RSP is

precisely the difficulty we are facing now, and it is also the key to whether or not Hong Kong will be able to meet the emission reduction targets for 2010 set in the agreement we have entered into with the Mainland.

Honourable Members may still remember that we have mentioned on many occasions that the emission of, for instance, SO₂ from the power plants of the two power companies accounts for over 90% of the total emission of SO₂ in Hong Kong. Therefore, we must take measures to regulate the emission from the power plants of the two power companies.

Actually, the Government had reached a new 10-year Scheme of Control Agreement (SCA) with the two power companies before the introduction of the Air Pollution Control Ordinance (the Ordinance), that is, at the end of last year and early this year — Members may also remember — under which the Government has not only reduced their permitted return but also taken measures to, through this bilateral agreement, require the two power companies to make major undertakings in emission reduction. To put it simply, if any of the two power companies exceeds our ever tightening emission caps with regard to any pollutant, 1% of its profits will be deducted, possibly amounting to a few hundred million dollars in real terms for each of them, which is arguably a reduction in the form of penalty. In parallel with entering into this agreement, we will gradually lower the caps for a few pollutants.

However, besides imposing regulation through SCAs, the authorities seek to propose measures under the present legislation, by amending the Ordinance, to include the emission caps for power plants in the legislation. Our objective is very clear, that is, we hope that through these amendments, the transparency of these standards will be enhanced so that the public can exercise monitoring and be informed of the relevant situation.

Of course, in order to clean up the air of Hong Kong, in particular, to reduce the emissions from power plants, we must enforce the SCAs stringently and exercise gatekeeping, while also hoping that the clearly laid down criteria in the Bill and the penalties to be included in the future can help enhance the efforts in this regard.

As stipulated in our Bill, its main objective is to clearly regulate the emission caps for the power sector from 2010 with regard to SO₂, NO_x and RSP

by way of legislation and apportion the emission allowances for the above three types of pollutants to the power companies on a pro rata basis.

Although we have imposed the emission caps for these three types of pollutants on the power companies upon the renewal of their respective Specified Process Licences (SPLs) since 2005 and have been gradually tightening the relevant caps subsequently, we hold that it is more meaningful and necessary to introduce the Bill because it will not only further demonstrate the determination of the SAR Government in controlling emissions from the power sector, but also ensure that power plants can meet emission caps set by us in a smooth and timely manner. Another objective of the Bill is to stipulate clearly the considerations to be made by the Secretary for the Environment in allocating the emission allowances for the three types of pollutants and allow for greater participation of the Legislative Council in setting the emission caps for the power sector in the future, thereby enhancing the transparency of the relevant process and public confidence in the monitoring of emissions from the two power companies.

Just now, some Members mentioned that during the process of legislative amendment, it was proposed that CO₂ be included as a type of pollutant in addition to the three pollutants. Actually, in this connection, my colleagues and I already provided a further explanation at a meeting of the Bills Committee during their process of scrutiny.

I am more than willing to reiterate these several major considerations. First, we have to state solemnly the fact that we do not include CO₂ as a pollutant in the Ordinance does not mean that we do not attach any importance to the increase of CO₂ emission. The main reason why we are unable to add CO₂ to the Bill is that at present, there is no mature and commercially viable technology in the world to separate, extract and store CO₂. We can reduce other pollutants by using such processes as desulphurization or denitrification. However, unlike the case of other pollutants, mature technology to capture and store CO₂ is not yet available in the market.

Insofar as the real situation of Hong Kong is concerned, what consequences will be brought about if CO₂ is included in the Bill as a restricted pollutant? Let us try to take a look at the current emission of CO₂ in Hong Kong. As a matter of fact, 63% of it comes from power generation. As we all know, over 50% of our electricity is generated from coal burning. If we have

to include CO₂ as one of the requirements and achieve the effect of reducing its emission at the same time, apparently a substantial change to the fuel mix is required. An alternative is to approach the issue from the power generated at present. It will be helpful if electricity is used more effectively. Actually, we will target measures in these two aspects to address the warming of the climate system and air pollution in the future.

Earlier, when attending a meeting of a relevant committee, I mentioned that in the long run, changes in the fuel mix for power generation might be required in Hong Kong. Such changes are contemplated in response to the ever increasingly stringent requirements regarding air pollution and are helpful in reducing CO₂ emission. I also mentioned that we might have to make preparation for the construction of a liquefied natural gas terminal. More importantly, however, in Hong Kong, which is a service-oriented economy, we actually have room for reducing CO₂ produced by electricity generation by reducing the use of energy and committing to using it reasonably and effectively. Besides, we can also considerate such alternatives as other non-fossil fuels and renewable energy. Therefore, I hope Honourable Members will understand that although CO₂ cannot be included in the Bill, the Government has undertaken to, in other aspects, continue to study various measures extensively and thoroughly in response to the warming of the climate system or focusing on approaches to reduce CO₂ emission.

Regarding the emissions trading proposed in the Bill, we have examined the practice adopted by many other countries. Under the present Bill, power plants in Hong Kong are allowed to engage in emissions trading with other power plants in Hong Kong and in the Pearl River Delta (PRD) Region as an alternative means of abatement to comply with the emission caps.

Just now, some Members asked whether Hong Kong has put in place any concrete measures to reduce the emission of pollutants. Actually, the agreement on measures to reduce the emission of air pollutants with Guangdong Province in the Mainland in 2002 and the agreement on emissions trading between the thermal power plants of both sides in the PRD Region in January last year are the specific measures adopted by the Governments of the two places to lay down targets for emission reduction with regard to air pollution and plans formulated through concrete measures of emission reduction. Emissions trading for the purpose of emission reduction has to be conducted on the ground that different power plants in the same region can achieve a better result through

such trading than by complying with the emission caps set in collaboration. Therefore, in response to Members' remark that emissions trading allows a power plant of either party to continue to emit excessive pollutants at will, I would like to point out very solemnly here that this is contrary to the objective laid down in the Bill and is against its original intent.

Regarding the arrangement for emissions trading between the power plants of Guangdong and Hong Kong, we jointly announced with the Guangdong Provincial Government in January last year the implementation of the Emissions Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region, and subsequently explained repeatedly various details through the relevant panels of the Legislative Council. The Bill precisely provides a legal basis for this Pilot Scheme and enables co-operation between both places in emission reduction, thereby achieving regional co-operation as desired by many Honourable Members.

Finally, we also propose to take this opportunity to amend existing provisions to bar public officers from serving on an Appeal Board in order to further enhance the independence and impartiality of the Appeal Boards and repeal the right of the Director of Environmental Protection to refer an Appeal Board's decision for review by the Chief Executive in Council.

Madam President, the Bill was introduced to this Council for First Reading and Second Reading debate in February this year. I would like to reiterate my gratitude to members of the Bills Committee for their participation. Although various different views were raised and there were even disputes at the meetings, I believe Members and the Government are moving forward with the common goal of establishing better emission regulation and a practicable emission reduction regime in order to achieve our common goal. Therefore, here, I would like to propose amending the provisions properly. I will explain the details of the Government's amendments later at the Committee stage.

Madam President, the Bills Committee has indicated its support for resuming the Second Reading of the Bill. I implore Honourable Members to pass the Bill to allow the SAR Government to further strengthen the control over the emissions from the power sector to improve the air quality of Hong Kong.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Air Pollution Control (Amendment) 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): Air Pollution Control (Amendment) Bill 2008.

Council went into Committee.

Committee Stage

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

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Air Pollution Control (Amendment) Bill 2008.

CLERK (in Cantonese): Clauses 1 to 4, 8 to 11 and 14.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 6, 7 and 13.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in detail in the paper circularized to Members.

The purposes of the amendments are to make minor and technical amendments to clauses 6, 7 and 13. As the Bills Committee has indicated support for these amendments, I implore Members to support and pass them.

Thank you, Madam Chairman.

Proposed amendments

Clause 6 (see Annex III)

Clause 7 (see Annex III)

Clause 13 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 6, 7 and 13 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move the amendments to the proposed sections 26G, 26I, 26K and 26L in clause 5, as set out in detail in the paper circularized to Members. In this connection, I would like to give a brief introduction.

The Bills Committee is concerned about the arrangement that in the case of a special event which is beyond the control of a power plant, the power plant can apply to the Authority for additional allocated allowances. In response to members' concern, we have proposed to amend clause 5 of the Bill by adding a new section 26K in the Air Pollution Control Ordinance so as to make it more clearly that the occurrence of the special event could not reasonably have been foreseen by the applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, the applicant must have exercised all due diligence to prevent the occurrence of the event, apart from the fact that the event has occurred for reasons beyond the control of the applicant.

Besides, it is also provided in the amendment that the applicant has to notify the Authority in writing of the occurrence of the event within five working days after the occurrence of the event and promptly exercise all due diligence to minimize the quantity of pollutant being emitted as a result of the occurrence of the event.

We have also proposed some minor and technical amendments to clause 5 of the Bill in relation to the new sections 26G, 26I and 26L in the Air Pollution Control Ordinance.

Madam Chairman, as the above proposals have gained the support of the Bills Committee, I urge Members to support and pass these amendments.

Proposed amendment

Clause 5 (see Annex III)

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 Secretary for the Environment 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 amendment passed.

CLERK (in Cantonese): Clauses 12 and 15.

CHAIRMAN (in Cantonese): The Secretary for the Environment and Miss CHOY So-yuk have given notice separately to move amendments to the proposed section 26M in clause 5, and to clauses 12 and 15.

Members may now debate the original clauses and the amendments to the clauses proposed by the Secretary for the Environment and Miss CHOY So-yuk jointly. I will call upon the Secretary for the Environment to speak first, to be followed by Miss CHOY So-yuk; but no amendments are to be moved at this stage.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, the Bills Committee, when scrutinizing the Bill, indicated its concerns about the emission trading arrangement between the local power plants and power plants in the Pearl River Delta (PRD) Region. First of all, let me

reiterate that the emission trading scheme for the power plants in the PRD Region is an important strategic co-operation agreement on improving the air quality in the PRD Region between Guangdong and Hong Kong. The purpose of the agreement is to effectively implement the emission trading scheme which will not only help the power plants of the two places achieve the emission caps set by the two Governments in a more flexible and cost-effective manner, but it also has positive significance in respect of further strengthening the co-operation between Guangdong and Hong Kong in the future.

The emission trading between Hong Kong and Guangdong will be conducted in the form of emission reduction projects. Those participating power plants must first of all implement the emission reduction plan approved by the two Governments so as to achieve an actual emission level which is even lower than the original statutory emission cap, thereby acquiring emission credits issued by the local government which are salable to the buyers. Certainly, emission trading should be based on a fair, reasonable and reciprocal agreement to each other. It should also be conducted on a stringent legal basis with sufficient room in the market. This is also the purpose of our amendments today.

After considering the Bills Committee's views on the emission trading mechanism between Guangdong and Hong Kong, we have proposed two additional arrangements to further ensure that the Authority will carefully consider the views of all parties and relevant factors when vetting the applications before making a final decision.

First, we propose an amendment to section 26M to be added to the Air Pollution Control Ordinance under clause 5 of the Bill and the addition of Schedule 2C under clause 15 in order to specify that the total quantity of emission credits acquired by a local power plant from its counterparts in the PRD Region in an emission year cannot exceed 15% of the quantity of emission allowances allocated to it at the beginning of that emission year.

Second, we propose that the Authority should as soon as practicable after receiving the relevant application consult the Advisory Council on the Environment (ACE) according to the established procedure, under which all relevant papers will be made available for public inspection. The Legislative Council Panel on Environmental Affairs will also be consulted accordingly. Through consulting the ACE and the relevant Panel of the Legislative Council,

we can enhance the public understanding of the actual proposal and the achievable effect in the emission trading. While this will enhance the transparency of our work on the one hand, it will also boost public confidence and support in the emission trading on the other.

Meanwhile, the Government has also proposed in the amendment how emission credits can be transferred by local power plants to their counterparts in the PRD Region and specified that they should notify the Authority within five working days after the transfer. I have also proposed to make a minor and technical amendment to clause 12 of the Bill.

Regarding the proposed amendment by Miss CHOY So-yuk to prescribe that the emission credits generated from an emission trading project between Guangdong and Hong Kong can only be used in a maximum of five emission years, we think it is undesirable both in principle and operation because each emission reduction project is different in nature and the amount of emission reduction and size of investment may also be different. If the validity period of emission credits in each emission reduction project is restricted by means of legislation in a broad-bush approach, it will significantly restrict the flexibility of the two Governments in joint vetting relevant applications. Besides, as the participating power plants have to carry out additional emission reduction work, such as constructing highly efficient desulphurization facilities or particulate screening devices, and the amount of capital involved is also quite huge, if a uniform restriction as proposed by Miss CHOY So-yuk is adopted by the Legislative Council, it will only deter power plants intent on carrying out large-scale emission trading. As I just said, in terms of feasibility and room in the market, it is doubtful whether adequate room for participation can be provided to power plants which have an intention to take part in the scheme in the future.

In my opinion, Madam Chairman, the Government's proposed amendments, through restricting the local power plants' emission credits acquired from cross-boundary emission trading in an emission year to no more than 15% of the quantity of emission allowances allocated to it at the beginning of that emission year, can fully ensure that the local power plants cannot rely solely on cross-boundary emission trading to achieve the statutory emission caps.

Madam Chairman, the amendments moved by the Government have obtained the support of the Bills Committee. I implore Members to support and endorse the amendments, and negative the amendment proposed by Miss CHOY So-yuk. Thank you, Madam Chairman.

MISS CHOY-SO YUK (in Cantonese): Chairman, please allow me to explain the rationale for my amendment. As I pointed out during the resumed Second Reading debate, the entire legislation allows power plants to adopt a more economical and convenient way to acquire allocated allowances from power plants in the PRD Region through emissions trading to make up for their emission exceedance.

First of all, when the Government set the emission allowances for the power plants of Hong Kong, it did so with reference to their output and emission volume instead of the amount of a particular pollutant to be emitted by them. However, instead of giving them larger emission allowances, the Government insisted that they should reduce their emissions anyhow in order to make the air cleaner. When the Government allocated the allowances at the beginning, it had already taken into full consideration the emission volume of power plants in order to allocate adequate allowances to them. However, we have to admit that under some circumstances, the emission from power plants may exceed the allowances. For example, power plants may have to increase their output in a certain period of time or in a certain year; or they may be unable to purchase clean coal during a certain period of time and thus have to use relatively unclean coal; or some power plants may have to use natural gas for power generation but its emission volume may increase in a certain period of time as natural gas is unavailable. Under such circumstances, we cannot possibly prohibit power plants from operating on the ground that their emission volume has increased. Therefore, I fully support allowing power plants to acquire some allowances from power plants in the PRD Region before they can solve their own emission problems gradually.

As a matter of fact, I also moved a motion at a meeting proposing the Government to do so. However, even if we allow power plants to do so, it does not mean that we should allow their emission to exceed the volume allowed for an indefinite period. Therefore, I proposed to the Government that if they cannot meet the requirement in three years, we can extend the period to five years; and if they cannot meet the requirement in five years, we can extend the

period to eight or 10 years. In short, a time limit must be set. If the emission of a certain power plant in Hong Kong exceeds the allowed emission by 15%, we should in no way allow it to enter into an emission agreement for a period of 30 to 40 years with a certain power plant in the PRD Region and allow its emission to exceed its allowed volume by 15% during those 30 to 40 years. I suggested to the Secretary that he should propose an amendment. If he thinks that five years is not enough, he may propose eight years, and I am ready to accept it, just that there must be a time limit. However, he even proposed 35 years. Does Hong Kong really have to do that? Should we allow power plants to exceed their allowed emission by 15% in the next 35 years just because it is cheaper and more money can be saved? Should power plants in Hong Kong be allowed to exceed their allowed emission for a prolonged period of time without solving their problems?

In this connection, I have asked the CLP Power whether it will face any difficulty if a period of five years or three years is established and whether it will face great difficulties because it has engaged in an emissions trading scheme for a period of over five years, or whether the allowed period of five years will create any serious problems as it has to enter into a 10-year agreement for the purchase of coal. However, the CLP Power indicated that such problems would not arise. Therefore, the present problem is purely caused by the fact that the Government is sitting on the issue.

Chairman, I think there would not have been any problem if this issue was undertaken by a Secretary responsible for economic affairs. However, the one present here is the Secretary responsible for environmental affairs. He just sits over there, unwilling to make any effort on environmental protection and allowing power plants to exceed their allowed emission. Hong Kong might have allowed power plants to exceed their allowed emission by 15% in the 30 years or 50 years to come just because the Secretary refused to make any effort. Fortunately, we succeeded in setting the limit at 15%, which was not the percentage initially proposed. Chairman, the initial standard was probably over 50%. If that was the case, the whole endeavour would have been meaningless.

I also consider it acceptable if power plants really need more than five years to solve their problems. I can accept that the Government makes amendments by way of subsidiary legislation introduced into the Legislative Council for negative vetting so that this time limit would become 10 years or even 35 years. By then, Members will allow the public to give their comments. If power plants really have specific difficulties, should they be allowed to do so?

Does Hong Kong not need electricity? Will we disallow power plants to generate electricity? After discussion, we will give our approval even if power plants require that a period of 30 years be granted for them to exceed their allowed emission. My request is as simple as this.

Regarding the amendment that I will move, colleagues of the political party to which I belong (DAB) were also concerned whether my amendment is so radical and attaches so much importance to environmental protection that it might have failed to strike a balance. However, when the Chairman and Vice Chairman of the DAB discussed this issue with the Secretary for the Environment, the Secretary was unable to convince my colleagues in the DAB. Worse still, he considered my amendment unnecessary and superfluous. Under such circumstances, I even suggested the Secretary — because he indicated that he was afraid his amendment would not be passed, while mine would — to lobby the other political parties. However, I have not seen any efforts made by him so far. He just kept asking me to withdraw this amendment. Running short of arguments to defend his weak case, he even disseminated misleading information to the media last night, and I think he was lying.

Chairman, although Miss CHAN said this Government is not trustworthy, I personally would not say so. However, my confidence in the credibility of this Bureau has been seriously shaken. In the first place, some environmental groups found a few days ago that the Government has been providing "fabricated figures" on the amount of waste to be treated, that is, waste produced, by excluding even the entire category of electronic waste, which has made the amount of waste produced in Hong Kong appear to have reduced instead of increased. As a matter of fact, the electronic waste really existed and had really been shipped to the landfills. If such waste had not been excluded, the amount of waste produced in Hong Kong has actually increased instead of decreased. However, the Government even blatantly provided "fabricated figures" on the Internet. Now, the Secretary is saying that he has met with our caucus. May I ask when he came to provide an explanation to our caucus? He just came to this Council upon the request of our Chairman and Vice Chairman to discuss the issue instead of coming to meet with our caucus.

Ms Audrey EU said just now that the Civic Party would not support us, yet she told the Government that I am the culprit. Everyone has been particularly anxious this time, saying that the Civic Party also supports me. Chairman, I do

not wish to discuss the issue of whether or not they support me, of course I hope everyone will support my amendment. However, I hope the Secretary will stop lying and refrain from releasing such information to the media when he is unable to provide any justification. Even in the discussion on waste disposal, he always released a great deal of misleading information to the media, which caused the public to form such an impression of Members. He also said a great deal about emissions trading overseas generally covering a period of 10 years while I insisted on limiting such trading to five years. However, I also proposed that if the Government finds five years unacceptable, it may extend it to 10 years, just that the Secretary himself has to move the amendment. Did I say so? Did the Secretary express to me his query about the meaning of setting the limit at 10 years and challenge that if we do so we might as well set the limit at 35 years? Now, he is presenting the public a picture that I have been very difficult and unreasonable as I insisted on setting the limit at five years, not even allowing it to be set at 10 years. I feel Chairman, sorry, I am furious and I do not know what to do. Should I adopt the same approach as Miss CHAN?

Please judge for yourselves — as the Secretary for the Environment, he should make genuine efforts on environmental protection. If the Secretary had made any serious effort and was still unable to achieve some environmental protection goals, I would have appreciated it even if the public and this Council disagreed. This is not the present situation — the public is now asking him to make more efforts, and so is this Council; the Government allows him to take up this full-time position of Secretary, yet he chooses not to do anything. I just feel that he simply cannot live up to his expectations.

Chairman, I am sorry, I really find it heartrending. What has made me even more furious is that someone said that I had proposed this amendment out of election considerations and that I had failed to receive any support from the DAB. Chairman, I have never thought of engaging in environmental protection for the sake of election. I opposed the Government's proposal of constructing Route 7 and advised it to construct a railway extension for residents of the Southern District as it is the only approach which was environmentally sound. I opposed building more and more roads despite the fury of residents of the Southern District because it was not environmentally-friendly. I told them that there was nothing I could do about it because if we want to enjoy fresh air and a good environment, we have to make some sacrifices. There is something which we have to do. Therefore, election considerations will definitely have no

bearing on whether or not I would propose an amendment, and I hope the Government will refrain from releasing information wantonly to mislead the public.

Chairman, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I heard the Secretary say in his reply that the Government had actually formulated some measures. However, at the APEC Leaders' Meeting, Chief Executive Donald TSANG said that emissions had to be reduced by 25% by 2030. It is now 2008, and there are 22 years to go before 2030. The Government's purpose of introducing legislation into the Legislative Council is of course to secure the support of this Council and the public for its administration by way of legislation, thereby translating such legislation into various regimes. However, may I ask "Headmaster TSANG", that is, Donald TSANG, whether he has requested his students to come here and explain how his words spoken at the APEC will turn into reality and in what way they are related to this piece of legislation?

This is vitally important because when we are requested to give our support, we have to consider whether the Government has done so out of good intention and whether this is a necessary step to take. As the saying goes, "a newly acquired daughter-in-law is like a newborn child". This newly formed Bureau is the Chief Executive' apparatus to make preparation for his promise of a blue sky made during his election campaign when he ran in the small-circle election.

Why do I make such a harsh criticism? It is because when the Government responded to Honourable colleagues with regard to this legislation, it has actually not Miss CHOY So-yuk already mentioned this just now. I only came to know the truth after listening to her speech. I really have to thank Miss CHOY So-yuk. Secretary Edward YAU, please refrain from talking for the time being. Will you come to the League of Social Democrats (the League) in future to discuss environmental protection with us? Actually, you attended a meeting of the DAB and mistook it as a meeting of the caucus. I do not know whether it was a meeting of the caucus but a verbatim record was made, right? You said that it was a meeting with the Chairman and Vice Chairman instead of a

caucus meeting, and they did so only because you were unable to convince them, right? This is what Miss CHOY said just now.

I am extremely shocked. We are "at the bottom of the affinity list", that is, we are unable to talk with you at all. However, you even failed to tell the truth in your own camp as if they could be "taken lightly". This is a comment made by somebody. I believe in both parties. As I am no King Solomon, I would not kill the child. You really have to make a response later to state clearly that this is the truth because it will affect Members who are going to cast their votes. If you really lied or your lie was exposed; or perhaps you did not lie, just that somebody accused you of having done so without any ground, either of these would have a bearing on my voting decision. If you really have the sincerity to address the issue and it was only a misunderstanding, I will of course consider changing my position.

Regarding the question I posed to you just now, you have not given any answer so far. Have you ever discussed at the meeting of the Executive Council or did the Chief Executive mention in his instruction to all of you that he had signed a cheque at the APEC Leaders' Meeting, undertaking to reduce emissions by 25% by 2030? Did he do so? If he did, has the Government discussed this issue with its counterparts on the Mainland and enabled them to reduce their emissions by doing so or by arranging for the expenses incurred to be met by us? Has it provided them with any subsidy for the generation of wind electric power or hydro-electric power? Has Hong Kong adopted these methods of power generation? Have we issued any ultimatum to the power companies to inform them that they may lose their franchise if they fail to do so? Has it separated the power generation from the grids such that the power companies cannot monopolize the market and sanctions can be imposed when necessary? Has the Government done so?

If the Government fails all this, I could not help but air the grievances for Mr Alan LEONG again. When Donald TSANG competed with him for the position of Chief Executive, he said Mr LEONG only knew how to talk, while he had the know-how. However, how does he "know-how" now? None of you has done anything at all. "Headmaster TSANG" always instructs all you students to come to this Council to submit your homework, but actually this approach does not work.

I know I have talked too much. I just could not help making these remarks when I saw Miss CHOY So-yuk being bullied by you in such a way. You must not bully the others, especially ladies. As a gentleman, how could you deceive people with lies? I think you have the obligation to clarify whether or not you have done so. Of course, I know the answer actually. I would also like to tell you through the Chairman that "Heaven is watching the acts of us all", and so is the television audience. I hope you will make the issue clear in order to do justice to the DAB, this Council and the public.

To accuse the Government of lying is a very serious accusation. Accusing the Secretary of lying is tantamount to accusing the Chief Executive of doing so. The Chief Executive will give people a hit on the hand because he is the headmaster. Therefore, when the Secretary is accused of lying, it means that the Government is accused of lying. I very much hope that you can clarify this.

Thank you, Chairman.

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

MS AUDREY EU (in Cantonese): Chairman, just now Miss CHOY So-yuk was very emotional in delivering her speech. She said she attaches great importance to environmental protection. I wonder whether it is the excessive importance which is attached by her to environmental protection that has made her find the Secretary so offensive. Chairman, I think it is definitely not wrong to attach excessive importance to environmental protection, and everyone should attach more importance to it. Therefore, in this regard, I share Miss CHOY So-yuk's stance.

Miss CHOY also queried why the Secretary had disseminated false or misleading information extensively. This made her very furious and offended. Chairman, I totally share Miss CHOY's view. I also find the release of anonymous information to the media by some high ranking government officials most offending. We can always find very consistent information, which is apparently anonymous official information, in newspapers. Regarding such false information, I am similarly infuriated.

As regards the release of false information, the Secretary himself has to explain in his response later whether the current false information was released by him or by the staff within his Bureau. However, when it comes to the release of information, I have to relay that from a certain newspaper last week, I learnt that Miss CHOY had rebuked the Secretary for releasing information and claimed that the Secretary had enticed the pan-democratic camp into supporting him and so the authorities could destroy the environment as they please in future. This was the content of the news report: I am personally very concerned about the issue of liquefied natural gas receiving terminal. This has been discussed for a long time but nothing has been heard so far. Chairman, you should understand that we will soon "get off the train", and thus we definitely want to press the Secretary for information on the findings and progress of the study. Initially we intended to ask an oral question, but as the black rainstorm signal was issued that day, our submission of the oral question was delayed. Therefore, we missed the opportunity of asking the oral question. Subsequently, we raised a written question instead and ultimately received a written reply from the Secretary.

However, the Secretary indicated to me that he would like to come to this Council to give an account on the issue, but as no meeting was scheduled, he asked me whether he could be given 15 minutes during a special meeting to give an account on this issue. When other colleagues of the Panel on Environmental Affairs were consulted on this matter, they all agreed with this arrangement. Therefore, after the Secretary had discussed the information on the disposal of inert waste at the special meeting, he spent 15 minutes to give an account on the progress of the construction of the liquefied natural gas receiving terminal. I would never have guessed that when I read the newspaper the following day, I learnt that Miss CHOY had rebuked the Secretary for enticing the support of all the Members of the pan-democratic camp and remarked that the authorities could now do whatever they please to destroy the environment. I find this totally perplexing because as Chairman of the Panel on Environmental Affairs, I think when the Secretary indicated that he would like to come before the Panel to give an account on an environmental issue of common concern, there is no reason why such a

(Miss CHOY So-yuk raised her hand in indication)

CHAIRMAN (in Cantonese): Miss CHOY So-yuk, is it a point of order?

MISS CHOY SO-YUK (in Cantonese): Chairman, I wish to make a clarification.

CHAIRMAN (in Cantonese): You may only clarify the part of your speech which has been misunderstood.

MISS CHOY SO-YUK (in Cantonese): Perhaps I will make the clarification after Ms Audrey EU has finished her speech.

CHAIRMAN (in Cantonese): Ms EU, please continue.

MS AUDREY EU (in Cantonese): I am more than willing to allow Miss CHOY to make the clarification later.

Chairman, why did I mention this incident? Because sometimes we are infuriated by some news reports — we know it is certainly fabrication, but why is there such a report? We have no idea who has released the information. At times, there may really be people who have released information wantonly; but other times, it may be the media themselves which have wantonly "fabricated" it, not of the making of the parties concerned. Sometimes we can only accept it impassively because just when a person is engaged in politics, there may be people who disseminate false information somewhat related to him. I mentioned this story in order to let Miss CHOY know that she does not have to be infuriated when she learns about such reports because there may not necessarily be anyone who has released false information but it may only involve the misunderstanding on the part of some other people.

Chairman, let me come back to these two amendments in question, that is, the amendments proposed by the Secretary and Miss CHOY respectively. Chairman, our first consideration for how we should vote later — when I referred to it as the first consideration, it does not mean that it is the most important consideration. I should have said that one of the considerations I

would like to talk about relates to strategic issues. It is because we have to vote on the respective amendments proposed by the Secretary and Miss CHOY, that is, we have to cast our votes after the joint debate. According to the normal practice, Members will first vote on the Secretary's amendment. If the Secretary's amendment is negatived, voting will be conducted on Miss CHOY's amendment. If the Secretary's amendment is passed, we will not have any opportunity to vote on Miss CHOY's amendment.

As we all know, since separate voting is usually not required for the Secretary's amendment, there is a higher chance that it will be passed. Yet, separate voting is required for Miss CHOY's amendment. In the event that both amendments are unfortunately negatived, we will only be left with the original Blue Bill. Very often, this is not the scenario we wish to see. Therefore, sometimes we have to make strategic considerations for the vote.

However, Chairman, as far as this issue is concerned, this is not the most important consideration because the Civic Party has considered which party's rationale is justified based on a wide spectrum of principles. When we consider the clauses, especially section 26M on cross-boundary emissions, we have to consider the content of the clause itself. This is the most important consideration we have to make in deciding whether we should support the amendment proposed by the Secretary or that by Miss CHOY.

Chairman, the Bills Committee has actually spent much time on discussing the issue of cross-boundary emissions because this is a new issue and many Hong Kong people are very concerned about the problem of air pollution in Hong Kong. When we see people covering up their noses in the street, we can imagine how serious the air pollution problem in Hong Kong is. But we have to face another problem at the same time. Although the pollution problem of Hong Kong is mainly caused by local power plants and transportation, cross-boundary pollution, especially pollution in the PRD Region, has also created serious impact on Hong Kong. Our foggy sky is, to a great extent, attributable to regional pollution. One of the improvements proposed is to conduct cross-boundary emissions trading schemes.

Chairman, I remember when I first met Sarah LIAO, she had neither joined the Government nor taken up office as a Director of Bureau, and back then she had been talking about cross-boundary emissions trading and already raised quite a lot of concerns and opposition. For example, she opined that the

money of Hong Kong should be spent in Hong Kong instead of outside Hong Kong. Actually, we have to provide some financial incentives to attract power plants of Hong Kong to invest in power plants across the border and implement special emissions schemes or projects with a view to reducing regional pollution, thereby bringing benefits to Hong Kong. However, section 26M has triggered off a heated debate with the argument that if the people or the power plants of Hong Kong are allowed to invest in power plants across the border in a more economical way and purchase more expensive coal, thereby reducing pollution, more money will definitely be saved, and it is more economical than conducting emission reduction in Hong Kong.

Under such circumstances, Hong Kong people have to put up with emissions from the power plants in Hong Kong because if cross-boundary emissions trading is conducted, the Secretary will increase the allowances allocated to local power plants, which will aggravate the local pollution problem, especially when it is stated clearly in section 26M(2) that the Secretary may approve, for the purpose of special projects, the allowances for Hong Kong, which are already the Secretary may increase the caps stipulated in the several clauses he discussed with us earlier. Chairman, some members of our Panel do not have a Home Visit Permit, and they may think that the Government only provides benefit to and ameliorates the pollution of places across the border, while Hong Kong people have to put up with the pollution in Hong Kong. This is a very serious problem. Therefore, we spent much time discussing this question.

Chairman, we finally reached a consensus and the Secretary also agreed to make a concession. He undertook to limit the amount of emission in excess of the annual emission allowed to 15%. This is the outcome of our discussion. Although the initial proposal was 20%, after the discussion with us and making the concession, the Secretary ultimately set the limit at 15%, which was readily accepted by us all. Thus, the Secretary has to propose this amendment.

Subsequently, we found another problem, which is related to the amendment currently proposed by Miss CHOY. Miss CHOY considered that power plants should not be allowed to exceed their emission allowances for an indefinite period of time. If the excessive emission maintains at 15% of the emission allowed every year, what should we do? Chairman, we have already discussed this problem in great detail. Chairman, before I considered Miss CHOY's amendment, I had consulted many green groups. My assistant and colleagues in my office had also consulted many green groups, in particular

concern groups of air pollution. They were of the unanimous view that the most important issue in this Bill was actually the point I mentioned earlier. Chairman, this black balloon I am holding is a balloon inflated with CO₂. I would like to tell Members in passing that these balloons are very useful because I have already handed them to the new Under Secretary of the Environment Bureau so that she can keep them in her office and see them all the time. Chairman, this is the issue discussed just now and it is also the major reason why we consider this Bill deficient.

Secondly, the major concern of environmental groups is that we have only set emission reduction targets up to 2010. Although we have been discussing this issue since 2002, we are still talking about the targets for 2010 to date without setting any medium- or more long-term targets. I consider this the most serious problem. To encourage thermal power plants or companies to reduce emission or engage in emissions trading, the Government must expeditiously provide details on its medium- and long-term targets to enable the market to operate. When the present discussion is only confined to issues before 2010, how can the market operate?

Under these circumstances, regarding Miss CHOY's amendment which proposes a validity period of five years, green groups in general do not consider it helpful at the present stage because market operation has not even commenced. Everyone would like to see that there is a market for cross-boundary emissions trading and that it will begin to operate. Such uncertain circumstances may not be helpful to the conduct or promotion of emissions trading, especially if the Secretary and the Government have to set a validity period of a certain number of years before even setting any medium- and long-term targets. Therefore, as all of us can see, green groups have not expressed support for Miss CHOY's amendment.

In this circumstance, Chairman, we in the Civic Party have made a final decision. Although we appreciate Miss CHOY's good intention, under the present situation, we have still decided to abstain from voting on Miss CHOY's amendment. I have told the Secretary that we do not support Miss CHOY's amendment, and I have explained to Miss CHOY why we will abstain from voting on her amendment.

Chairman, here I would like to call on the Government to expeditiously set the post-2010 emission reduction targets. Now that many people have adopted

a wait-and-see attitude and we have been discussing this problem for so long, and this Bill has also been introduced, when will cross-boundary emissions trading really be conducted and how will promotion be carried out? To date, we have not received any information that such trading can proceed. Chairman, we hope that after this Bill is passed, the Government will set the targets, carry out promotion and really implement emissions trading projects.

Chairman, during the discussion on section 26M, we already included many additional safeguards. As the original clauses were quite loosely drafted and adequate oversight was lacking, during our discussion on this issue in the Bills Committee, we thus included such clauses as the one requiring consultation of the ACE. The Secretary has also undertaken just now to attend meetings of the Panel on Environmental Affairs. During the process of consulting the ACE, the Secretary will also make adequate information papers available to the public. We will also ensure that the Secretary will set a proper timeframe at the Committee stage so that the public, in particular environmental groups, will have adequate time to examine papers and data relating to emissions trading.

I believe if that situation really arises, the ACE, green groups or non-government organizations will "intensely scrutinize" the relevant projects and monitor the Government. At that time, the Legislative Council will surely exercise monitoring to ensure that cross-boundary emissions trading will not cause the emission caps of Hong Kong to increase indefinitely or every year, as mentioned by Miss CHOY. We hope that, on the one hand, emission within the territory will be reduced through the setting of reasonable emission caps and conduct of cross-boundary emission inspections in a smart manner, and on the other, reasonable cross-boundary emissions trading acceptable to all will be conducted through the provision of financial incentives so that the regional air pollution problem can be ameliorated.

Thank you, President.

CHAIRMAN (in Cantonese): Miss CHOY So-yuk, do you wish to clarify the part of your speech which has been misunderstood?

MISS CHOY SO-YUK (in Cantonese): Yes, President. I will wait for my turn to express other views, but now I wish to make some clarification first. Ms Audrey EU said just now that I had released information to the media. As a matter of fact, I did not release information to the media

MS AUDREY EU (in Cantonese): President, I

CHAIRMAN (in Cantonese): Shall I offer some help to both of you? Actually, Ms Audrey EU said she had learnt from the newspaper that the Government had released information to the media

MISS CHOY SO-YUK (in Cantonese): Yes, but she went on to say that she had also learnt from the newspaper that I had said as the Secretary had bought out the pan-democratic camp, the authorities could destroy the environment as they please. This remark

CHAIRMAN (in Cantonese): Miss CHOY So-yuk, I have to interrupt you here because you have to clarify the part of your previous speech which has been misunderstood by Ms Audrey EU, or you may speak again later because at the Committee stage, you can speak many times.

MISS CHOY SO-YUK (in Cantonese): Chairman, I know, but she got me wrong. Perhaps I will talk about this when I speak again later, I will not mind. Thank you.

MS AUDREY EU (in Cantonese): President, I have to clarify that in my speech, I did not accuse the Secretary or Miss CHOY of releasing any information. I just said that when we learn about this kind of information in the newspaper, it may sometimes be due to some government officials or Members having really released false information, and I find this very offending. However, very often, we do not know the truth and it may only be "fabrication" by the media. I therefore suggested that Miss CHOY clarify this point later in her speech because I had learnt from the newspaper that she had accused us in such a way,

and perhaps she had not done so. Chairman, I did not accuse Miss CHOY of having released that information, I just raised this point and advised her not to be so furious because sometimes the information we get may not really be released by a certain person. If she did not make such a remark, she can make it clear later. Chairman, this is what I said just now.

CHAIRMAN (in Cantonese): If you have finished your explanation, I will have to allow Miss CHOY So-yuk to speak now.

MISS CHOY SO-YUK (in Cantonese): Thank you, Chairman. I really did make a remark, but I made that remark in this Chamber. As the Government only allowed us 15 minutes to discuss the issue of the South Soko liquefied natural gas project that day, I raised my hand and said to the Chairman that — the Chairman on that occasion was Ms Audrey EU — the Government only gave us 15 minutes to discuss such an important

CHAIRMAN (in Cantonese): This is not the part of your speech which has been misunderstood.

MISS CHOY SO-YUK (in Cantonese): Right, but I have to clarify this point. She may still recall that I said it was impossible to finish the discussion on this issue within 15 minutes and that we must follow up and discuss this issue in great detail in the next term. At that juncture, a Member from the pan-democratic camp said it was acceptable to discuss it for 15 minutes, but at that point I said this issue would have great implications on the environment. As such, the remarks made by the two of us just overlapped with each other. I said if the pan-democratic camp was bought, the authorities could destroy the environment as they please. This remark just happened to overlap with the remark made by that Member from the pan-democratic camp. Therefore, instead of releasing any information, I only officially made that remark here, Chairman.

CHAIRMAN (in Cantonese): So much for that. As a matter of fact, this incident has nothing to do with the examination of this Bill. Mr SIN Chung-kai, you may speak now.

MR SIN CHUNG-KAI (in Cantonese): President, I agree with and greatly support your ruling. However, honestly, how can a buyout be possible? In the first place, there exist affinity differences, and monetary enticement is illegal; in the second place, the pan-democratic camp does not hold any public office which may subject it to enticement. Therefore, we do not have to talk about it anymore. Chairman, while you were busy with your work just now, I wanted to say to you that both you and I will leave this Council and have more time for movies. I would like to recommend to you a movie known as "Six Degrees Could Change the World" aired on the National Geographic Channel. This movie is on the subject of global warming. You may wish to watch it when you have time.

I would like to come back to the respective amendments proposed by the Government and Miss CHOY So-yuk. If we deal with this problem seriously, we will ask why a 15% cap is set. The Secretary explained just now that he would like to impose an additional barrier or check in the regime. If power plants really rely on purchasing emission credits or fail to exercise due diligence in doing their part, they are still subject to the 15% cap. I think this additional cap will enhance public confidence or the confidence of Members of this Council in voting for the passage of the Air Pollution Control (Amendment) Bill 2008 (the Bill). To put it simply, this flexibility or cap can prevent power plants or even the Secretary or subsequent Secretaries from acting arbitrarily. As such, I think it is not only readily understandable but also uncontroversial. As regards why it is set at 15% instead of 20%, we can discuss it further.

I believe if there is room or the need to raise the cap from 15% to 20%, or from 20% to 25%, such proposals, which warrant discussion, have to be introduced into the Legislative Council for scrutiny. However, I think 15% is not a small amount and it is already a generous cap. Actually, at the beginning of the discussion, I thought 15% was already adequate and considerably generous. As a starting point under the Bill, even if this mechanism is passed, it is actually not easy at all to carry out emissions trading in Hong Kong or in the region. I am not as optimistic as Miss CHOY So-yuk who thinks that the companies will be very keen and active, and thus provisions similar to "sunset

clauses" have to be drawn up. I do not share her idea, and I think probably "the sun will have set even before it rises". In other words, no trading will be carried out under the trading system established in the legislation within five years. If trading has to be carried out subsequently, a proposal has to be introduced into the Legislative Council again.

Regarding emissions trading, in the first place, it is something new. As far as I know, perhaps the Secretary can give us a brief explanation later, the European Union (EU) has the best performance in this regard, but I mean their performance after 2003, or strictly speaking, it should be their performance after 2005, that is, their performance in the last four to five years. To put it simply, the EU has been conducting such trading more and more extensively and in an ever increasing volume. Therefore, when passing this Bill, we can consider discarding emissions trading altogether, while just exercising monitoring over power plants. In that case, we can just "save ourselves much vexatious efforts" and free ourselves from the need to consider issues relating to the mechanism, such as the validity period. However, should emissions trading be regarded as a means for handling the problem of regional air pollution? If the answer is in the positive, may I ask whether Miss CHOY So-yuk's sunset clause of five years can catalyze or establish an emissions trading regime? Will it give rise to positive or adverse effects? I cannot see that this sunset clause will bring about any positive effects. Nevertheless, I would like to stress that the EU has been conducting such trading in an ever increasing volume and more and more extensively instead of the other way round.

However, we may share the same concern, that is, we do not trust the Government. Actually, we do not have any ground to trust the Government for, say, the way it will exercise monitoring and control in the future. A good emissions trading regime calls for high transparency. As I am not really well-versed in this subject, please refer to the abundant information available on the EU's webpage on trading system. I hope the Secretary will make reference to the information disclosure regime adopted by the EU and set up a dedicated website in future in order to make the relevant information available to the general public.

President, let me respond to Miss CHOY So-yuk specifically. The Democratic Party cannot support Miss CHOY's amendment. Let me quote the comments received by Members of this Council from a certain environmental group, I mean Greenpeace, which staged a petition up there just now. It has

been well recognized as a relatively radical environmental group. Simply, it is at the forefront of environmental protection. I can see Mr LEUNG Kwok-hung nodding. As far as radicalness is concerned, Greenpeace and he are on a par with each other. President, let me quote from a submission received from Greenpeace as follows: "The Legislative Council will resume the Second Reading of the Air Pollution Control (Amendment) Bill 2008 next week (that is, today). Under the Bill, the Government allows power plants to enter into joint ventures with power plants in Guangdong Province under the emission trading regime to invest in emission reduction projects in order to obtain emission credits. A Member proposed an amendment proposing that trading contracts of emission credits with a validity period exceeding five years be subject to the approval of the Legislative Council. We have reservation about it and we are writing to express our views. The Member proposed the amendment because of the concern that the purchase of emission credits for many years in one go by power plants in Hong Kong from those in the Mainland may not be helpful to alleviating air pollution in the region. I will try to express the Member's concern in the following manner." President, a lot of figures are then provided in the submission. As it is too difficult to read them out, I will skip that part and just read out the justification provided in the ensuing part. "The paradoxical reason why this situation may arise is that when the two power plants initially enter into the agreement, they only know the emission caps for 2010 to 2012 (as Ms Audrey EU just said), but the validity period of the contract is as long as four years, that is, beyond the time limit, while the emission cap for the fourth year will change.

"The Member proposed that if the validity period of the emission credit purchase agreements entered into by power plants in Hong Kong and those in the Mainland exceeds five years, approval of the Legislative Council should be required so as to prevent Hong Kong power plants from purchasing emission credits for many years in one go, thereby causing the aggregate cap for the region to exceed the allowed emission volume even if the relevant power plants' excessive emission is offset. This concern arises from the following assumptions: Even if power plants do not know the emission caps for the future, they will still purchase emission credits in advance. However, we think this is very unlikely to happen. The cap and trade system facilitates emission reduction through market forces and stakeholders will, after receiving clear market information, make the most cost-effective decisions of their own — to invest in emission abatement facilities, purchase emission credits or simply settle the problem by paying the fines. Clear emission caps are market information,

and given the existence and operation of an emissions trading regime, stakeholders will be able to make corresponding decisions only after obtaining the information.

"On the contrary, if there are uncertainties in the market, stakeholders will definitely refrain from taking any action casually. That is to say, if power plants do not have any idea about the long-term emission caps, they will not purchase a large amount of emission credits in advance to avoid any risk. For example, if the Government only sets the emission caps for the coming four years, while the medium- and long-term emission policy is not clear, power plants will not purchase emission credits for 15 years in one go because they may suffer losses if the Government substantially increases the emission caps in the future. As the market will make adjustments on its own, there is no need to make this superfluous effort and require that approval of the Legislative Council be obtained for emission credit purchase agreements with a validity period exceeding five years. Actually, this project-based emissions trading regime proposed by the Government is similar to the clean development mechanism adopted under the existing Kyoto Protocol in which developed countries may invest in GHG emission reduction projects conducted in developing countries and obtain emission credits in order to meet the mandatory targets specified in the Kyoto Protocol. The Kyoto Protocol requires developed countries to reduce GHG emission by 5% below the 1990 levels in 2012, and the commitment period is up to 2012.

"We are of the view that the success of the emissions trading regime lies in whether or not the Governments of Guangdong and Hong Kong can set clear medium- and long-term emission reduction targets and ensure that these targets will not be changed lightly. As the Hong Kong Government has not given any detail about its vision for air quality in the region after 2010 so far, we do not know whether any possible changes to the environmental policy of the Central Government will affect the emission reduction targets of Guangdong Province. As such, the Hong Kong Government has a duty to provide the relevant details to remove the uncertainties of the emissions trading regime." This is the submission made by Greenpeace to Members of this Council, and I have also shared some of my views here. To put it simply, Greenpeace does not support Miss CHOY So-yuk's amendment.

President, I personally find it necessary to do something to give a balanced view of Miss CHOY So-yuk's concern. Miss CHOY acted out of good

intention, hoping that the Government will enhance its transparency instead of bypassing the Legislative Council through administrative means or implementing environmental protection measures half-heartedly. We do have grounds. We have brought these balloons with us because the entire Bill only regulates the emission of three pollutants while excluding CO₂. We have reasonable grounds to doubt the Government's determination. However, as I mentioned repeatedly during the scrutiny of the Bill, the emission reduction regime is a means worthy of consideration and it will have a certain positive effect on regional emission reduction. Therefore, even in the absence of legislative regulation in the future, I still hope the Secretary will make efforts in data disclosure, information disclosure or transparency. In other words, the relevant authorities will have to come to the Legislative Council every year to give a thorough report on the mechanism and disclose more detailed information on the website. If the public raises grave doubts about emissions trading, the Government should also consider whether or not approval should be granted.

Although I do not support CHOY So-yuk's amendment, I agree with the spirit behind it, and I also hope the Secretary will consider Miss CHOY's views.

MISS CHOY SO-YUK (in Cantonese): President, I have to clarify many aspects because a lot of Honourable colleagues may have misunderstood them.

Mr SIN Chung-kai sees the five-year limit as a sunset clause, but this is not the case. To limit the validity period of emission reduction projects to not more than five years does not mean that the projects will expire or this piece of legislation will not be enforced in five years' time. He thinks that if my amendment is passed, power plants may stop making any efforts. He also thinks that even if the Bill is passed, power plants may not carry out emission reduction at full speed. Honourable Members may have misunderstood that this Bill seeks to reduce emissions, thereby requiring power plants to make efforts in emission reduction.

Actually, we are discussing a scenario in which a power plant will have a means to continue with its operation and go on producing excessive emissions when its emission has exceeded the allowed emission level or volume, that is, the emission allowances allocated by the Government. I hope power plants will not compete to purchase emission credits, otherwise it will serve as proof that

emissions from local power plants have exceeded the allowed level and have always been so, and thus emission reduction and other incentives have to be used to solve the problem of excessive emissions. We certainly hope no one will do so, which proves that emissions from power plants do not exceed the allowed level. Therefore, the question is not that it is a sunset clause, but whether or not the Government will allow power plants to exceed their allowed emissions for a prolonged period of time.

Just now, Mr SIN Chung-kai mentioned Greenpeace and Ms Audrey EU also mentioned environmental groups. Actually, I did distribute this amendment to the environmental groups I know, but I have not received any opposition. Greenpeace discussed this issue with me in detail, and the letter I received from them is different from the one received by Mr SIN Chung-kai. Perhaps he has been misled.

Greenpeace indicated that they understood my view and advised that under the Secretary's proposal of allowing excessive emissions for an indefinite period of time, when the PRD Region tightens the requirement in the future, because of the long-term contracts in force, the contract requirement would appear to be lenient in comparison with the tightened one, and thus emissions will increase. However, as this is not very likely to happen, they thus suggested that the proposal be passed.

However, just now I heard Mr SIN Chung-kai quote from their letter that the Government may relax the requirement in the future to enable power plants to increase their emissions. But I do not believe this will happen. Neither do I believe that environmental groups will wish the Government to relax the emission volume. Therefore, as pointed out by Greenpeace, if power plants do not know the extent to which the requirement will be relaxed in the future, it is unlikely that they will be so stupid as to purchase so many emission credits as if they were stockpiling futures. I think this situation will not happen, and neither will we allow this to happen. The Government can only tighten but not relax the allowances.

Just now, Ms Audrey EU said that she does not believe the Government will increase the allowances in future. I also share Ms EU's view that allowances will not be increased in future. It shows that we are not talking about the possibility of allowance increase, and therefore, power plants will plan

for the days ahead and acquire the futures. It is precisely because we think there is the possibility that the allowances will be reduced in future that power plants will be allowed to produce excessive emissions for a prolonged period of time if they acquire the futures now.

The focus of our discussion is on the increase of allowances. When the emission of a power plant is 110 tonnes, which has exceeded the allowance of 100 tonnes initially allocated to it, how can it deal with this excessive emission of 10 tonnes? It can only enter into a contract with other power plants in the PRD Region. If the mainland authorities tighten the emission allowances and require power plants in the PRD Region to reduce the emission from 100 tonnes to 90 tonnes in future, the power plant in the PRD Region will have to think of ways to reduce its emission to 90 tonnes. However, as it has entered into a contract with the power plant in Hong Kong, all it has to do to meet the requirement is to reduce its emission to 90 tonnes in the coming years. In other words, the emissions from both places will be increased by 10 tonnes for no reason.

President, I am glad to see you nodding because this is really hard to explain. I have spent much time explaining this to the others. Thank you, President. You are so clever that you understand what I mean right away. *(Laughter)*

Therefore, the focus of our discussion is entirely on how many years the power plants of Hong Kong will be allowed by the Government to exceed their allowed emission. We also understand, as repeatedly indicated by the Government — and I also saw the Secretary nodding when I mentioned this point just now — that instead of relaxing the allowances, the Government will only tighten them in the future. We only hope power plants will not purchase these futures for stockpiling purposes before the Government tightens the requirement.

Environmental groups are well-intentioned, and I also consider it their good intention to require me to urge the Government to provide the medium targets for 2010 to 2020. I also agree to urge the Government to provide such targets, and actually I have been doing so over the years. When the DAB met with the Chief Executive and the Secretary a few years ago (Secretary Dr Sarah LIAO was still in office back then), it requested the Government to liaise with the PRD Region the air quality control standards after 2010 for both parties. Even if I was able to obtain the standards, if the present Bill, as introduced by the

Secretary, is passed, power plants will be able to stockpile substantial emission credits for a prolonged period of time. Therefore, I still hope Members will support my amendment. Thank you, Chairman.

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I thank you for allowing me to make a response. As some Members have mentioned some of my personal views in their speeches on the Bill, I think I need to respond to them.

Madam Chairman, I have noted that Miss CHOY So-yuk, in her speech just now, seemed to hold that I had made some incorrect reports. But I have also noted carefully that she might have quoted some reports. Otherwise, it will be a direct allegation. Madam Chairman, I also hope that you can make a judgment because this is about my personal integrity. But I have also noted that she might have quoted other reports as some Members did.

If we are talking about the same report today, which I have also read, I will agree to some of its points. I agree that the enactment of this Bill is not easy. I have attended the meetings of the Bills Committee and my colleagues have also made a lot of efforts explaining why the Government has to introduce this Bill. They have also clarified that both parts of the Bill are equally important. In the first part, the emissions of power plants will be further tightened in a highly transparent way. The second part is about the common target of the two places of further tightening emissions so that the power plants in the two places may adopt the measures through a more flexible market mechanism when the emission control has been further improved.

But I must state that this may also be the biggest difference between my view and Miss CHOY So-yuk's, thus giving rise to the report and conjecture. And this is about the proposal which, apart from capping the percentage, has also stipulated the validity period. In this connection, the Government is really worried that the scheme will exist in name only after the requirement has been tightened. Otherwise, the Government is most happy to incorporate Members'

views into its amendments. Take 85% — sorry, take the ceiling of 15% as an example. This lower percentage, which was initially proposed by Ms Audrey EU and became the consensus forged by Members of other parties and groupings after discussion, has been absorbed willingly by the Government.

However, the difference between us and Miss CHOY is precisely because we are worried that the effectiveness of the scheme will be adversely affected if a restriction on the validity period is imposed on top of the percentage. Regarding this point, some Members have quoted the view of some green groups, that the Government may not necessarily take the lead in various fields of work. But I believe Members will agree that the ultimate purpose is to ensure that the power plants in both places can do a good job in emission reduction and they can engage in emission trading in the market on condition that their performance is better than the existing standard. I believe the purpose is precisely founded on the hope that in the long run the whole region, including Hong Kong and the Mainland, can do a better job in air pollution control. This is not to allow incessant pollution by the power plants in both places, as some Members have said. I believe this is also the reason why the Government is so concerned about the proposal.

Regarding some Members' concern about whether the arrangement will be submitted to the Legislative Council for scrutiny, I have also mentioned this point in my speech just now. I have undertaken that if there is an application for acquisition of emission credits within the ceiling of 15%, we are happy to submit it to the Legislative Council. Before that, we will conduct a public consultation through the existing procedure of the ACE. We will perform this task.

I do not believe the arrangement will give rise to wide interest in the short term because the power plants engaged in emission trading are required to make very huge investment which is mainly on project basis. Most importantly, however, emission trading is allowed to take place in both places because such an arrangement is another effective channel apart from tightening the emission caps.

With these remarks, I wish to clarify questions that have been raised by Members and hope that Members will support the Government's motion.

CHAIRMAN (in Cantonese): Miss CHOY So-yuk, do you wish to speak again?

(Miss CHOY So-yuk shook her head to indicate she did not need to speak again)

CHAIRMAN (in Cantonese): Secretary for the Environment, you may move your amendment.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move the amendments to the proposed section 26M in clause 5, and to clauses 12 and 15.

Proposed amendments

Clause 5 (see Annex III)

Clause 12 (see Annex III)

Clause 15 (see Annex III)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for the Environment's amendments, I wish to remind Members that if those amendments are passed, Miss CHOY So-yuk may not move her amendments to clauses 5, 12 and 15. If the Secretary's amendments are negated, Miss CHOY So-yuk may move her relevant amendments.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for the Environment 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)

Miss CHOY So-yuk rose to claim a division.

CHAIRMAN (in Cantonese): Miss CHOY So-yuk 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.

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr Fernando CHEUNG, Prof Patrick LAU and Mrs Anson CHAN voted for the amendments.

Mr WONG Yung-kan, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendments.

Mr Albert CHAN and Mr LEUNG Kwok-hung abstained.

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

THE CHAIRMAN announced that there were 42 Members present, 34 were in favour of the amendments, five against them and two abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

CHAIRMAN (in Cantonese): As the Secretary for the Environment's amendments have been passed, Miss CHOY So-yuk may not move her amendments to clauses 5, 12 and 15, which are inconsistent with the decision already taken.

CLERK (in Cantonese): Clauses 5, 12 and 15 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 6A Section added.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move that new clause 6A be read the Second time, as set out in detail in the paper circularized to Members.

New clause 6A seeks to add section 30B to the Air Pollution Control Ordinance so as to specify the penalties for excessive emission or provision of incorrect information. We propose that if a power plant has committed excessive emission, the specified licence holder will be liable to, on a first conviction, a fine of \$30,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission. On a second or subsequent conviction, the specified licence holder will be liable to a fine of \$60,000 and to imprisonment for six months.

Besides, if a person who is required to provide any information on a specified pollutant under the specified licence has provided incorrect information or omitted any important items deliberately, the person will be liable on conviction to a fine at level 6 or \$100,000.

In view of the Bills Committee's concern that the fines mentioned just now may be paid by the customers of the relevant power company, we propose an amendment to add sections 30B(3) and (4) to the Air Pollution Control Ordinance so as to ensure that the relevant fines have to be paid by shareholders of the power company.

Madam Chairman, the new clause has obtained the support of the Bills Committee. I implore Members to support and endorse the amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be read the Second time.

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

MR SIN CHUNG-KAI (in Cantonese): The current amendment is in fact proposed by colleagues in the Legislative Council, in particular Mr Martin LEE, who has made reference to a lot of legislation and considered that it would be too compassionate to the two power plants if the original penalties were adopted by the Government. But we should not be compassionate to them because we are now talking about emissions. So, I believe the current amendment is reasonable instead of being too stringent to them.

But I am still a bit worried. Of course, it is our earnest hope that the Government need not initiate prosecution against the power plants. It will be ideal if the power plants can get their job done in this aspect. But I hold the view that the Government had better conduct more inspections, more auditing or checking in the future.

With these remarks, I support the amendment.

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

MS AUDREY EU (in Cantonese): Chairman, I would like to speak briefly on the amendment. The penalties originally proposed by the Government in the Blue Bill are entirely inappropriate to be adopted as penalties in the Bill.

The Administration has drawn reference to some existing penalties when deciding the current clause. But such penalties do not cater to the actual situation of power plants because these are penalties to be imposed on a daily basis for breaching the relevant legislation and do not cater to excessive emissions which are calculated on yearly basis.

To put it simply, Chairman, when abundant resources are available to the Secretary, and particularly the relevant government departments, we hope that they will give adequate consideration and make full preparation in drafting such legislation so that even Members who are laymen can propose certain amendments. I am very pleased that the Government has accepted the amendment in this regard. Chairman, I hope that problems of its kind will not arise so frequently. Thank you, Chairman.

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

MR MARTIN LEE (in Cantonese): Madam Chairman, colleagues should remember that penalties laid down by the Government are the maximum and heaviest penalties which will not be meted out by a Judge and Magistrate unless he opines that the relevant case is the worst scenario or the most undesirable that can be imagined. In other words, the offender will certainly not be given the

maximum penalty at first conviction. Neither will such a sentence be passed at a second conviction. The maximum penalty will be imposed only when the offence has been repeatedly committed and the case concerned is considered the worst of its kind as far as one can imagine. Hence, the proposed penalties are not too heavy at all.

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

(No Member indicated a wish to speak)

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

(The Secretary for the Environment shook his head to indicate he did not need to speak again)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 6A.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move that new clause 6A be added to the Bill.

Proposed addition

New clause 6A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the

Air Pollution Control (Amendment) Bill 2008

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 Air Pollution Control (Amendment) Bill 2008 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Air Pollution Control (Amendment) Bill 2008.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Product Eco-responsibility Bill.

PRODUCT ECO-RESPONSIBILITY BILL**Resumption of debate on Second Reading which was moved on 9 January 2008**

PRESIDENT (in Cantonese): Miss CHOY So-yuk, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MISS CHOY SO-YUK (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Product Eco-responsibility Bill, I would like to report the deliberations of the Bills Committee.

The Administration has published "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" (Policy Framework) setting out its strategy to tackle the imminent waste problem. Enshrining the principle of "polluter pays" and the element of "eco-responsibility", the producer responsibility scheme (PRS) is a key policy tool in the Policy Framework for waste reduction, recovery and recycling. The Administration proposes to formulate a Bill as a statutory framework for implementing the PRS and the first PRS will be the environmental levy on retailers who provide plastic shopping bags (PSB).

The Bills Committee has noted that the framework legislation seeks to provide the legal basis on which a PRS can be implemented on individual types of products when the opportunity is ripe. However, members expressed concern that the framework legislation may have given the Secretary for the Environment extensive power to introduce other PRS. The Administration's explanation is that as a piece of framework legislation, the Bill contains a purpose clause setting out its objectives and intended coverage and does not contain any provision that will empower the Secretary to introduce a new PRS through subsidiary legislation. Any new PRS in future should be implemented by adding provisions on the new PRS to the principal Ordinance through an Amendment Bill. The Secretary will make it clear at the resumption of Second Reading debate on the Bill that new statutory PRS in respect of other products will be developed in consultation with the relevant stakeholders and the

Legislative Council, and that these will be implemented through amendments to the principal Ordinance.

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

Given that recycling is an integral part of PRS, the Bills Committee is disappointed that the Bill does not contain any provision in this respect. Some members hold the view that part of the proposed environmental levy should be used to provide financial incentives for the recycling of used PSB such as refund or partial refund for customers upon return of used PSB, or subsidy for the trade to place recycling bins at their retail outlets for the collection of used PSB. Measures should be put in place to support the local recycling industry, particularly for recycling of PSB which is considered not cost-effective given the high transport cost.

Part 2 of the Bill sets out the general provisions that supplement any regulation-making provision on specific products, the enforcement powers and the appeal mechanism. Under the framework legislation, the provisions under Part 2 may be extended to apply to other PRS as and when they are introduced through Amendment Bills in future. The Bills Committee has expressed concern about the relevant provisions, including the minimum ranking of public officer authorized to perform certain functions of the Bill; the power to request relevant parties to provide assistance or information, and the power to enter and search non-domestic premises; the offence of omitting a material particular from any information; the offence committed by the director of a body corporate due to neglect; the appeal procedures and the composition of the Appeal Board.

In response to members' view, the Administration agrees to propose a Committee stage amendment (CSA) so as to specify the rank of environmental protection inspector as the minimum rank of public officers to be authorized. Besides, the authorized officer can demand the relevant person to provide the relevant information that is in his possession only; an authorized officer shall not enter or search non-domestic premises without a warrant; any person who has omitted any material particular without reasonable excuse will commit an offence; a director of a body corporate will not be legally liable due to neglect;

any party to an appeal may be legally represented; there should be at least three members in the Appeal Board, one of whom must be the Chairman.

Part 3 sets out the regulatory scheme that introduces a levy on PSB. The Bills Committee has studied the feasibility of combining Part 2 and Part 3 of the Bill, given that a substantial part of the Bill relates to the introduction of an environmental levy on PSB. The Administration's explanation is that Part 2 provides for the general provisions applicable to any statutory PRS contained in the principal Ordinance while Part 3 sets out the specific contents of PRS on PSB. If the application of Part 2 is to be extended to other products, the relevant Amendment Bills must specify those products as additional prescribed products to which Part 2 applies. The Amendment Bills may also propose amendments to other provisions in Part 2 in order to modify them where appropriate, having regard to the requirement for different products. As such, it is necessary to preserve the current structure of Part 2 and Part 3.

As the Bills provides that the Secretary for the Environment may, after consultation with the Advisory Council on the Environment (ACE), make regulations on certain matters, the Bills Committee considers it necessary that such regulations should be subject to the positive vetting procedure given the wide scope of the proposed regulations. At members' repeated requests, the Administration eventually agreed to move CSAs and undertook to include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that the Administration would continue to consult the affected trades on the implementation and operational details of the environmental levy on PSB, including how to account for the number of PSB.

The Bill provides that a person is a prescribed retailer if he owns more than one qualified retail outlet. The Bills Committee has raised concern that small and medium enterprises will be subject to the levy scheme, thereby increasing their financial burden. The Administration will move CSAs so as to raise the threshold to five qualified retail outlets. The Administration will also specify that a retail outlet is a qualified outlet if the goods offered for sale in the outlet include any food or drink, any medicine or first-aid item, and any personal hygiene or beauty product. A person who displays a certificate of registration at a place that is not a registered outlet without reasonable excuse will commit an offence.

Schedules 1, 2, 3 and 4 to the Bill set out the definition of PSB, the exemptions, the level of levy and the definition of prescribed retailers respectively. As these are the core elements of the levy scheme, members hold the view that the positive vetting procedure should be adopted for these amendments instead of the negative vetting procedure as currently proposed under the Bill in order to allow sufficient time for scrutiny. After members' repeated requests, the Administration eventually agreed that the positive vetting procedure should be adopted for future amendments to Schedules 1, 2 and 4. Given that Schedule 3 only sets out the level of levy, the Administration considers that there will be sufficient time for the Legislative Council to consider amendment to this Schedule under the usual negative vetting procedure. In response to members' view, the Secretary will, at the resumption of Second Reading debate on the Bill, specify that any change in the level of levy will take effect after completion of scrutiny of the relevant amendment under the negative vetting procedure.

The Bills Committee is also concerned that the levels of penalties proposed in the Bill are too stringent. In this connection, the Administration will propose relevant CSAs after a comprehensive review of all the penalties.

The Bills Committee, in principle, supports all the CSAs proposed by the Administration.

Deputy President, I will express the views of the DAB and my personal views on the Bill.

Deputy President, the legislation is actually belated and this is particularly true to myself. It has been 10 years since 1998 when I moved a motion urging for the implementation of PRS. Ten years down the line, I have no idea how many government officials I have met to whom I made petitions and requests or the number of motions I have moved. Fortunately, I have received the responses of many colleagues in this Council. Many colleagues also feel that they cannot afford to wait any longer and it is imperative to put PRS in place.

As I always say, Hong Kong is probably a rare place in the world for it has put all its resources on waste disposal. In foreign countries, most resources are deployed in waste reduction, followed by recycling of waste materials, separation and recovery. And resources for waste disposal rank the last. But

in Hong Kong, we do not have the first two policies, as landfills have become the only solution. I hope the Secretary will not succeed this time. Thinking that a large incinerator is not enough, he has planned for the second and third phases, in the conception that the waste problem will be solved forever by having two or more large incinerators.

The introduction of PRS is only the first step — Of course, the introduction of landfill charge for construction wastes before that also represents one step forward. This is an achievement of this Council for we have been forcing the Government to implement the scheme and this is a relatively great step forward. However, Deputy President, in scrutinizing the Bill, the biggest problem we have encountered is the framework legislation which I find hard to understand. Even at the Committee stage, we are still puzzled as to how to do with this framework legislation.

In fact, at the panel meeting two years ago prior to the submission of this Bill — it was called an umbrella bill instead of a framework, Members had made a lot of criticisms. I remember that I had argued with the officer-in-charge of the waste reduction group under the ACE whether there was a need to have the framework and whether we can enact a framework legislation. Regarding the introduction of the so-called framework legislation, Deputy President, as you are a member of the Bills Committee, both of us know that it exists in name only for it is only a framework without substance or "knife". It has been created entirely out of the Administration's desire to have such a framework.

As far as I know, the Government insisted on having a framework because it had observed the situation in Australia. I remember that the Secretary told us that the framework legislation implemented in Australia was very effective. After the introduction of the framework legislation, people have reduced wastes on their own initiative immediately without the need of proposing any penalties. As wastes have been substantially reduced on people's own initiative, there is no need to propose any penalties at all and the problem has been solved. We have also taken a look at the framework legislation of Australia. As I have always said, it resembles the legislation on the West Kowloon Cultural District we passed last week. The entire political system in Australia is different from ours. In Hong Kong, our executive-led Government can introduce a Bill whenever it wishes. Moreover, the Government has not set up a bureau like the West Kowloon Cultural District Authority to handle the matter. In Australia, a

bureau responsible for waste reduction or waste disposal has been set up and relevant legislation has been enacted to empower the bureau to discharge its functions.

However, I do not understand why the then Secretary Dr Sarah LIAO thought that such a practice was so good that it should be introduced into Hong Kong. I would give full support if the Government would set up a Waste Disposal Authority like that in Australia. But instead of doing so, she had only introduced the framework and functions of such an authority in Australia into Hong Kong. I asked the Secretary: Why should powers be bestowed on such an authority before legislation can be enacted? Why should its scope of work be specified before legislation can be enacted? Why should it be allowed to impose fees and charges before legislation in this aspect can be enacted? These are basically unnecessary.

Members have made it clear at meetings of the relevant panel that the framework legislation is not feasible. Despite that, the Administration still insisted on adopting the negative vetting procedure. As I have said, if the Administration can enact a framework legislation so that matters are subject to negative vetting, you can behead me for I will not believe it. Having worked in this Council for so many years, I do not believe colleagues will allow the Administration to issue a blank cheque, meaning that the name of the payee is left blank so that you can write anything on it. How can that be?

However, this time around, the Government has also realized the actual situation and I thank the Government for that. But it has to. I believe that even though negative vetting is imposed on us, I will be the first one to oppose the passage of the Bill. Eventually, the framework contains a few words and the provision contains only a few words.

Then there is Part 2. Part 2 would have covered a wide range of products. But as it is uncertain what penalties will be imposed in future, all maximum penalties are incorporated, including the levy on PSB. Of course, as I said earlier, the Bills Committee has unanimously agreed that the penalties proposed by the Government are not feasible and unreasonable.

As I said when speaking on the Air Pollution Control Ordinance, if those big power plants deliberately submitted incorrect figures, the fine on first

conviction is \$50,000. But if some small and medium enterprises have unintentionally submitted erroneous figures by mistake, say, it is reported that 9 800 PSB have been sold but the actual figure is 10 000, thus giving rise to a discrepancy, they will be liable to a fine of \$200,000 and six months' imprisonment I find this incomprehensible. But I believe many colleagues, such as Mr Vincent FANG who is very agitated, will speak on this later. As such, the content of Part 2 is now related to the levy on PSB. In other words, Parts 2 and 3 are basically the same, although the Government is unwillingly to merge them.

Of course, this has nothing to do with me but it will be a headache for you in future for you will find it difficult to add a second product to the framework or Part 2, not to mention adding it to Part 4 and the problems associated with subsections 1, 2, 3, 4, which have to be considered by the Department of Justice and the relevant Policy Bureau. In fact, the entire framework is basically a bad idea. I am sorry, Deputy President, I do not know (*Laughter*)

According to the Government's explanation, the objective of setting up this framework is to send a message to the sector and the community that the Government has taken it seriously and the PRS will soon be introduced and implemented. This is very valuable and because of this, I strongly support the legislation and because of this, I agree to set up the framework.

But in my opinion, it will be easier to handle other items in the absence of such a framework because there will be no need to make amendment and a second piece of legislation can be submitted to the Legislative Council more speedily. I now wonder when the Administration can finish its work on matters relating to the levies on six types of products such as vehicle tyres, electronic products, which are the third, and beverage containers, which are the fourth. The Administration is now studying the wordings in detail, trying to divide the legislation into different parts covering PSB, vehicle tyres and electronic products. I wonder how the legislation will be drafted in future. In any event, while the drafting of the legislation is another matter, I still have to speak out from the bottom of my heart. I hope the PRS on the remaining five products can be implemented expeditiously and the Government does not just engage in empty talk.

Of course, Deputy President, in this process, the Government has always hinted that strong opposition is met. To be fair, I have not heard any Member

oppose it. Regarding some details, there are certainly a lot of different views. And I have strong views too because of the penalties proposed by the Government concerning PSB and exemption, and so on. But I am satisfied after amendments have been made. Before that, there were really a lot of problems.

However, the biggest problem is certainly the late submission of the Bill which was submitted to the Legislative Council in the last couples of months before the deadline. I appreciate the Administration's worry about this Bill not passing. But we should not pass the Bill in haste simply because we have to expedite the process. We must exercise extreme prudence. So, thanks to the efforts of many colleagues, we find it now relatively satisfactory. Judging from the fact that no Member has moved any amendment, I think the Bill is considered acceptable.

Deputy President, another problem is about regulations. In fact, the expeditious enactment of this Bill is due to the fact that a lot of details will also be included in the regulations in future. As the saying goes, "The devil is in the details". So, these details will also be submitted to the Legislative Council for scrutiny and the Government has agreed that the legislation will be implemented after scrutiny by the Legislative Council.

During our deliberations, the government representatives indicated that the legislation could be passed in the middle of next year the soonest. But later hints were intimated in the press this is just like information about environmental protection. After learning it from the press, we faced questions posed by reporters. But the Administration will never tell us. It will only tell the reporters. I also hope that the media will not be used by the Administration. The media are often used as a means to force us not to do this or do that. I think this is over board. As Ms Emily LAU said, it is outrageous. Is the Government not over board?

I recently heard that the legislation would be implemented in the first quarter of next year. If so, we have to hurry up with our legislative work and I do not oppose this. But I hope that the Secretary can formally give an explanation to this Council and will not just give hints to the media, thereby leaving us to make a wrong estimation of the situation. While some Members are worried that the Government has implemented the legislation in such a rush without consulting the industry, some Members hope that the implementation can

be expedited for fear that the Government may lack the resolve to do that. So, I would rather hope that the Secretary can give us a detailed explanation later. The DAB welcomes the passage of this Bill.

Deputy President, I so submit.

MR VINCENT FANG (in Cantonese): Deputy President, one day my office received a message in which the sender said in a ferocious tone, "Vincent FANG, I run a shop in the Ho Man Tin Estate. Regarding the levy on plastic bags, you have to oppose it. It is unreasonable that customers are required to pay a levy for the plastic bags provided for carrying the things they bought. What kind of law is that?"

In addition, some hawkers have said to me, "The use of straws for tying up things is only a gimmick of the Government. How can we go back to the days when newspapers and straws are used for wrapping things? Don't let the Government impose the plastic bag levy on traders in the market."

Both of these two comments are made by the grass-roots shop operators in our neighbourhood. Fortunately, they will not be affected by the Product Eco-responsibility Bill (the Bill), but they all consider that the plastic bag levy is unreasonable because plastic bags have become a daily necessity. They are even worried that the Government will expand the tax net in the future, thus dealing a further blow to small operators and people's livelihood. This is one of the reasons why I, during the scrutiny of the Bill, have repeatedly urged the Government to submit its proposal of expanding the scope or increasing the levy to the Legislative Council for deliberation in the future.

Although in the course of deliberations, the Environment Bureau has listened to members' views and proposed several amendments which are more reasonable than the provisions in the Blue Bill, I have sought special exemption from the Liberal Party so that I can oppose the Bill, which mainly seeks to introduce a levy, on the ground that its spirit of imposing a ban by levying a tax is contrary to my idea of reducing waste for environmental protection, in addition to the views of the wholesale and retail sector.

In last week's motion debate on "Proactively promoting waste recovery and recycling", I also mentioned that the wholesale and retail sector's objection

to the levy on plastic bags does not mean that they do not support environmental protection. In fact, the trade has taken the initiative to implement a lot of environmental protection measures in a more proactive manner than that of the Government.

The wholesale and retail sector opines that the effect of a punitive measure which forces the people to use fewer plastic bags is counterproductive, because such a high-handed approach will not make people change their daily habits spontaneously. On the contrary, it will give them a misconception that the five cents of levy is the green tax they pay for the disposal of plastic bags. Thus they will be slack and unable to build up a consciousness of reducing the number of plastic bags being turned into waste.

The three environmental laws which have seen my participation, including the mandatory volatile organic compounds labelling scheme, the mandatory energy efficiency labelling scheme and the mandatory levy on plastic bags, are all mandatory in nature. Together with the previous negative vetting of the mandatory labelling scheme on nutrition information for pre-packaged food, I am frightened whenever I see the words "mandatory", "labelling" and "negative vetting". Why is everything in Hong Kong subject to labelling? Why can the Government do what it said? Why do business operators and the public have no right to voice their views?

Deputy President, I do not know whether or not the Environment Bureau has noted that labels are made of paper with lamination and glued on the bottom, in addition to the content of volatile organic compounds? As reflected by facts, every coin has two sides.

Speaking of the levy on plastic bags, retailers which collect the levy on behalf of the Government will have to submit an application and display a notice at a conspicuous location of each shop, stating that a levy on plastic bags will be charged. Moreover, they have to retain the documents for a number of years so as to facilitate the Government's random inspection. Meanwhile some retailers are required to write to the Government to apply for exemption. During this process, what contribution has been made to environmental protection by the Government which has endeavoured to bring us on a par with certain countries, or to achieve the target of "successfully reducing 1 billion plastic bags"?

Whenever the Government wants to enact a piece of legislation, it will cite the examples of many regions which are much more advanced than Hong Kong as justification in order to prove the backwardness of Hong Kong. As the Secretary said last week in response to the motion, the legislative process in the Mainland and San Francisco is faster than that in Hong Kong. However, let us take a look at the Plastic Limit Order promulgated on the Mainland. It is a comprehensive proposal on production control, use, recovery and recycling, under which offenders will be liable to a fine of RMB 10,000 yuan only.

This time, Hong Kong is going to supersede the United States and Britain, as well as our Motherland. It is proposed in the Blue Bill that the penalty includes a fine of \$200,000 and six months' imprisonment. Moreover, the law-enforcement agency will be given the power of entry and search without warrant, which is similar to that for search of drugs. But there is no mention of the whole environmental protection chain.

However, I have to thank the Secretary for the abolition of imprisonment and the classification of penalties in the Bill so that the maximum penalty has been reduced to \$100,000, and the law-enforcement agency has to apply for a search warrant first. Although the Government is willing to heed good advice, this has also reflected the Government's lack of careful consideration when drafting the legislation. The Government has simply mixed relevant parts of environmental legislation together, thus resulting in a lot of problems and leading to a longer time required for scrutiny by the Bills Committee. I am sure that the Bills Committee has no intention to delay the legislation because we have to attend a lot of meetings. So, is it true that the Bill has been introduced in haste because the Administration wants to push the Bill through in this term, thus resulting in a lot of ambiguities?

I have strong views on the spirit of the Bill which seeks to impose a ban by levying tax and the fact that the penalties originally proposed are too heavy. Apart from that, I do not agree that all income generated from the levy on plastic bags should be accounted to the Treasury. I understand that under the Government's financial management practice, specific sums for specific purposes will not be adopted. However, it will be very difficult to get the money out after being put into the public coffers. Take the rent increase for food wholesale markets as an example. The tenants have to face an increase of 11.4% on the pretext of cost recovery. But on what basis is the cost calculated?

In what way is the revenue being used? The tenants have no involvement, although they have to bear the costs.

The Secretary has kept reiterating that the Government has injected \$1 billion into the Environment and Conservation Fund this year. However, the conservation of natural environment and reduction of waste are two completely different issues. It is basically a creation of artificial barriers to put these different functions under the same fund, not to mention that those who have aspirations in these aspects are required to submit applications which will go through cumbersome procedures.

As I said in this Council time and again, I hope that the Government will promote waste recycling by providing incentives so as to boost the value of wastes, thus promoting recovery and reduction of waste. The Secretary said last week that the levy on plastic bags is the financial incentive, in the hope that the people will not ask for plastic bags in order to save five cents. The Secretary has really put the concept of financial incentive into our daily life. As he is also aware of the effectiveness of financial incentive, why does he not expand the incentive?

Recently, it has been frequently reported that the price of waste paper has plummeted from the peak of \$1,600 per ton in last year to a few hundred dollars recently mainly because of a significant drop in the demand for waste paper in the Mainland. As a result, both scavengers and recyclers have lost motivation. The fact has reflected what I said last week. Other countries will not permanently import wastes from Hong Kong. We have to carry out recycling on our own so that useful wastes can be turned into fuels, and the Government should play the leadership role and take up the responsibility of planning and supervision.

The Secretary said that the supermarkets had refused to place plastic bag recovery facilities. Of course, if people have carried plastic bags with them when going to the supermarket, they naturally wish to save the five cents. Moreover, as the Government has not guaranteed, for example, how many times of recovery will be carried out daily in order to minimize possible hygiene problems, the supermarkets certainly dare not make any commitment.

In fact, the Food and Environmental Hygiene Department has laid down certain procedures for cleaning rubbish bins. Why can the Government not

provide a guarantee in respect of the recovery of plastic bags? Can recycling bins be placed in the government markets? It seems that the Government does not have a long-term and effective plan on this.

The same problems occur with the recovery of electrical and electronic products. In its discussions with the industry, the Government required that storage for end-of-life electrical equipment be provided by the industry and recovery would be carried out by the Government every six months or one year. The Government may be unaware of how expensive the current rentals of commercial warehouses are.

So, as I have all along pointed out, I do not support the extension of the levy to other products before the Government can put forward an effective method for recovery and recycling, and before it is willing to make a greater commitment in this aspect. This is also the main reason why the Government is required to submit an independent Bill to the Legislative Council for scrutiny when the levy is extended to other types of products.

(THE PRESIDENT resumed the Chair)

The wholesale and retail sector also knows that today's Bill concerning the levy on plastic bag will be passed. So I would like to make the following requests to the Secretary. First, as I mentioned last week, a review of the effectiveness of the policy should be carried out and the consumption of plastic bags through other channels should be monitored after the levy has been introduced for one year. Do not expand the scope of the levy or propose an increase on the ground that the Government's target of reducing 1 billion plastic bags in the first year cannot be achieved.

Second, I hope that the Government can expeditiously formulate a complete environmental protection chain of waste recovery and recycling so as to deal with the waste problem in a comprehensive manner.

Third, the Government will communicate and co-operate with the industry before deciding to extend the environmental levy to other products, so that the scope of recovery can be expanded.

Fourth, it is hoped that the Government will strengthen the green education for the people, and cultivate their awareness of waste recovery and recycling so as to achieve the goal of a genuine green Hong Kong.

I so submit. Thank you, Madam President.

MR SIN CHUNG-KAI (in Cantonese): President, first of all, I would like to congratulate the Secretary because he is going to make two achievements. This is his second Bill submitted to this Council today. I wish him success and the Bill will be passed smoothly. In fact, he has done a lot of work in just one year because, as mentioned by Mr Vincent FANG earlier, we have dealt with a total of four Bills, including this one, on environmental protection this year. I remember that, before you assumed office, Secretary, I had made a comment in this Chamber about Secretary Dr Sarah LIAO, who had been in office for five years, not making any achievement despite a lot of gestures by her. Nevertheless, Secretary Dr Sarah LIAO might have done a lot of groundwork enabling you, Secretary, to make four scores in four penalty kicks.

In the following paragraphs, President, I will speak in support of the resumption of the Second Reading of the Product Eco-responsibility Bill (the Bill) on behalf of the Democratic Party. But before further expressing our views on the Bill, I wish the Government can submit the relevant Bill to the Legislative Council as soon as possible when dealing with environmental legislation in future. In fact, I was a bit overloaded with the scrutiny work in the past year. As the scrutiny of several Bills was carried out simultaneously, I sometimes took the wrong file, a file containing the papers of another Bill, with me. Fortunately, the relevant papers could be found online.

As I said earlier, among the Bills submitted to the Legislative Council in the current Session, four are related to environmental protection, including the mandatory requirements on volatile organic compounds, legislation on the Energy Efficiency Labelling Scheme and the Bill on air pollution control which has just passed. Most of these bills were submitted to the Legislative Council almost at the end of the Session. Colleagues found the scrutiny work difficult because of insufficient time. I hope the Secretary will give colleagues more time for the scrutiny work in the next Session. After the end of this Legislative Council term, I will leave the hard work to my colleagues.

The Government has stated a number of times that the objective of the Bill is to lay down a framework legislation with the levy on plastic shopping bags (PSB) as the first environmental levy. If we look at clause 2(1) of the Bill alone, that is, the purpose of the Bill, we will find that the Government seems to endeavour to change the existing waste management policy through the Bill, including the objective of minimizing the environmental impact of various types of products, such as PSB, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries. In order to achieve these goals, the Government has also implemented the producer responsibility schemes (PRS) and formulated schemes or measures on the "polluter pays" principle, requiring manufacturers, importers, wholesalers, retailers, consumers or any other people to share the responsibility of reducing the use of products, as well as the responsibility of recovery, recycling and proper disposal of products.

Clause 2(2) even stipulates that the Government will strive to achieve the aforesaid goals in different ways, including requiring manufacturers, importers, wholesalers or retailers to implement product take-back schemes for a number of products, or the PRS, which is very popular in foreign countries. A deposit-refund scheme, under which a consumer is required to pay a deposit to be refunded on the return of certain products to a specified collection point, will be implemented. In addition to that will be the imposition of a recycling fee and environmental levy or even a domestic waste disposal charging scheme. However, if you read the provisions carefully, you will find that the Bill, under such a large framework, has only targeted at a small measure and, that is, the levy on PSB.

The Democratic Party does not oppose the framework legislation approach. In fact, I am not sure whether it is your remark, Secretary, or your predecessor's. You have introduced the so-called "one plus one" concept. As I mentioned before, we need a framework and a piece of specific legislation. This is my previous comment. The Democratic Party is worried that the Government cannot or dares not implement the aforesaid measures in the future. In other words, we are worried that the Government is gutless or incapable, or not making thorough efforts, or not resolute enough, rather than being too aggressive in its legislation.

President, in the course of scrutinizing the Bill, the Government did not make any specific commitment or provide any timetable for implementing the

other details in the Bill which serves as a framework. Thus the environmental levy gives people an impression that its objective is to increase government revenue. In fact, as we said at the meetings of the Bills Committee, we hope that the levy will become zero eventually. To put it simply, the number of used PSB is zero. Such an impression has distorted the principle of environmental levy. Moreover, to maintain "fiscal neutrality" so that the objective is not to raise revenue has also become the justification for opposing the introduction of environmental levy.

The measures set out in the objectives of the Bill tie in with the suggestions made by the Democratic Party two years ago. The Democratic Party hopes that the Government can gradually implement the legislative work on levies on PSB, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries, as well as product take-back schemes in the next Legislative Session. So, I urge the Secretary to give details or undertake in his speech that legislation will certainly be enacted in order to impose levies on various products as mentioned in the Bill and implement PRS in the future.

The Democratic Party agrees that, in order to reduce waste, we cannot rely on levy as the only means. A proper and efficient recovery and recycling system should be included. Even if we support the levy on PSB proposed in the Bill, we should also pay attention to the need of improving the existing low recovery and reuse rates of PSB. We hope that the Government can make reference to overseas experience and implement the recovery of clean plastic bags through mandatory legislation or incentives. In the statutes of California, for example, it is stipulated that large department stores must provide recycling facilities to collect plastic bags, and recycling is promoted through the imposition of levies on products.

In the motion debate proposed by Mr Vincent FANG last week, I already pointed out that the Government basically cannot convince people to accept the proposal of building incinerators and expanding landfills when there is still room for improvement in the recovery and recycling rates of solid waste in Hong Kong. Certainly, the Secretary cannot simply respond that the recovery rate of household waste in Hong Kong last year has reached 45% of the expected rate because the recovery rate was initially set on the basis of a very conservative target.

Compared with other developed cities, Hong Kong has been lagging behind in terms of its recovery policy or the effectiveness of recycling. Take Taipei as an example. As we have mentioned time and again, the local municipal government has stipulated that fast-food restaurants are not allowed to provide disposable tableware free of charge and used tableware should be recovered. Such a policy can only be implemented by way of legislation. The Democratic Party hopes that, when foreign governments have begun to promote the zero-waste concept, the Government can keep abreast of the times and improve recovery and recycling of solid waste.

President, the Democratic Party opines that the imposition of environmental levies is not to impose levies on certain types of products only. The Government should also reform other parts of our tax regime in order to achieve the effect of "fiscal neutrality" which is frequently mentioned by the Government. The Democratic Party advises that when the Government has acquired revenue through the levy, it should at the same time reduce other fees and charges that affect people's livelihood so as to reduce the people's tax burden. As environmental levy is a kind of regressive tax and low-income families will be subject to greater impact, the Government should reduce the impact of environmental levy on them. At the same time, double taxation should be pre-empted. For instance, while part of the revenue generated from rates is currently used to meet expenses on the disposal of municipal waste and cleaning, part of it in the past was allocated to the Urban Council and Regional Council to meet their expenditures.

I believe that in the next few years when other products are gradually subjected to environmental levy, the impact on the grassroots will be more obvious. To put it simply, District Council members or political parties may make more petitions to oppose the imposition of all kinds of fees or charges in the future. But I believe if the Government, in the process of achieving "fiscal neutrality", can make people understand that an increase of a certain type of levy will lead to a corresponding reduction of another, people will find it more acceptable. Thus, I urge the Secretary to discuss with the Financial Secretary on a reduction of other tax items such as rates when implementing the levies on PSB and other products, and when consideration is given to introducing the levy scheme on domestic waste in the future so as to achieve "fiscal neutrality".

The Democratic Party has always held the view that it is the best opportunity to promote green reform when the economy is booming. First of all, in an economic upturn when people's incomes begin to rise, they will be less resistant to the introduction of new taxes than in a period of economic downturn in the past, and the Government will have sufficient room to implement tax cuts. In last year's budget debate, the Democratic Party asked the Government to propose the environmental levy and the timetable. But the Government was reluctant to make any specific commitment.

Regarding the use of environmental levies, the Democratic Party has suggested that expenditure on the disposal of municipal solid waste should be accorded the first priority. If expenses on disposal of waste and pollutants are now met by public money (part of which is generated from rates), revenue from environmental levies should be used to meet such expenses first, for example, the operational cost of landfills, in order to realize the "polluter pays" principle. Secondly, the revenue should be used for subsidizing the recovery industry, promoting environmental protection, giving tax subsidy to low-income families and funding for public education.

Of course, we hope that apart from environmental levies, other government resources are available for subsidizing the recovery industry in Hong Kong. I would like to emphasize that subsidies may be needed in this aspect. In fact, I do not support giving subsidies to individual industries. However, as environmental protection involves public interests and our long-term interests, financial assistance may be considered because not too many green industries are commercially viable or able to make enormous profits commercially. The Secretary also fully understands that environmental levy is charged on the basis of the consumption of products which have caused pollution to the environment. The smaller the revenue, the smaller the amount of consumption. On the contrary, a large amount of revenue generated from such levies will not be conducive to the improvement of the environment. Therefore, to support the local recovery industry by means of such levies alone is not the best arrangement.

Finally, in the course of promoting environmental levy, I found that everybody would indicate his support for environmental protection. But everybody will shake his head when the policy is implemented and payment is demanded. Some stakeholders or organizations will try to turn themselves into free riders in different ways. I believe the Government will face a growing

resistance in the future when such levy is extended to other products and legislative work on other environmental legislation begins. The Government's top priority is to persuade the people to accept the "polluter pays" principle and the principle that environmental protection costs us money.

President, the Bill is only a beginning which, I hope, will give the Secretary more confidence so that he will make greater efforts, as Premier WEN has always asserted, when the PRS on the other five types of products aforesaid is launched in future. Secretary, I support you.

MS MIRIAM LAU (in Cantonese): Madam President, environmental protection has become the major trend of the human world in the 21st century. Hong Kong, as a member of the global village, is duty-bound to promote environmental protection.

In recent years, the Hong Kong Government has tried to implement environmental policies through various measures and today's Product Eco-responsibility Bill (the Bill) is one of these measures.

In 2005, the Government introduced "A Policy Framework for the Management of Municipal Solid Waste", which proposed the implementation of producer responsibility scheme (PRS). Enshrining the principle of "polluter pays" and the element of eco-responsibility, the PRS aims at waste reduction, recovery and recycling of useful materials. The Liberal Party supports the proposal.

During 2006 and 2007, the Government repeatedly briefed the Legislative Council Panel on Environmental Affairs on the concept of its legislation. The Government indicated that in order to implement the PRS, it proposed to adopt the framework legislation model so that the main elements of individual PRS could be set out in the principal legislation while the implementation and operational details of the PRS would be listed in subsidiary legislation. The proposal sounds quite reasonable, but the Bill subsequently submitted by the Government is really very disappointing.

First of all, the Bill is divided into three parts. In Part 1, only the objectives of the legislation and the proposed scope have been set out. As only the objectives are set out, it does not contain any operative provisions. Part 2

and Part 3 contain operative provisions, but they only apply to plastic shopping bags (PSB). The Government explained that Part 2 contained the general provisions, particularly concerning the enforcement powers, penalties and the appeal mechanism, which could be amended so that it would be applicable to other newly added PRS in the future. But at the current stage, we do not know what these schemes are and the details of these schemes are not available to us. The only PRS that we can see is the levy on PSB. As a result, the Bill, which is known as a piece of legislation for implementing the PRS, has in fact aimed at charging a levy on PSB and granting too much power to enforcement officers, while imposing too stringent regulation and penalties on the offenders.

The Government may think that other PRS will be added in the future. So at the current stage, although the Bill is only about the levy on PSB, the Government will incorporate all the maximum enforcement powers and penalties so that the provisions will be as stringent as possible in order to include other PRS in future. However, the Government has forgotten that what we can see now is only a piece of legislation for imposing levy on PSB. Regarding the actual implementation of PRS, the Bill can be described as vague and general, devoid of commitment or substance. It can only be described as an expression of intent at most.

Secondly, as mentioned in the Policy Framework in 2005, recovery and recycling of materials is an important part of PRS. However, no provisions have been made for this in the Bill. In fact, in some advanced countries such as the United States, a comprehensive PSB recycling scheme has been put in place although levy on PSB has not yet been implemented. For instance, recycling bins are provided in supermarkets so that used PSB can be collected for recycling purposes.

In our opinion, in order to implement a comprehensive PRS for PSB, there is a need to promote the recovery and recycling of PSB, apart from imposing the levy. Moreover, part of the levy should be used for subsidizing recovery and recycling projects so that the whole scheme can achieved the goal of three "Rs" (that is, reduce, reuse and recycle). Unfortunately, the Government has only reiterated that the Administration will continue to roll out the Source Separation of Domestic Waste Programme. The Government has pledged that it would liaise with the major supermarket chains to explore possible measures to facilitate the collection of used PSB. But given that it will take time, the Liberal

Party opines that the Government should have started the study at least two years ago when the legislation was in conception if the Government had pondered over the scheme deeply so that the relevant measures could be introduced simultaneously with the legislation. But the Government has not done so.

The Government has also rejected the idea that part of the environmental levy be used to provide financial incentives for the recycling of used PSB. The Government insists that the environmental levy serves as a deterrent economic tool to reduce the use of PSB rather than as a means to raise government revenue. In our opinion, however, the effectiveness of the levy as a tool by the Government to reduce the use of PSB will be short-lived. When people have got used to the levy, the deterrent effect will diminish and environmental benefits will be reduced accordingly. By then, such kind of PRS which only aims at imposing levy will not solve the problem of PSB effectively.

Certainly, the Government can repeatedly increase the environmental levy so as to restore its deterrent effect. For instance, in Ireland, the levy on PSB was first introduced in 2002 at €0.15 (around HK\$1.8), which was increased to €0.22 (around HK\$2.7) in 2007, representing an increase of 50% in a short period of five years. I do not know whether a continuous increase in levy is acceptable to the public, but Ireland is at least better than Hong Kong. Why? As far as I know, in Ireland, the PSB levy collected is invested in environmental projects. But in Hong Kong, the levy on PSB is used for boosting the Government's coffers only. The Liberal Party holds that as the Government wishes to achieve environmental protection through the Bill, a series of effective and feasible arrangements for waste recovery and recycling should be implemented as soon as possible in order to maximize the effectiveness with the least effort. Otherwise, the legislation may be reduced to a piece of revenue legislation with very limited contribution to our long-term environmental protection cause.

Furthermore, I have strong views on the drafting of the whole piece of legislation. As the Government has adopted the framework legislation model, the operative provisions are contained in Parts 2 and 3 only, and some Schedules as well. These two parts only apply to the levy on PSB. However, according to the Government's smug calculation, amendments can be made to expand the general provisions of Part 2 in the future so as to include PRS other than the levy on PSB. I do not understand why the Government has adopted this mode of

drafting. In 2006 and 2007 when the Government proposed to introduce the legislation on PRS, the Government indicated that a piece of umbrella legislation would be adopted, meaning that a piece of empowering legislation would be enacted to implement detailed regulatory requirements through subsidiary legislation. The Government emphasized that such mode of legislation was generally applied to PRS in various parts of the world.

The Government has cited a dozen of examples in foreign countries, which show that the relevant umbrella legislation is detailed and its scope is very wide, including the disposal, recovery and recycling of various types of waste. Regarding the PRS of designated products or individual PRS, the practice in foreign countries is that specific details will be laid down in other regulations. For instance, in Ontario of Canada, while waste management is regulated under the Environmental Protection Act, used vehicle tyres and electrical equipment are dealt with and regulated by the (Tyres and Waste Tyres) Regulations and Waste Electrical and Electronic Equipment Regulations under the aforesaid Act. These wastes are regulated by these two regulations. The Environment Act 1995 of the United Kingdom covers provisions on PRS, but abandoned vehicles are governed by the End-of-Life Vehicles Regulations 2003 under the Act. While the Environmental Management Act of the Netherlands regulates waste recovery, the disposal of batteries and vehicle tyres is governed by the Batteries Disposal Decree and Car Tyre (Disposal) Decree under the aforesaid Act. As for Ireland, the Waste Management Act 1996, which governs the disposal and recovery of different types of waste, has laid down very detailed provisions on waste recycling and recovery and is voluminous. But the levy on PSB is governed by the Waste Management (Environmental Levy) (Plastic Bag) Regulations 2001 enacted under the Waste Management Act 1996.

In fact, each PRS is unique, and its implementation and operational needs are different. While different authorization is needed in law enforcement, the relevant penalties are not the same. Under the statutory framework of the Bill, the operative provisions are tailor-made for the levy on PSB. It is hard to believe that other PRS can be introduced in the future through a simple amendment to the existing provisions. I have no intention to draft the legislation for the Government, but I would like to point out that the manner in which the legislation is drafted is bizarre. I just wish to point out the problem so that the Government will consider how to make remedy and deal with it.

Besides, according to the Government's original smug calculation, when a new PRS is introduced, it will be integrated into the principal legislation, while the implementation and operational details will be included in the regulations. Of course, the principal ordinance will also empower the Secretary for the Environment to formulate regulations on specific arrangements. The relevant regulations, as mentioned by Miss CHOY So-yuk and other colleagues, will be subject to negative vetting by the Legislative Council. In that case, the Legislative Council will have a maximum of 28 days plus 21 days to consider the legislative proposal. In the Schedules, there are details concerning how to implement the legislation, such as definitions and scope of exemption. According to the Government's smug calculation, these will also be subject to the negative vetting procedure. On the part of the Government, this is certainly the best and the most simple as what it has to do is to submit the legislation to the Legislative Council for the seal of the rubber-stamp. It is not quite fair to the Legislative Council, the sectors affected as well as the general public — the public will be affected as levies are involved in many provisions — because the devil is always in the details and the implementation of any scheme and operational details may be open to dispute. So, full discussion, consultation and sufficient time for scrutiny are necessary. The Liberal Party thus thinks that it is unacceptable on this count.

Fortunately, the Government has willingly accepted most of our views, deleting the part which will grant excessive powers. For example, power of entry and search without a warrant has been deleted and the power to obtain information has been appropriately adjusted. Schedule 3 which is about the levels of levy will also be subject to negative vetting when amendments are made in future. Thus new levies will be implemented after deliberations. We consider that the amended provisions are more appropriate and more reasonable in relation to the policy objective of levy on PSB.

As the Liberal Party has emphasized, the successful implementation of any PRS depends on public support and the sincere co-operation of the sector. We hope that the Government will discuss the implementation details of the scheme with the affected sector as soon as possible (for example, the method of calculating the number of PSB, what records to be kept, what documents to be submitted and when), so that the sector can make full preparation for the smooth implementation of the PRS.

Even after the passage of all the amendments, we still think that the Bill is not perfect. Despite such a view, the Liberal Party, on the premise of environmental protection, will support the passage of the Bill so as to reduce the use of PSB. However, we urge the Government to introduce and improve the existing environmental protection measures expeditiously, including the recovery and recycling of PSB. Meanwhile, publicity and education should be enhanced so that people will understand the importance of environmental protection and reduce the use of PSB on their own initiative. And this is a solution to cure both the symptoms and the problems at root.

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

MR LEE WING-TAT (in Cantonese): President, I speak in support of the Second Reading of the Bill. Instead of speaking in great detail, I would like to first talk about the general direction and strategy of the Government's environmental policy. It is true that policies are often included in the framework legislation. However, Secretary, although I think that you are very diligent and have adopted a very correct approach, I have to tell you frankly we do not think the SAR Government has formulated any categorical and consistent policy with clear commitment to environmental protection.

In fact, the biggest problem, as the Secretary should be aware, is that the environmental protection policy has to deal with a lot of interests. And many habits and vested interests of some people will be damaged. How will the politicians, especially the Government, deal with these problems when facing them? The Government will hesitate to make decisions or even continue to play down a very important policy or legislation for another goal. As a result, the policy or legislation would turn into something which is neither fish nor fowl, thus its effectiveness is undermined.

President, this legislation will certainly achieve a certain effect, but over the past two years, I would have such a feeling whenever I came into contact with the Secretary when dealing with policies. We cannot say that the Government is not devoted to environmental protection, but it always finds itself in a difficult situation in face of a problem as it has to consider the sectoral

interests. So it is not brave enough to implement the policy, or in a vulgar term, it chickens out.

The issue concerning a motorist who must switch off the engine of his car when it is idling has been discussed for many years, but no progress has been made so far. When we talked about the legislation on air pollution and the regulation of carbon dioxide the Secretary's explanation was certainly not unjustified, but we are still unable to shoulder our responsibility as an international metropolis in relation to global warming. We have reiterated the seriousness of air pollution and proposed that the entry of vehicles to busy areas should be restricted at peak hours although the Central-Wan Chai Bypass has not yet been built. Such a practice has been adopted in Beijing. But the Secretary considers it too troublesome to put it into practice. He holds such a view because he is facing a lot of difficulties. However, if it is not difficult, we need not talk to Secretary Edward YAU. Why do we talk to him? It is precisely because there are a lot of difficulties. In my opinion, if the Government lacks the determination in its acts, the sector will see its weaknesses, which is a lack of courage to make a breakthrough from such obstacles. As a result, the sector will dispute and negotiate with the Government on every issue, with an intention to water down all its policies and legislation so that the original purposes cannot be achieved.

President, the Government is facing a difficult situation the Secretary may be unhappy at hearing that the lack of a popular mandate. If Donald TSANG was elected by universal suffrage in 2007, and the Secretary was a member of his electioneering team, Donald TSANG could indicate that the policy requiring motorists to switch off the engines when their vehicles are idling would be implemented one year later and a levy on PSB be imposed one and half years later. Voters would decide whether they should cast their votes to him according to their wishes. Emily LAU, Frederick FUNG and I have been elected in such a way. I have a platform. Voters who do not support me will not vote for me. If they vote for me, I will act according to my platform. So, sometimes I do understand Secretary Edward YAU's difficulties. But I hope that he can hold out against all odds despite the difficulties. Sometimes, it is indeed very difficult. But if he lives or works under the coercion of the sector every day, many of his objectives cannot be achieved.

Speaking of the levy on PSB, as we all know, this represents the responsibility to be borne by the modern cities in this global village. In fact, we

have been making progress very slowly. Given that our landfills will soon reach capacity, our Administrative Officers try to solve the problem by racking their brains which have been trained up for that. As some facilities will disappear in five or 10 years, it is time to start thinking how to deal with them and a strategy has come up as the solution. But apart from the levy on PSB, the problem is: Have we asked the Government why it has seldom mentioned the factors leading to so much waste? Waste is produced because of urbanization, which has led to high consumption of materials. We have seldom heard that I know they have discussed it I have seldom heard of the Government advising the people to lead a simple life and recycle things in order to minimize waste. Those who are in favour of capitalism are always eager for stable and rapid economic growth. They will certainly think that the aforesaid approach will lead to a policy conflict because a simple life When tidying up my shoe cabinet today, I found that a pair of shoes I bought 15 years ago was still in good condition. Yes, I am right. It was bought 15 years ago. Shoe vendors may wish to hurl shoes at me to express their dissatisfaction. This pair of shoes is black. Of course, I have bought some new shoes over the past 15 years even though this pair of shoes has not been worn out. I even have some handkerchiefs which have been used for 10 years. I will buy a new one only when the old one has been worn out. However, if this is the practice of all consumers, the economy will certainly be affected. The Government does not want to debate on this issue. It does not want to discuss whether we want to see our city enjoy rapid economic growth thus producing a large quantity of waste or we want to lead a simple life in which the recycling of things is encouraged. When speaking of these contradictions, I really have no idea of the priorities of different Secretaries as far as their policies are concerned. Sometimes I really find it most unclear.

President, concerning the levy on PSB, as we all know, there has been no significant drop in the volume of waste in recent years. According to the publicity programmes of the Government, Bureau Directors and department heads, a lot of recycling bins have been provided in a bid to encourage the owners' corporations, mutual aid committees and organizations to participate in recovery activities. But the effectiveness will always come to a standstill after a certain stage and no further progress is made. So, the Democratic Party or I agree to the levy proposal. This will provide a certain incentive to people to re-use PSB. Moreover, the levy will also send a clear message to all members of the public, that the Government has started to make a very important step in respect of PRS. So, President, I do not quite agree with the remarks of some

colleagues, that the legislation is hard to understand. I support the framework legislation. But can the Government tell the public that it will formulate a legislative timetable for other recyclable products, including vehicle tyres, batteries and other containers, as soon as the Bill has been passed? When the timetable for levy on PSB is ready, the Secretary will have to deal with other products. But I will be very disappointed if the Secretary cannot complete his tasks within his term of office in respect of products which he has unequivocally stated that recovery or levy is necessary.

Of course, if the Secretary can introduce a number of legislative proposals in one go by the end of 2008, it will be most welcomed although I have to work very hard. I do not want to see that we still have to handle a lot of legal provisions concerning the PRS of other products by the summer of 2012. In that case, we will take more time to deal with the problem.

President, there is one thing that we all know. We had had a debate some time ago and the Secretary did not give much response to the public argument on the waste levies. As I mentioned before, we in the Urban Council and Regional Council had set out a series of levy for the funding of the two Municipal Councils. While part of the levy would be put to cultural and recreational use, part of it would be used for waste disposal and other items. At that time, we suggested that — as we told other Secretaries before the Secretary took office — if part of the costs were shared equally, for each citizen had paid a certain amount of rates and part of which had been used for refuse collection.

In fact, we can refund a certain amount of money to the public and inform them that a levy will be charged in future. If the people can exercise economy, they need not pay the levy on solid waste just like the water tariff. I have not paid water tariff for many years not because I do not bath, President. I bath, but I rarely cook and wash my clothes occasionally. As a result, my wife and I have not paid water tariff for many years. We have different bags at home for the collection of containers and aluminum cans which will then be sent to the management office. If we can draw up an effective practice on the basis of consensus In fact, this is subject to debate. If we can only deal with PSB, we can only deal with a very small portion of solid waste because the waste in a PSB is not all solid wastes. Solid waste includes domestic and commercial wastes.

President, just now I heard the comment of several Members, that the legislation would bestow excessive powers on the Government which, however, had not made any commitment and the legislation was hollow. They added that the Government's approach would only swell the coffers, and the Legislative Council had only served as a rubber-stamp in the discussion on this Bill. If I have not been sitting in the Chamber, I would, judging from such an argument, think that these are the remarks of the democrats. These are in fact the comments of the Liberal Party, which opines that the Government will be given excessive powers in the absence of any commitment, while a hollow piece of legislation is enacted to increase government revenue. The Liberal Party also considers that the Legislative Council is merely a rubber-stamp. I do not know why we have switched roles. Today, despite my criticism against the Government, I support the Bill. I just think that the Government has not done enough.

President, I occasionally go shopping in the supermarket. When I go to the supermarket on foot or by driving, I will remind myself of bringing along a reusable shopping bag. But a member of the public once asked me a question which I do not know whether I can solve it. Even if I cannot solve it, I will support the Secretary's Bill. That member of the public said that although motorists would certainly be able to carry shopping bags, what the general public should do if they occasionally want to go shopping in the supermarket when strolling in the streets? I have consulted Director Anissa WONG on this question, and asked her what to do. She said that in the future, the people would be advised to bring with them reusable shopping bags in addition to their purses, keys, car keys and mobile phones (we in the Legislative Council are provided with pagers) when going out. This is feasible and we can advise the public to make carrying a small shopping bag with them as part of their living habits. I saw that some reusable shopping bags were very small, the smallest one being one and a half inch by one inch approximately and very thin when folded up but large in capacity.

I want to encourage more manufacturers to make efforts in this aspect so that the member of the public last time I did not know how to answer his question he may carry a small reusable shopping bag in his pockets, either in the back of his trousers or jacket. President, we have no more strong view on this legislation. But I hope the Secretary will understand that he will face pressure and criticism from all sides when dealing with all sorts of recommendations and legislation in relation to environmental protection.

Sometimes, the Secretary will give us a vivid image if we are looking at him from a particular position. I do not want to say this, but Emily LAU often says so. It is unreasonable that the popularity rating of the Secretary is lower than that of Stephen LAM. He is the Secretary for the Environment. But I do not know whether it is because his image is not vivid enough so, I think that a more vivid position or attitude at work may be conducive to promoting the image of the entire Environment Bureau. This has also explained why there is growing public support for environmental protection work over the past few years. Even environmental levies are supported by 60% or 70% of the people. In fact, the Secretary is in a relatively secure environment and highly respected by the people when implementing his policy.

So I hope that the Secretary will not let those who admire and respect him down. People hope that in respect of environmental protection work, he will be brave enough to commit, to break through sectoral interests and barriers so that we can see the blue sky again in Hong Kong, enjoy a simple life as well as more space, which will not all be used as landfills and waste depots.

Thank you, President.

MR FREDERICK FUNG (in Cantonese): Madam President, starting from the 1st of last month, mainland China bans the free provision of plastic bags to customers at all commodity retail venues such as supermarkets, shopping malls and markets, and implements a "non-gratuitous use of plastic bags" scheme. The law expressly prohibits the production, sale and usage of ultra thin plastic bags, and there is a RMB 10,000 yuan fine for breach of the provisions. It is learnt that, before the implementation of the law, the Mainland consumed more than 3 billion plastic bags daily; and according to the estimation of the National Development and Reform Commission (NDRC), consuming so many plastic bags in China each day was tantamount to consuming 13 000 tonnes of oil. As projected by the authorities concerned, after the implementation of the plastic bag restriction order, the number of plastic bags used would be reduced by 1 million tonnes per annum. Some industry players have even estimated that the number of plastic bags used throughout the nation would be reduced by two thirds under the plastic bag restriction order.

Concerning the plastic bag restriction order recently implemented on the Mainland, we do not know how effective it would be, but we can consider the

experience of other places, for example, Ireland has imposed a plastic bag levy of HK\$1.5 since 2002, and the number of plastic bags disposed has substantially reduced by 95% within a short duration of one year. The non-gratuitous use of shopping bags has been implemented in Korea since 1999, and the number of PSB consumed has decreased by 60%. Moreover, Taiwan implemented in 2002 a policy restricting the use of PSB, and imposed an environmental levy on plastic bags at the retail level. The number of plastic bags used in the first year dropped sharply by 80%; despite a slight increase in the number used in the next few years, the results have been effective and significant.

Madam President, we should have clearly seen that the damages done by the abuse of plastic bags to the environment is widely known all over the world. What is the situation in Hong Kong? Statistics tell us that the number of plastic bags consumed by Hong Kong people is truly alarming; in 2004, 1 000 tonnes of plastic bags were disposed of at landfills each day, which accounted for around 10% of all rubbish. During the period, minor improvement was made after the use of reusable bags and fewer plastic bags had been promoted by various parties, and the number of plastic bags disposed in 2006 dropped to 892 tonnes. Despite that, the landfills received 8 billion discarded plastic bags in 2007, at an average of 2 300 bags each day, that is, each person discarded more than three plastic bags each day.

Madam President, the Mainland has restricted the use of plastic bags by way of legislation, but Hong Kong as an international city is lagging far behind. In late 2005, the Administration published A Policy Framework for the Management of Municipal Solid Waste (2005-2014), setting out its strategy to reduce waste through the principle of "polluter pays" and the element of "eco-responsibility", which was expected to be implemented in 2008. Unfortunately, owing to some setbacks, the Second and Third Readings of the Product Eco-responsibility Bill are only officially resumed today, and only a levy on plastic bags is imposed to curb the abuse of PSB. Nevertheless, the levy will still not be imposed after the passage of the Bill for some details still await negotiations between the Government and the trades. We are concerned about how long the negotiations are going to take, and we are not optimistic about whether the levy on PSB will be imposed or people will start switching to reusable bags in the latter half of the year.

Madam President, for many years, the Hong Kong Association for Democracy and People's Livelihood (ADPL) have been concerned about the

serious environmental impacts of municipal solid waste. According to statistics, an annual growth in the total amount of waste has been recorded since 2004, and the peak rate was 7.9%. Last year, 3.44 million tones of municipal solid waste were disposed of at the landfills, 1.5% more than that in 2006, and there was growing pressure of the landfills being filled up. The ADPL thinks that the Government should step up the promotion of waste reduction, and the source separation and recovery of waste can be done in a variety of ways. For example, the Government can enact a relevant law to require producers, importers, wholesalers, retailers and consumers to implement PRS, and require them to share the responsibilities for waste reduction, recovery, recycling, treatment or disposal of products in the whole sales chain. These products may include tyres, batteries, beverage containers and electronic products, and so on. This would also help manufacturers take account of environmental considerations when they design and produce commodities, and share the responsibilities for the recovery and recycling of commodities. Furthermore, the Government should step up public education and publicity and put in place more waste recovery facilities to enable convenient use by the public.

Concerning the environmental levy on plastic bags, the ADPL thinks that the levy has a certain role to play in reducing the production of waste, and is a feasible measure to achieve some environmental protection objectives. However, the "polluter pays" principle must be upheld in order that people would participate more actively, and the levy should not be accounted as the Government's general revenue. The Government should consider restricting the use of the collected levy to waste treatment or support of environmental protection industries.

Summing up, the ADPL thinks that the implementation of a product eco-responsibility scheme such as imposing a levy on plastic bags is one of the ways to enhance people's awareness of environmental protection. Its aim is to guide and encourage people to reuse PSB, give PSB longer service lives, promote resources recycling and protect the ecological environment.

Nonetheless, Madam President, we have only made one law concerning the levy on a single product (that is, PSB) so far, and the making of legislation on other products is not realizable within the foreseeable future. The progress is definitely slow and we have not yet had in-depth discussions on other more aggressive waste reduction measures (including the imposition of waste treatment charges). According to the ADPL, even for matching measures such as waste

reduction, recovery and recycling, the Government has yet to open discussions; it has not done enough and what it has done is not good enough. Now, I have heard that the Bureau intends to invite us to discuss the Government's construction of incinerators. Given so much to be done, we need a comprehensive package. In my opinion, the Government should have a comprehensive policy on waste reduction, recovery and recycling, granting which the whole thing would then become more meaningful. Thank you, Madam President.

MS AUDREY EU (in Cantonese): President, we have been discussing a PRS for more than 10 years, and the Government has finally introduced into the Legislative Council the Product Eco-responsibility Bill (the Bill). Since the Second Reading debate on the Bill has been resumed and the Bill will be read a Third time, Honourable colleagues should be very happy and should jump up in joy because we have already waited too long. We have discussed this Bill and the Race Discrimination Ordinance which has just been enacted for more than a decade. Comparing the two, Honourable colleagues would find a very big difference. When we discussed the Race Discrimination Bill, many ethnic minorities and concern groups sat in on the meetings of this Council, and they even applauded happily when the Bill passed through the Third Reading; and the Deputy President had to ask them not to be so noisy at that time. This Product Eco-responsibility Bill should also be significant, and there should also be many green groups in the public gallery sitting in on the meeting and applauding, but that is not what I have seen.

The reason is very simple. The title of the Bill, "the Product Eco-responsibility Bill", is really pleasing to the ears, however, it appears better than it is and it is hollow. I feel very sorry about some parts because I am a member of the legal profession and I have very high requirements for the making of laws. However, honestly, I think this Bill has not met the due legislative process. This framework legislation has made references to PSB, electrical and electronic equipment, vehicle tyres, packaging materials, beverage containers and rechargeable batteries. Nevertheless, the Government is only indulging in empty talk and PSB is the only thing that it will work on. Also, it is not going to work on it at once because it would first discuss the relevant rules with the supermarkets, and the scheme would be implemented only after the details have been sorted out.

Moreover, the so-called product eco-responsibility for PSB, frankly, is not a genuine PRS because we are not talking about how the producers of plastic bags should recover and recycle plastic bags. On the contrary, the consumers will have to bear the responsibility. Consumers must remember to bring reusable bags when they shop at supermarkets; otherwise, they have to pay 50 cents for a plastic bag. For this reason, I think this is not the responsibility of plastic bag producers but that of the consumers. Thus, President, I think the Bill appears better than it is actually.

Furthermore, President, I feel very sorry that, as Honourable colleagues may recall, the consultation document on the Policy Framework for the Management of Municipal Solid Waste (Policy Framework) submitted by the Government then not only looked pleasing to the eye, but it also told us the legislative timetables of the products cited by me just now, including plastic bags, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries, but we have not seen any signs of the legislation yet. According to the timetable initially provided by the Secretary, we should have completed all the work next year (that is, 2009). Nonetheless, we are only going to work on plastic bags now, and the PRS is only about recycling.

That being the case, President, I would like to make a very important request, which is definitely also a request by green groups; I am asking for a timetable. At that time, the Government told us that all products would come under the scheme according to a timetable. Now that we are lagging behind the schedule, we should devise a new timetable. Yet, the Government has not done so. President, the Bills Committee has convened a number of meetings, and we raised the issue of a timetable whenever the Secretary and his subordinate officials attended the meetings. Nonetheless, they were only beating around the bush, without providing a timetable.

There is another very important point, President, the PRS is set out in the Policy Framework I just referred to. It is not only about an environmental levy and environmental protection charges, but it also covers many other areas, for example, product recovery, deposit refund, prepaying recycling charges and putting limitation on certain contents in certain products. Yet, President, these are not found in this Product Eco-responsibility Bill; not a word is mentioned about the areas above. This precisely explains why I said the Bill appears better than it is, and why we do not see a lot of green groups applauding in the public gallery.

President, there is another really important point which I have told the Secretary — not at a meeting because the Secretary seldom attended the meetings of the Bills Committee but on another occasion, and I have told officials from the Environmental Protection Department (EPD) at a Bills Committee meeting — that I did not oppose imposing a levy on PSB; I agreed but I wondered if the levy collected should at least be used for environmental protection purposes. In particular regarding the recovery of plastic bags, should the Government not do more? In any case, the Government has not done so.

The Government has given the explanation that the objective of imposing a levy on PSB is not to increase tax revenue but to make people use fewer plastic bags. President, I understand the Government is not aiming at more tax revenue, but it only wants people to use fewer plastic bags. Yet, the Government cannot evade a problem, that is, it really has increased revenue this way. It is groundless for it to leave the money in the public coffers; it should at least use it for environmental protection purposes. Why not?

Ms Miriam LAU said a while ago that Ireland had effectively imposed a levy on plastic bags, but the levy became ineffective after a short period of time, and a higher levy had to be imposed. President, the same happened when there was a tunnel toll increase. Within the first week of the toll increase, there was a drastic drop in tunnel usage but the usage reverted to normal afterwards. Since the same would happen when the levy is imposed on PSB, the problem would basically not be solved, and there would only be a temporary but not permanent solution. Hence, it is still most imperative to promote recycling, especially the recycling of plastic bags.

We have discussed at length in the Bills Committee meetings about the point that nobody is willing to engage in work relating to an ecopark or plastic bag recovery because of excessively high transportation costs. In fact, the Government can provide facilitation in various aspects, for example, it can set up plastic bag collection points at supermarkets, places near District Offices or car parks so that people who have the intent can leave plastic bags there for recovery. Even though we have made this suggestion many times, we are not getting anywhere.

Concerning an environmental protection fund, the Secretary is unwilling to set up the fund, much to my regrets.

President, as many Honourable colleagues have mentioned in their speeches, it was often said that the Government was overblowing the figures though it was very often unwilling to admit that; I am sorry about that. However, we noticed on Monday that a green group convened a press conference and criticized the Government for overblowing the figures in implementing the PRS. That was why the figures on electronic waste somehow disappeared, and the public mistakenly thought that the amount of waste generated had dropped by 0.3% while it actually had increased by 0.6%.

This is not only a problem of overblowing the figures as it also reflects that while discussing the Product Eco-responsibility Bill, we are also discussing waste treatment. President, waste treatment has three very important levels or links. The Secretary definitely knows the three "Rs": the first R is reduce, which is very important. Although Hong Kong has set an objective of waste reduction by 0.1% a year, it is actually not the case and the rate is conversely increasing. We can say to a certain extent that it is because our society is very prosperous, yet, President, I think the Government actually has responsibilities that cannot be shirked. It should not only educate but also lead the community. Insofar as waste treatment is concerned, there is really much to be done in Hong Kong.

When the Secretary speaks later on, I know he will certainly say that, compared to other places, our recovery rate is not bad; however, Honourable Members have set a high demand on the Government for they think there is still much room for improvement. I am sure he is going to say that. Nonetheless, President, in view of the growth in wastage and waste in Hong Kong year on year, and the Government's overblowing the figures as uncovered by green groups, we really feel very sorry.

President, I believe the Product Eco-responsibility Bill will definitely be passed today, but there is actually a lot of work to be done. As regards such work, I have learnt that various parties and groupings in the Legislative Council have already reached a consensus, and only the Government's determination and commitment is missing. President, when this term of the Legislative Council ends, the Secretary does not need to attend Legislative Council meetings anymore, and he and the EPD should have more time. I hope that they would at least give consideration to the areas on which this Council has already arrived at a consensus and adopt more new measures, especially those about recycling and recovery.

President, regardless of who will become Legislative Council Members in the next term, I hope the EPD and the Secretary would adopt more appropriate measures that have more substance. Thank you, President.

MS EMILY LAU (in Cantonese): President, I speak in support of the resumption of Second Reading debate on the Product Eco-responsibility Bill (the Bill). Since a large number of Honourable colleagues have already spoken, I do not want to repeat the points already made, President.

As Ms Audrey EU has pointed out a short while ago, we have reached a consensus on many areas and my opinions are not too different from those of the Liberal Party. President, as you know, I am a member of the Business Facilitation Advisory Committee, and I have heard the business sector say for numerous times that, whenever the Government wants to place the sector under regulation, the consultation is inadequate and this is one of the reasons why they are dissatisfied. I think we should consult not only the business sector but also the others who would be affected by any changes in institutions.

Therefore, I had deep feelings last Wednesday or Thursday when I heard Mr WONG Yung-kan discuss the chicken incident because we would have to debate the provisions on daily chicken cull the next day, the day after next or two days later. Mr WONG Yung-kan asked Secretary Dr York CHOW whether he would meet the industry players, and he also pointed out that the Government had not met the industry players for dozens of years. Therefore, he said that the Bureau looked down upon these industry players because they sold chickens.

However, in my view, when the Government intends to make legislation with serious impacts on people, the Secretary concerned should meet with the industry players. I trust that the industry players will not frequently ask to meet with Secretary Edward YAU himself; in fact, they only hope that the representatives from the Bureau would have meetings with them and give a clear account instead of giving specious reasons.

President, I agree with the views expressed by Honourable Members just now, for example, the Bill is devoid of substance, there is much said but little done, and we have got so little though so much has been said. I hope the Secretary has really exerted his best; I would not underestimate the difficulties

involved but he has an Under Secretary and a Political Assistant frankly speaking, I am not sure whether this is a merit or demerit for him; only he knows. In a word, now that the Government has created these stuffs, the Secretary can only make his best efforts.

I think all of us would like to help accomplish the matter but the greatest difficulty is that, in the environmental protection cause, what we discuss today will not happen tomorrow. Things discussed today may only happen 10 or five years later or there can be no knowing how long it would take before they happen. And, to do the job well, the Secretary is usually not asking people to do something; he is asking them not to do something, which creates much trouble. In particular, in our society which advocates spending, in order to promote environmental protection for instance, if one day I urge people to save money on food and expenses in a shopping mall in Tseung Kwan O, it would be odd if I was not blamed by the shop owners there; hence, there are quite a lot of conflicts.

Nevertheless, the public accepts it and even the business sector understands it because our so-called sustainable development involves the question of how best to leave resources to the next generation and then to the generation after next. If this generation uses up all the resources, what will happen in future? For instance, the Secretary has proposed a levy on plastic bags and the public agree to pay 50 cents, and they have said that they will use reusable shopping bags. However, reusable shopping bags are actually not environmentally-friendly. President, both of us know that there are reusable shopping bags everywhere, even more than plastic bags. I also do not know what to do; "when one cock is dead, another one crows", and we are flooded by reusable shopping bags when we have not yet finished handling plastic bags. That makes me feel really sad.

Yet, I think people accept it, and they also find it necessary to restrain themselves. The question remains: If the policy affects the business sector, how can we obtain their consent? I do not think we should do so with force, and I do not think the business sector would always do the contrary because that is not what the sector is like. In fact, that is not only true about the business sector, for Hong Kong people in general are very reasonable and rather gentle.

However, the problem lies in the fact that the public hope that, before the Government takes action, especially in cases where their well-being is affected,

it would hold discussions with them and listen to their grievances. They would like the Government to understand the obstacles encountered and engage in discussions. When it really takes actions after a number of discussions, it may not be able to look after the interests of all but people would at least think that the Government has listened to the grievances they poured out. Although it would not be 100% effective, it may be 40% to 50% effective. Hence, they would be willing to give and take. But if they find any excuse to say that the Government has never had discussions with them or the Bureau has not listened carefully during the discussions with them we have heard these remarks many times in the Business Facilitation Advisory Committee.

So, I hope that may not necessarily fall under the portfolio of Secretary Edward YAU, but as his Bureau recently intends to place them under regulation in many aspects, I think his Bureau should definitely do so; that is very important. If the Bureau fails to deal with the industry players, it would create great difficulties for the Secretary and the industry players will stage a protest at the Legislative Council. This is not only about individual sectors, when a policy affects any sector, the affected parties will stage a protest here. Therefore, the Secretary and his colleagues surely have to handle the matter and they have no alternative.

On the levy on plastic bags under discussion, some Honourable Members have said that the Administration would not be able to settle the matter next year or the year after that. Of course, that is not what I want. I want the expeditious enactment of the Bill but other things, for example, tyres, and so on it seems that tyres are in question because the industry players have immediately set up a committee after tyres have been included. President, the industry players are all tensed up. Yet, I have heard that efforts need not be made on tyres because there is not much problem. In my opinion, it would be best if there is no problem, but the industry players are waiting to talk it over with the Bureau.

There are other matters, packaging materials in particular. It is the most ridiculous case. A tiny thing will become very big after packaging, and it will look beautiful. However, this culture and people's views should be changed. The Secretary has to make efforts because all those who have had discussions with him are very anxious and they would like the Bureau to work faster. Even the Liberal Party the Liberal Party has also asked a while ago about the

whereabouts of the municipal solid waste strategy. We urge the Government to take actions but it must first seek the agreement of the affected parties, and then reach a consensus and make the best efforts. When all the details have been discussed and finalized, there will not be any problem in the end. Yet, the Secretary has not done enough now.

Regarding the current levy on plastic bags, even supermarkets have expressed dissatisfaction and commented that the publicity conducted by the Bureau is not enough. So, I believe the Secretary should really borrow a page from other policy bureaux. When other policy bureaux deal with Bills the Urban Renewal Authority is an example; though Honourable Members subsequently said that they had been cheated by the Authority, it did hold 70 to 90 meetings with people for extensive discussions. The Secretary should know his former colleagues. Of course, I am not saying that all Administrative Officers are willing to do so, but some are really ready to hold discussions and listen to people's views, and then draft the Bills after listening to their views. They may still be questioned for "short changing" but that is another issue. All in all, in handling these matters, I trust that it is very important to listen to people's views.

Therefore, President, I support this Bill. Mr Vincent FANG said earlier that the Bill is unreasonable. This I disagree. I hope the industry players in his sector would understand that the continuous production of so much waste is unacceptable. I have to talk about Tseung Kwan O in particular. The Secretary surely knows the situation there. Tseung Kwan O residents are very angry indeed. President, the Government is going to expand the landfill which really stinks. Even the residents of the Ocean Shores and other housing estates can smell it, and they have said that the Secretary should really go there for a good sniff: It stinks so badly that the residents cannot open their windows. They live in luxurious flats, President, having paid millions for their flats, but they cannot open their windows. Is the Secretary aware of that? There is a landfill management problem. If the landfill is managed better, the odour will not come out, but that is not done. The Sai Kung District Council is indignant and has kicked up a row, and the residents have wrangled over it here, entirely because of the problems with the treatment of solid waste. If incinerators are to be built, the situation will become even worse.

For this reason, whenever I discussed with the Secretary, I would ask him to effect waste reduction and start addressing these problems. The Secretary

should have heard very clearly today the message that this Council fully supports the environmental protection efforts of the Administration. The Bill we handled a while ago is about air pollution, and we are now talking about solid waste. Honourable Members support waste reduction, recycling and re-use of materials as advocated by the Bureau; all of us are supportive. The Secretary must listen and deal with the views of the industry players; he must do so. Yet, it is a great pity that the Bill seems to be devoid of substance, and it does not cover other issues that need to be addressed; and we are not sure when they would be addressed. That is why some Honourable Members have said that the Secretary would have more time during our summer recess. He had better not take any leave because these issues would soon be followed up after the recess in the new term of the Legislative Council. This is a pressing task and we should have noticed how packed the landfills are. The residents will besiege the Government Secretariat sooner or later. I feel really sorry that the two sides are at daggers drawn.

President, I support this Bill and I hope that the Secretary would listen to the people's views and expeditiously do something in this connection. I also wish that the Secretary would have a higher popularity rating. Thank you, President.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I remember that we had a debate on a similar topic last week. That evening, all of us were very tired and I talked about some examples in Taiwan and the environmental protection measures of MA Ying-jeou, which spurred the Secretary. Both of them are actually more or less the same although MA Ying-jeou has a higher position than the Secretary.

I said so because I agree with a few Honourable Members who have spoken a while ago. Madam President, we were quite furious when we scrutinized the legislation. First, an official was transferred to another post. As far as I recalled, an official replaced another one who had taken up another post. The succeeding official only rigidly stuck to one point, and thought that we did not understand the importance of proper treatment of plastic bags. For that reason, we spent almost five more meetings discussing the issue; I think Ms Miriam LAU should be very clear about that. These meetings wasted our time because we discussed the same things at each meeting. I remember that, on one occasion, I asked the Chairman, Miss CHOY So-yuk, a question: "The

Government has said that some amendments would be proposed but it has not provided any papers to us, how much time is left for our deliberations?" Therefore, besides criticizing the Government in respect of the preceding Bill it took 27 days for all the papers on the amendments related to MPF to be provided to us, yet, our deliberations had to be completed within two days, despite the addition of a new provision on "special contribution"; how could I not get angry?

Nonetheless, the Bill under discussion also made me a bit angry. It seemed that I was the first Member to say that I did not want to scrutinize the Bill anymore, and I wonder if Honourable colleagues remembered that. Green groups were very worried that we might quit the scrutiny. However, the Secretary really had his charm Madam President, I suspected that he should have done something because many green groups told us not to reject the scrutiny then. I even admitted at the time that I was the one who wanted to stop scrutinizing it. I explained to the green groups that we just did not want to go round and round As I just said, we spent five meetings on it but the Chairman of the House Committee, Miriam LAU, said we took even longer all in all, we were really disgusted with what we were doing at the time for we had to repeat the same comments at each meeting.

Very frankly, I was not sure if the Government would like to stall until the last moment, forcing us to pass the Bill in a hurry. Madam President, I was not sure if that was the case but I considered that what the Government did was really suspicious. If Honourable Members had not found fault with the Government in anger One day, when I was hiking on a hill, the Secretary gave me a call. He said, "Miss CHAN, the situation is not like what you thought and the Government does not intend to give itself excessive powers through an 'umbrella' law". That infuriated me most. I would like to tell the Secretary what I thought at that time.

At that time, I was looking at the green trees and comfortably enjoying the beauty of nature, but I became angry when he suddenly told me that. Even worse, he also said that belonged to the Sarah LIAO era. There are only three Members from the FTU in this Council; though it is a small number, we have division of labour, and each of us would be responsible for Bills falling specific areas of work. This Bill is my responsibility, and I would like to complete the deliberations on this Bill early. But, the Secretary had not yet put everything in order when another Bill was introduced into this Council; and he had also not put

everything in order when yet another Bill was introduced. The Secretary even told us that they already intended to make amendments during the Sarah LIAO era. Even Miss Emily LAU would agree that I should be angry, right?

He said, "We are not going to bypass the Legislative Council and bring it back for examination later." He finally agreed that the subsidiary legislation should be scrutinized first. Lastly, the Secretary I praised him twice for being young and promising when I was "in a state of unconsciousness" for which Honourable Members made fun of me. In fact, he is really young but I wish to say that he should not do so again in future. If he regards Legislative Council Members as "Ah Dou", he would definitely fail.

Frankly, we must enact the law, and we have stated clearly that the law must be enacted. Therefore, first, he should not stall anymore; second, he should not think that we do not know anything. I think this is a very important point. Summing up our experience this time around, I would like to tell the Secretary that we are actually supportive. However, if he wants to enact the so-called "framework legislation", and if he wants to bypass this Council in respect of the details of the five types of products, it would not be possible. Of course, we agree to one of the particulars, that is, the proposed 50 cent levy, but we do not agree to the rest.

I would express my feelings first, Madam President, and I would then express my appreciation for the Government for what it did at the later stage. Why? It is because, at the later stage when we discussed the retail floor area in an outlet and the number of retail outlets at which a retailer carried on a retail business to be subject to the levy scheme, I got an unexpected surprise. Did you know that? After I had expressed my views, the Secretary fully acceded to our request and changed the number of retail outlets to five when he returned for another meeting with us, which was gratifying to me. The seesaw struggle before and the straightforward response after that were totally different. Hence, I could not help thinking that my suspicion was correct. They had been stalling all along — I am not sure if that was really the case. Certainly, I should not In a word, I considered that desirable.

What the Government did at the later stage made us we were concerned about whether the Government had excessive powers and how it

would take care of small and medium enterprises and enterprises that might help the poor. In fact, we have no objections to environmental protection and the levy on plastic bags, and we are definitely supportive. Yet, the problem is, we think we need to take more things into account in the process. I am really glad to see the Government's significant change before and after, and I think it is a good thing, and I hope the SAR Government could bring to a conclusion the disturbance that occurred in the course of our deliberations.

Madam President, some people doubted why this term of the Legislative Council seems to have more work and has been especially busy. I only want to say and I must point out that it is actually because the whole civil society including Legislative Council Members are going after accountability, thus, there must be a great deal of interaction. If Honourable Members simply act as "Yes-men", the public would be very dissatisfied. That is why I said earlier this morning that Mr XI did not quite understand the relationship between the executive, legislature and Judiciary. I agree with his views but when mutual monitoring is needed in the process, we have to exercise monitoring functions, otherwise, would people vote for us? When young people reach the age of 18, why should they vote for this group of "Yes-men"? That is only natural. So, I think it is reasonable to have interaction, and if we could respect one another in the course of interaction, a balance would be struck. Taking the later stage of our deliberations as an example, it made us feel much more comfortable.

Madam President, Ms Emily LAU has just referred to a very diligent official, and I still like him very much. He is not Matthew CHEUNG, but Stephen FISHER. Many years ago, the Urban Renewal Authority Ordinance was under his charge. He was a very nice person, and he readily met non-governmental organizations (NGOs) with us. As we all know, many NGOs were gravely concerned about the development of old districts. Whenever we made an invitation, he would show up. I remember one occasion; I was in great health at that time and we had meetings on consecutive evenings. The meeting was not yet over when it was 11 pm one evening; I told the others that I had to go first and asked them to continue with their discussions. I found what he did really touching; I was not sure if that was why he managed to cheat us in respect of the Urban Renewal Authority Ordinance. LAU Chin-shek, do you think so? Madam President, I might be excessively moved but it is true that I commend Stephen FISHER very often. He is now the Director of Social Welfare and I still sing praises of him very often.

I recently had a meeting with him together with a group of women facing employment difficulties. All of them wanted to join a fund scheme but their applications had been rejected. He thought that they should be given help, and his sincere attitude really moved people whom he had contact with. He is a nice official and his name is Stephen FISHER. Nevertheless, he has not done too well in moving up the ladder, and he has not been promoted to even higher positions though he is a good official. He is a very good Administrative Officer, and all those who have had contact with him felt the same. We may not necessarily agree with his views, but we have greater confidence in our deliberations if he is there.

As far as I can recall, we were then arguing whether the values of a 10-year-old, a seven-year-old or a five-year-old flat in the same area should be used as the basis for the calculation of compensations; we argued over this topic at many meetings. I know that the Civil Service has training courses, and I think they should actually invite Stephen FISHER to teach new Administrative Officers how to co-operate with Legislative Council Members. He really has a variety of methods, and I fully agree with the remark just made by Ms Emily LAU.

Having said that, I would like to turn to an issue that has always been the FTU's concern. Besides supporting the idea of product eco-responsibility, we also agree that the problem of plastic bags should be handled well. We agree totally with that.

For the sake of convenience, Hong Kong people abuse plastic bags and the situation is alarming. With 23 million plastic bags consumed each day, the case is very serious. I also know that it is most imperative to promote re-use and using less plastic bags under the current regulatory system, which is known to all. Nevertheless, in the course of deliberations, the Liberal Party has asked some questions many times, and I share their views. Where would the money so collected go? Would it be given to the green groups? No. Would the money be used to build up the recovery and environmental protection industries? No.

The Government kept saying "No" in the whole process. Thus, we were angry, and I am not going into the details. Actually, the idea of environmental protection includes many different parts, and waste recycling is a very important topic. Yet, this part has not got enough attention from the whole community.

Time after time when this topic is discussed, I envy our neighbouring countries and places. Japan is one example, and we visited Japan for a field inspection in the 1990s; Guangzhou has also done very well. Moreover, Taiwan has done extremely well these few years.

In other words, we have seen that after the others have proposed the idea of a recovery industry In fact, it is not only recently that we mooted the idea. I recall that the FTU organized a carnival-style procession years ago; people dragged along bottles and soft drink cans and chanted slogans throughout the procession. At that time, we asked for recycling on the one hand, and the absorption of grass-root workers who failed to integrate into the mainstream economy on the other.

For instance, when I visited Virginia in the United States, I found that the environmental protection industries fed many people. To feed so many people, the place must be very spacious and far away from the urban area. It cannot have lots of problems to be addressed just like the smelly landfills that Ms LAU has described. Yet, the problem is that we have even not taken the first step. Hence, despite questions repeatedly asked by Honourable Members and continuously asked by Mr Vincent FANG, the Bureau has not yet given us an answer.

In connection with the treatment of solid waste, as originally planned, the treatment of all the six types of waste would be achieved in 2009. However, the scheme involves not just recovery, and we need to do more than just recovering wastes. Should the Bureau not consider how to take advantage of our current conditions to engage in recycling and recovery? I read a piece of news the other day. I disliked the way it was reported and I was very unhappy after reading it. As reported, some old ladies took free newspapers every day and put them away after collecting them. It was suspected that they might sell the newspapers. They really sold the newspapers because they are very poor. I guess these cases happened more often in areas where the new arrivals are living; they speak the Fukien dialect and have a strong accent. After reading the news, I realized that many people still make a living in such ways as bean sprouts pickers did in the past.

If we can build up a recovery industry properly, we can at least give the poor another means to make some money. They collect everything that has a value. Nonetheless, the Government has not done so all along. They are very

often bullied and oppressed, as reported in the news on that day. I have referred to this in the hope that This has nothing to do with the Secretary's duties, and it should be within Secretary Matthew CHEUNG's portfolio; the Secretary should maintain close liaison with Secretary Matthew CHEUNG. After we have started working on the Product Eco-responsibility Bill, both of them should consider how the Government could do something in connection with recovery and recycling.

On this point, I criticized the Government that evening and pointed out that people on earth produced many wastes, for example, waste water, waste paper and kitchen wastes. Actually, the universities in Hong Kong including the Hong Kong Polytechnic University have conducted researches and found various ways to treat kitchen wastes. Kitchen wastes can be used to produce lubricants and some kitchen wastes can be used to make recycled soil for planting. As a matter of fact, many people are introducing a variety of methods, and in the process, I am most concerned about the creation of job opportunities besides waste reduction, and there is one very important link.

In the past, there were many recovering shops on Tai Yuen Street and other places around Wan Chai. The rents were low then and the articles recovered included things like soft drink bottles and glass lids. Glass bottle cleansing was the job of many female workers. The Government must absorb these workers. For example, in regard to waste recovery at present, more than 70% of the paper for recycling is handled at the Kwun Tong Public Cargo Working Area. However, the present situation is that, whenever a place is designated for development or property projects, it would compel the natural disappearance of these industries originally beneficial to the city. I agree that the residents do not like these industries; in particular, the residents of Laguna City do not like the industries in Cha Kwo Ling. Regarding the Kwun Tong District, I have lobbied the residents there and I think the idea is fine. The Government should at least build a better looking place. Taking Nice in France that I frequently mentioned as an example, there is a street with brand name shops which turns out to be a very beautiful park elongated in shape. At first, I also asked why it was so beautiful for there should be shops opposite that street. That was not the case and the lower level was used for the parking of vehicles which emit exhausts. Parking spaces are essential but the government there has integrated them with the city. Likewise, our public cargo working areas can be

integrated into the urban development, and we can follow the example of others and make them look very nice.

With this in mind, when I supported the development of Southeast Kowloon, I had meetings with the Director of Planning for a number of years. The Director was Bosco then and later it was Ophelia WONG. I also had discussions with the accountability officials and the cargo handling workers. In fact, all of us wanted to sort it out. During the recovery process, it is most important for places to be provided for the treatment of recovered wastes before they are shipped or transferred to other places. An equally important factor is high shipment costs. If we ask all the operators to relocate to Tuen Mun, none of them would be willing to run the business due to the high transportation costs; they would not have profits if such costs are high. Thus, for the whole recycling industry, the Government when Sarah LIAO was the Secretary a number of years ago, I had meetings with her; similarly, I will have meetings with the Secretary and Eva CHENG today. I also think that we need to find a way out, one that can remove people's detestation of polluting industries and solve the problem to facilitate social integration, such that used and filthy things would not be regarded as a plague. Another proposal I made is that we can apply the mainland experience (they use a living water system for the recycling of waste water) in waste water recycling and build a living water garden. This is a very important task for which we certainly need the injection of funds.

I think Honourable Members welcome this Bill after all. We have conducted discussions many times and the Government has proposed essential amendments at the later stage. Besides expressing my views on this Bill introduced by the Government, I hope the Government would formulate a complete policy on the recycling industry. Thank you, Madam President.

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

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, the League of Social Democrats (the League) opposes the imposition of a levy on plastic bags, but we do not oppose environmental protection. The main reason is that all direct taxes are payable by users. Well, let me talk about pollution caused by

plastic bags first. This is actually a problem caused by producers. What are plastic bags made of? It should be something connected with petroleum because plastic bags are the by-products of petroleum. Nevertheless, we cannot target the petroleum producers, right? It is impossible for us to ask petroleum producers to discard undesirable by-products and then pay money in compensation. No, we are not going to do so. So, we cannot stop them from producing plastic bags.

It seems quite fair to impose a levy on the use of plastic bags. The Government is asking people not to use plastic bags but if they insist on using plastic bags, they should pay the levy. In other words, the Government is using a financial incentive to make people use less plastic bags. I would like to tell Honourable colleagues that this may work, but if we conduct opinion polls at supermarkets or all venues where plastic bags are used to carry articles, we will find that most shoppers do not have the habit of bringing along shopping bags. The problem is as simple as that: Who should provide shoppers with shopping bags? How can we make people bring along shopping bags? This is the thrust of the problem.

Most people think that environmental protection is desirable. How about asking them not to use plastic bags? The problem is they find it inconvenient to refrain from using plastic bags. Taking my experience as an example; on one occasion, I do not want to use plastic bags but I cannot carry everything in my hands, so some of the articles fell out of my hands. When we go shopping in supermarkets, we have to buy reusable bags, right? Someone has given me a wallet-size foldable reusable bag, so we already have reusable bags like that before environmental protection has become a popular concept. If the Government makes up its mind to distribute a reusable bag to each of the 6.9 million Hong Kong people, it can calculate the quantities needed. In the housing estate where I live, the management office gives each household a card for stamping each year, and each household can present the card each month and collect 30 plastic bags. I think the Government is distributing plastic bags that can be recycled. I have not checked the information because I am not interested. In fact, the Government has taken such a measure. In other words, the Government encourages the use of plastic bags that can be recycled. Of course, the Government should be criticized if it distributes plastic bags that cannot be recycled. In a word, the Government already has such a measure in place.

I would like to ask the officials present a question. If plastic bags that can be recycled are distributed or provided at low prices in Hong Kong, would

people use less plastic bags? Have the relevant estimations been made? If so, the Government should have the rough amounts in mind. The Government likes to conduct opinion polls, and it even included a substantial number of questions in the opinion poll on constitutional development, yet, no decision could be reached. It even commented that universal suffrage could not be implemented because there was a great divergence of opinions. Has the Government conducted an opinion poll in this connection? Has it conducted an opinion poll to ascertain people's spending habits or lifestyles? If not, does it think that people are incorrigible? If so, imposing a levy on the users will only put a heavier burden on them and no effects would be achieved. There will only be two results: first, people continue to use plastic bags but they use foul language and criticize the Chief Executive when they are using them (these unpleasant words can definitely not be spoken here). Second, the Government may have to require plastic bag suppliers to supply plastic bags that can be recycled. Is that feasible? That is another problem. In my view, it is not difficult to distribute plastic bags in Hong Kong especially because this is a small and densely populated place. When the Government implemented the anti-AIDS campaign, it gave away another kind of plastic bags — condoms, and I also helped distribute them at that time.

Thus, it is not true that the Government is unable to deal with the matter. Yet, the Secretary is only telling us today that a sumptuary levy is the world trend. Consumers would then have a financial incentive to use less plastic bags since they have to pay. This measure has both pros and cons. The actual significance of a sumptuary levy is that, if a levy is affordable to a person, he can use more plastic bags under the Government's scheme and he will not be punished because he has paid the levy, right? I would like to ask the Government a question. Assuming that 10 cents more is collected for a plastic bag, what will happen? A person who makes more money can throw away plastic bags whenever he likes. I have seen in Central a rich man who parked his car on one side of the road. A traffic policeman approached and warned him against that, but the rich man answered back, "I have money! Would I be fined once every two hours? So, I put down \$2,000 now. Come back here and fine me when you are free." The traffic policeman felt snubbed and left the place. If the policeman is empowered by an ordinance to tow away the car, it would be much better, right? In fact, the Government is less convincing in this connection. Why has it not considered other methods? If it is stipulated that plastic bags that can be recycled must be used, there would be no problem at all.

I would like to tell Honourable colleagues that plastic bags that can be recycled would actually put a heavier burden on consumers because they are more expensive. So, if consumers have to spend more money on plastic bags that can be recycled, they will use less plastic bags and it would be more effective than imposing a levy. A levy on plastic bags is actually only a sales tax, which is payable when a person spends. Therefore, I think the Government has not considered this carefully. Second, I think the Government lacks sincerity in implementing environmental protection. Since 2003, the Government has been aware that the middle class would take to the streets to express their views, and it has therefore paid much attention to their views. It has even created a webpage for the middle class to leave their messages online, telling them that the Government would listen to their views. The middle class may think that the poor are foolish or have little knowledge, and that they should be punished. There is an Oliver's outlet in the Prince's Building where the middle class help themselves to plastic bags as usual. If Oliver's happens to charge 20 cents for a plastic bag, what would happen? It does not matter even if the customers have to pay 40 cents because that would still be less than the tips they would pay after meals. Can it stop these people? No, it cannot.

So, the levy is regressive and punitive; it is absolutely unfair for the poor to pay the same as the rich for the use of plastic bags. Also, the Government is not using the levy collected for the well-being of the general public. The explanation given by the Secretary is quite appealing, for he said that the Government is not collecting the levy for the public coffers. I believe him, but why is the money not used for other purposes? Some may ask what the other purposes are. Even if it is not used to improve plastic bag production, it can I recall that when I staged a demonstration in the public gallery before, I told Mr TUNG that there was a group called "Greeners Action" (Secretary Edward YAU was not working in this field then); according to the group, the recycling industry could create more than 100 000 jobs. Certainly, the figure might be an exaggeration, right? I am living in a public housing estate (PHE), and there are three plastic recycling bins in red, white and blue; however, these bins cannot be recycled. On these bins are affixed notices about waste paper recycling or things like that. We put waste paper into these plastic bins, but honestly, these bins cannot hold much waste.

In connection with the Government's recycling activities, taking the PHE that I am living in as an example, it may sound offensive but the Government is just deemed to be doing something. In other words, it seemed to have done

something but it has actually not any. If it really wants to do things like that, why does it not do it better? The middle class do not understand the situation of PHEs. Some officials present may have grown up in PHEs but they must have moved out of them now. A half of our population is living in PHEs but such a mess is made in carrying out recycling. The green refuse bins smell so bad and the recycling facilities I lived in Germany before, where there were seven types of huge recycling bins and people who dump rubbish into them would not feel uneasy. There are only three waste separation bins in Hong Kong. It seems that I have drifted far away from the present topic. But, the problem is: Does the Government have a comprehensive recycling programme in response to the middle class people's detestation of the use of plastic bags? All of us think that the problem would be solved by imposing a sumptuary levy, yet, it has actually not been solved. Besides paying more for sticking to their habits, the poor will not change at all.

Thus, my opinion is very simple. The Government should distribute to each person a shopping bag that can be recycled. How much would that cost? I am asking Secretary Edward YAU: if he goes to mainland China known as a world factory and places an order there are 6.9 million Hong Kong people but plastic bags will not be distributed to children but only holders of adult identity cards. How much has to be spent? This might conversely solve the problem, right? According to the Secretary, the work would only be done after a levy has been imposed, and it may be feasible. If the levy collected in the future is really spent on this, I would certainly support the Secretary. But that is not what the Secretary is going to do.

In addition, I have received quite a number of complaints against the Tseung Kwan O landfill. The place has a nauseating smell, which even made me run away. Having failed to handle the matter properly, the Government tells this Council actually, that is all about politics. To be frank, does Secretary Edward YAU really think that the plastic bag problem is that serious? Does he find it really serious? Are the problems of electronic rubbish and real rubbish not serious?

Insofar as recycling is concerned, I know that most recyclers have caused operation now. Why? Because there is a shortage of land and complementary policies. If the Government really wants to promote the development of the recycling industry, why has it not taken these problems into consideration?

That is why I cannot support the Government punishing consumers with a regressive levy. Actually, a thorough solution would be to put restrictions on petroleum producers in the course of production and disallow their production of plastic bags as plastic bags are the by-products of the petroleum industry. If we cannot find a radical solution, we would not be able to solve the problem. If we rely on a levy, we will set a very bad example such that levies would have to be imposed in future to punish those who do not have good habits. Then, I have to ask Secretary Edward YAU but this actually has nothing to do with him As I have said time and again, stamp duty is collected for the speculative trading of stocks, and a capital gains tax will be levied on speculative flat buyers, right? Yet, consumers are not doing things that will do people harm, so the Government has put all things upside down, right? It only penalizes those who are least able to resist without distributing reusable bags to them.

We in the League support distributing reusable bags to all Hong Kong people before conducting opinion polls to find out how many people would not brought along reusable bags when they go shopping in supermarkets, and the Government can then decide whether a levy should be imposed. Is this feasible? We often say that we should be scientific, and it is where the scientific spirit lies. Human behaviour is affected by lots of factors; we should first provide people with substitutes and only consider giving them punishment when they have not used them. Ordinary families will not hold grudges then.

In fact, many people are infuriated, but I respect the President a lot and I am not going to make remarks that sound unpleasant, and I will avoid similar quotations. I would like Secretary Edward YAU to answer this question later. Why are reusable bags not distributed to help people do better? Furthermore, why does it not improve the recycling policy or treat natural refuse?

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for the Environment to reply.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam President, Honourable Members, today is a memorable day in the development of municipal solid waste management. Let us recap some history. For many years, our laws have put emphasis on the proper handling of waste already produced, and some measures for the reduction of waste at source have been adopted in respect of construction waste. In resuming the Second Reading debate of the Product Eco-responsibility Bill (the Bill) in the Legislative Council today, we emphasize the importance of waste reduction at source, and the promotion of waste recovery and recycling, with a view to reducing the depletion of earth resources. In spite of repeated discussions on the Bill, or the fact that Honourable Members may think that it has taken a very long time to handle the Bill, it is finally introduced into the Legislative Council, and I think this is a good beginning.

Through the Bill, we will officially incorporate the producer responsibility scheme (PRS) into legal provisions in the hope that the principle of "polluter pays" and the concept of environmental protection could become part of our daily life upon the commencement of the Bill. Also, upon the full commencement of this ordinance, the manufacturers, distributors, retailers of the relevant products and consumers are required to share the responsibility of environmental protection and reducing the environmental impacts of the products.

Madam President, insofar as the development of environmental protection in Hong Kong is concerned, the framework legislation today is a beginning. Even though some Honourable Members think that, in terms of spectrum, the framework legislation fails to immediately cover all the products that are expected to be included, this legislation at least proposes an integral concept of eco-responsibility for the first time, and allows us to gradually regulate different products through this legislation. In the Bill, we have introduced for the first time a widely abused product, that is, plastic shopping bags (PSB), with a view to managing and reducing the numbers used by imposing a levy. The legislation as it is explicitly shows that the Government is determined to launch the product eco-responsibility scheme on a full scale, and we would also like to

provide an outline setting out the items to be regulated in the future through this framework legislation.

Certainly, the Bill owes its progress up to the present stage to the consensus and support of various sectors of the community. I am particularly thankful to the Chairman of the Bills Committee, Miss CHOY So-yuk, and its members for their meticulous scrutiny of the Bill in the past few months, and for expressing quite a substantial number of views. I am very pleased that, in the course of scrutinizing the Bill, while having discussions on the Bill, members have expressed lots of opinions, especially those relating to the whole sewage strategy introduced in 2005. Last week, Mr Vincent FANG proposed a motion debate which precisely involved a number of strategies for handling municipal solid waste. As I have already given our responses, I do not wish to repeat a vast amount of topics discussed last week. However, I conversely wish to make some more points on the Bill, especially on the Bills Committee's views on the Bill expressed in the course of discussions, hoping to give Honourable Members an explanation before they vote.

First of all, I know that some Honourable Members do not understand and even have reservations about why the Administration proposes to adopt a framework legislation mode for the Bill. Some of them are concerned that this would give the Government excessive powers, or make it very easy for the authorities to introduce new PRS through subsidiary legislation.

We appreciate Honourable Members' concerns in this connection because, in respect of any products newly brought under the Bill, the relevant sectors, consumers, producers and stakeholders may have lots of opinions. Thus, while enacting the framework legislation, we give a clear assurance that we would formulate a purpose clause with a broader scope, covering different approaches and specifying some products. However, if new products are to be added to the Bill in the future, I promise that the changes will be introduced into the Legislative Council by amendments to the principal legislation, that is, they will go through three Readings, and be discussed and endorsed by Honourable Members before implementation. This is made in the light of Honourable Members' concern that the framework legislation will give the Government excessive powers.

Yet, every coin has two sides; when some Honourable Members worry that the framework legislation will give the Government excessive powers, some others are concerned about whether the Government would propose a shell law that is devoid of content. On these two areas, I believe that we had repeatedly restated in our previous discussions with the Bills Committee that a balance ought to be struck between the two. I believe the general public expects the Government to take a step forward in the management and recycling of municipal solid waste rather than just making an arrangement for plastic bags and stopping at that. Nonetheless, we also understand that, if introducing any products — as several Honourable Members mentioned earlier — would affect the stakeholders, Honourable Members would ask the Government to have in-depth discussions and consultation with various sectors before implementation. So, I trust that enacting this framework legislation would set out all the general provisions or approaches, and set down in a detailed and feasible manner in the legislation the requirements for some products for which the scheme could be introduced early (for example, PSB).

The environmental levy on PSB is the first producer responsibility scheme (PRS) under the Bill. Everyone knows that the problem of PSB abuse is rather serious in Hong Kong. The surveys related to landfills show that we discard at landfills billions of PSB each year, that is, each of us discards three PSB a day. Put simply, it has gone far beyond our basic needs in living. The precise purpose of the environmental levy on PSB is to put the "polluter pays" principle into practice in order to remind people to use fewer PSB through a direct financial means, that is, imposing a levy. This is a proven practice in other places.

I know that many members of the community think that the Government should put the revenue from the levy into an environmental protection fund to promote environmental protection. Quite a few Honourable Members have mentioned this point, and in a motion debate in the Legislative Council last Thursday, some Honourable Members expressed similar views. I would like to take this opportunity to restate that the ultimate purpose of the environmental levy is not to increase public revenue. If the environmental levy is imposed, it will change people's daily habits. Hence, there will soon be a drop in public revenue from the levy a short time after the scheme has been implemented. If we rely on the levy to support environmental protection, the Environment Bureau may then have fewer rather than more resources. It is worth restating that,

based on the experience of other places, if the scheme is successful, we are going to have diminishing revenue from the scheme.

The public are concerned about whether the Government's injection of resources into environmental protection will purely rely on this levy and there will not be any other resources. As Honourable Members are aware, in the past year, we injected \$1 billion for promoting environmental protection through the Environment and Conservation Fund, which was far more than the amount we would receive from the levy in the first few years. Apart from the recurrent public expenditure from the Fund, we also want to open up a new path to subsidize and carry out recovery and recycling activities that many Honourable Members have mentioned for the sake of the environment and conservation. We also hope that Honourable Members and residents' groups would make fuller use of the Fund so that more people would make joint efforts in other areas such as promotion while we are enforcing new Bills and implementing policies.

Madam President, I fully understand and agree with Honourable Members that the three "R" principles of Reduce, Reuse and Recycle must be observed in respect of municipal solid waste management. I believe the views expressed by Honourable Members are entirely consistent with the ideas we proposed in the past or the objectives of the Bill.

I also agree that the most effective and convenient plastic bag recovery method should uphold the three "R" principles. However, as there is an extensive abuse of plastic bags, we should really try to reduce abuse, and the imposition of a levy would be an effective method. On the recovery and reuse of plastic bags that are no longer needed, in fact, we can directly put them into the recycling bins at housing estates through the Programme on Source Separation of Domestic Waste. As at May 2008, 900 housing estates have taken part in the Programme, covering 1.1 million households and 3.32 million people, which is about half of our population. Besides, there are around 28 000 waste recycling bins in the territory, and plastic bags are also collected for recycling. In the past year, the Government stepped up publicity on environmental protection, and promoted green living in respect of clothing, food, housing and transport, which includes simple, healthy and green living as mentioned by Honourable Members a while ago. Moreover, we made announcements of public interests for broadcast on television, radio and public transport, teaching people to separate plastic bags for recycling. Last Sunday, a

green group launched with The Link a plastic bag recycling activity funded by the Environment Bureau and the Environmental Protection Department. As a supplementary recycling measure, recycling bins are placed at 12 large Link REIT shopping centres for the collection of used plastic bags.

Madam President, I trust that publicity efforts and programmes with people's participation constitute part of environmental protection work, and we would gladly continue to carry out other recycling work with residents' groups. In particular, if we can work together and make promotional efforts with different groups in the community, including residents' groups in the public housing estates just mentioned by Honourable Members, and the management companies of large housing estates, we would achieve better recycling. We are ready to work together with residents in terms of resource and management support. Recently, I have contacted some District Councils to see whether the work could be promoted in the districts through collaboration with the District Councils.

The measures above prove that the Government has really made efforts in promoting the reuse and recycling of plastic bags. About waste reduction at source, the Government started encouraging people to bring their own shopping bags in the 1990s. However, as some Honourable Members have said, many people have quite a lot of shopping bags at home and many have asked how surplus reusable bags should be handled. The method is actually very simple: we can refrain from requesting those bags. I have heard an Honourable Member suggest whether a reusable bag could be distributed to each person before the imposition of a levy on PSB, but I believe this may run counter to our objective of reducing waste. Actually, the answer lies somewhere between the two. On the one hand, we should use reusable bags that can be reused many times but reusable bags are not the only things we need. Yet, we also understand that some residents may be concerned that the levy on PSB may bring inconvenience. If some groups co-operate with us in promotion, and focus on providing reusable bags to people who are really in need, I believe this can be done through the Fund or co-operation with residents' groups. Yet, the objective is not only to replace one bag with another, but to make people understand that using reusable bags can reduce the number of plastic bags used; we should not request plastic bags if we do not need them, and we can reuse or recover surplus plastic bags.

Madam President, apart from the policy issues above, the Bills Committee has expressed views on the specific provisions and various details of the Bill, and I would also like to take this opportunity to give a simple response.

First, some Honourable Members think that there are excessive enforcement powers under the Bill; in particular, an authorized officer can enter and search non-domestic premises without a warrant. I wish to point out that, when drafting the provision on enforcement powers, we have endeavoured to ensure that a balance could be struck between effective enforcement and the impacts on retailers. However, in the light of members' concerns, we will propose a corresponding Committee stage amendment (CSA) to specify that an authorized person must obtain in advance a warrant issued by a Magistrate before entering and searching any place. On the other hand, to ensure compliance with the requirements in the Bill, we propose adding the routine inspection power so that an authorized person can carry out routine inspection at places accessible by the public.

Second, if an offence under the Bill committed by the body corporate is attributable to any neglect on the part of a director of or a person concerned in the management of the body corporate, the persons concerned would be criminally liable. Some members think that this is excessively harsh. In view of members' opinions, we will propose a CSA to delete the reference to "neglect", but the body corporate would still be criminally liable if the offence is committed with the consent or connivance of the persons concerned.

Third, some members have reservations about the point that an assessment notice demanding payment of that assessed amount would be served by the Director of Environmental Protection after a registered retailer has been found guilty of an offence for failure to submit return or providing false information in the return. According to some members, an assessment notice should only be served after it has been adjudicated that a registered retailer has committed the relevant offence. Thus, a CSA will be moved to this effect.

Fourth, the Secretary for the Environment may by virtue of the power conferred by the Bill, after consultation with the Advisory Council on the Environment, make regulations and amend the Schedules under the negative vetting procedure. However, some members have reservations. They think that the amendments to the regulations and Schedules can be highly controversial, so they should be subject to positive vetting in order to give the

Legislative Council sufficient time to scrutinize the amendments to the relevant regulations and Schedules.

After detailed consideration and repeated discussions with the Bills Committee, the Administration agreed to make regulations and amend Schedules 1, 2 and 4 through the positive vetting procedure, and a CSA will be moved to this effect. Regarding future amendments to Schedule 3, as it will involve the levy amount, we think that adopting the negative vetting procedure can already give Honourable Members adequate time for deliberations. Before submitting the relevant amendment to the Legislative Council, we will first consult the public, the relevant sectors and the relevant Legislative Council panels. I undertake that any amendment to the levy will only take effect at the end of the period of scrutiny by the Legislative Council.

Fifth, some members are concerned that the definition of "prescribed retailer" in Schedule 4 will bring small and medium retailers into the scope of regulation, thereby increasing their operating costs and difficulties. Although we have taken into account the fact that the more retailers brought into the scope of regulation, the higher the effectiveness of environmental protection, in response to members' views, we agreed to relax the scope of "prescribed retailer" to reduce the impacts of the first stage of the environmental levy scheme on small and medium enterprises. We will move a CSA to amend the definition of "prescribed retailer" in Schedule 4.

The Bills Committee also suggested making minor amendments to the technical issues in some provisions of the Bill, and I will elaborate these amendments later at the Committee stage.

Madam President, as I have just said, upon enactment of the legislation, there will be a new course of development in solid waste management, and before the official implementation of the environmental levy, I also think that we still need to formulate the relevant regulations. We will continue to discuss with the retail sector the specific implementation details of the environmental levy scheme, including how to account for the number of PSB with a view to formulating regulations that can be implemented and complied with easily. Since the regulations will be formulated through the positive vetting procedure, I urge Honourable Members to co-operate with us in scrutinizing the relevant regulations in future, so that the environmental levy scheme would be

implemented early as we expected. We also undertake to review the effectiveness of the scheme one year after implementation.

In addition, apart from PSB, the Bill also enables us to introduce a new statutory PRS in the future. I have noticed that Honourable Members are very much concerned about the details of the schemes and the implementation timetables. We know from our experience in devising the levy on plastic bags that we must first have the support and consensus of various sectors in the community. Hence, we will surely listen to the views that Honourable Members have just expressed and discuss in detail with the relevant trades and other stakeholders when we devise a new scheme. Furthermore, we would like to formulate at an early date timetables for the newly added products. I trust that the work in this connection would be continued in the relevant panels in the future.

Madam President, I would like to thank Honourable Members again for expressing a substantial number of views on the Bill, and for spurring the Government on its work in this area. We have also listened to Honourable Members' views on the early implementation of comprehensive strategies with a wide scope, and considered other proposals such as a municipal solid waste levy. In the future, we will continue to work with the Legislative Council in this regard.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Product Eco-Responsibility Bill 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.

(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.

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

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

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, 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, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Alan LEONG, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Mrs Anson CHAN voted for the motion.

Mr LEUNG Kwok-hung voted against the motion.

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

THE PRESIDENT announced that there were 34 Members present, 32 were in favour of the motion and one against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Product Eco-Responsibility Bill.

Council went into Committee.

Committee Stage

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

PRODUCT ECO-RESPONSIBILITY BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Product Eco-Responsibility Bill.

CLERK (in Cantonese): Clauses 1, 3, 12, 13 and 20.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4 to 11, 14 to 19 and 21 to 27, and the heading of Division 4 of Part 3.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move the amendments to the clauses and heading read out just now, as set out in the paper circularized to Members. Now, I am going to briefly explain the amendments.

The amendment to clause 2 of the Product Eco-responsibility Bill (the Bill) is based on the Bills Committee's proposal to include in the purpose clause the reference to schemes based on the "polluter pays" principle.

The amendment to clause 4 is made in response to the views of the Bills Committee to specify clearly that the general provisions in Part 2 of the Bill apply in relation to PSB.

The amendment to clause 5 clarifies that the general provisions in this clause only supplement the authorization under any regulation made under section 27.

The amendment to clause 6 is based on the views of the Bills Committee and specifies that an authorized public officer should not be below the rank of Environmental Protection Inspector.

Clauses 7 and 8 are about the powers to be exercised by the authorized officer, which include entering and searching a place when he reasonably believes that an offence against this Bill has been committed there. However, an authorized officer shall not enter or search any domestic premises without a warrant issued by a Magistrate. Some members think that the power to enter and search non-domestic premises should also be subject to the issue of a warrant. To address the concerns of the Bills Committee, we agree to propose an amendment to provide that an authorized officer must obtain a warrant issued by a Magistrate before entering or searching any places. Nevertheless, to ensure compliance with this Bill, I have also proposed adding a provision to allow an authorized officer to enter a place to which the public are permitted to have access for routine inspection without obtaining a warrant. Furthermore, we have taken on board the views of the Bills Committee and made an amendment to clause 7(2) to specify that a person who is required to provide information under this Ordinance only needs to provide information in his possession.

Clause 9(1) provides that a person who provides any information that is false or misleading in any material particular commits an offence. Some

members think that only a person who provides information that is false or misleading commits an offence because there may be minor errors in the provision of information and data required by the law. If the provision of incorrect information also constitutes an offence, some members think that it would be too harsh. Having considered this, we agree to propose an amendment to delete the reference to "incorrect" information.

In addition, under clause 9(3), it is an offence for a person to omit a material particular from any information required to be produced, and clause 9(4) provides defence for the person charged to prove that he has exercised due diligence. Nonetheless, as some members expressed the concern that this provision seemed to be harsh, the Administration agreed to amend clause 9(3) to specify that a person commits an offence only when he omits any material particular from any information required to be produced without reasonable excuse, and to delete clause 9(4) in consequence.

The amendment to clause 11 has taken on board the Bills Committee's views. The clause provides that if a body corporate commits an offence under this Bill, and it is proved that the offence was attributable to any neglect on the part of a director of or a person concerned in the management of the body corporate, the person also commits the offence and is liable on conviction to the penalty provided. But some members think that this may be too harsh. Hence, we agree to amend clause 11 to delete the provision on neglect, but if the body corporate commits an offence with the consent or connivance of the persons concerned, these persons are also liable on conviction to the penalty provided.

Some members expressed concern about the fact that the Chairman of the Appeal Board may have excessive powers under clause 15; in particular, the Chairman may appoint the number of panel members for an appeal, and in the event of an equality of votes, the Chairman has a casting vote. In this connection, we agree to amend clauses 15 and 16 to specify that the Appeal Board should consist of at least three members, and we have further expounded the arrangement that applies if there is a change in the membership of the Appeal Board. For this purpose, we also specify that any party to an appeal may be represented by a legal representative in the proceedings before the Appeal Board.

We also propose adding subclause (3) to the interpretation provisions in clause 17, to add that a PSB is provided if "it is given free of charge or sold at a price".

The amendments to clause 18 and 19 are made upon the request of the Bills Committee, so that the Legislative Council can scrutinize and approve by positive vetting the amendments made to the Schedules by order published in the Gazette. In response to the suggestions made by the legal adviser to the Bills Committee, we also propose amending clause 19(6) to add that a registered retailer may apply for deregistration.

The amendment to clause 21 is made in response to the Bills Committee's view, according to which "without reasonable excuse" is added to the provision on the offence about the display of certificate of registration. The reference in clause 26 to clause 21 is deleted in consequence.

At the meetings of the Bills Committee, some members considered that some penalties in the Bill are too heavy. Having made reference to the Bills Committee's views, we have reviewed the seriousness of the offences and the penalties for such offences, as well as amended the penalties set out in clauses 9, 10, 19, 21, 22, 23, 24 and 25.

Under clause 25, if a registered retailer fails to submit any return or provides false information in a return, the Director may serve an assessment notice on the retailer demanding payment of that assessed amount. Based on members' views, we agree to propose an amendment to provide that an assessment notice demanding payment of that assessed amount may only be served after the Director is informed of the judgment in the relevant criminal case.

At the meetings of the Bills Committee, members have discussed clause 27. We have taken on board members' views and agreed that the positive vetting procedure should be adopted for the making of regulations. Hence, we have proposed the relevant amendment to clause 27.

In addition, we have made some minor technical and textual amendments to clauses 11, 14, 17, 22 and the heading of Division 4 of Part 3. All of these

amendments have the support of the Bills Committee. I implore Members to support and endorse them.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex IV)

Clause 4 (see Annex IV)

Clause 5 (see Annex IV)

Clause 6 (see Annex IV)

Clause 7 (see Annex IV)

Clause 8 (see Annex IV)

Clause 9 (see Annex IV)

Clause 10 (see Annex IV)

Clause 11 (see Annex IV)

Clause 14 (see Annex IV)

Clause 15 (see Annex IV)

Clause 16 (see Annex IV)

Clause 17 (see Annex IV)

Clause 18 (see Annex IV)

Clause 19 (see Annex IV)

Clause 21 (see Annex IV)

Clause 22 (see Annex IV)

Clause 23 (see Annex IV)

Clause 24 (see Annex IV)

Clause 25 (see Annex IV)

Clause 26 (see Annex IV)

Clause 27 (see Annex IV)

The heading of Division 4 of Part 3 (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4 to 11, 14 to 19 and 21 to 27, and the heading of Division 4 of Part 3 as amended.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 20A and 26A.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed additions

New Clause 20A (see Annex IV)

New Clause 26A (see Annex IV)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 4.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, Members, I move the amendments to Schedules 1 to 4. Schedules 1, 2 and 4 set out respectively the definition of PSB, the exemptions and the definition of prescribed retailers. To avoid the inclusion of a plastic bag with a hole or perforation attached to it in the scope of regulation of the environmental levy on PSB, we propose an amendment to Schedule 1 to make it clear that the Bill will apply to PSB with handle holes or other carrying devices. I also propose an additional provision in Schedule 2 to prevent retailers from adopting certain sales practices to avoid this levy based on the exemptions in the Schedule.

Furthermore, quite a number of members think that small and medium retailers should not be placed under this scope of regulation at this stage lest their operating costs and difficulties should be increased. Taking into consideration members' views, we agree to amend the definition of prescribed retailers in

Schedule 4 to narrow the scope of regulation so as to alleviate the impacts on small and medium enterprises.

We also propose some technical and textual amendments to Schedules 1 to 4, and the amendments have the support of the Bills Committee. I implore Members to support and endorse these amendments.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex IV)

Schedule 2 (see Annex IV)

Schedule 3 (see Annex IV)

Schedule 4 (see Annex IV)

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

MISS CHOY SO-YUK (in Cantonese): Madam Chairman, here I have to thank the Government and the Secretary for proposing these amendments. Many Honourable colleagues are worried about the small retail shops because the Bill introduced by the Government initially specified that a retail business carried on at two retail outlets comes under the scope of regulation. In other words, so long as the retail outlets sell food, medicine and articles for daily use, and the retailer carries on a retail business at two or more retail outlets, it will be subject to the levy scheme. Nevertheless, the Secretary has revised the number to five or more retail outlets, or at least one retail outlet that has a retail floor area of not less than 200 sq m. The representative of the sector thinks that an area of 200 sq m is quite large, and the retail outlet is not small. I believe this amendment would dispel the worries from the minds of the operators of many small and medium retail outlets in society, and we also think the revised number of five retail outlets appropriate.

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

(No Member indicated a wish to speak)

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

(Secretary for the Environment shook his head to indicate that he did not need to speak again)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

PRODUCT ECO-RESPONSIBILITY BILL

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam President, Honourable Members, the

Product Eco-Responsibility Bill

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 Product Eco-Responsibility Bill 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.

(A Member raised his hand)

Miss CHOY So-yuk rose to claim a division.

PRESIDENT (in Cantonese): Miss CHOY So-yuk has claimed a division. The division bell will ring for three minutes.

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

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

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Daniel LAM, Mr Jeffrey LAM, Mr Alan LEONG, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr KWONG Chi-kin and Mrs Anson CHAN voted for the motion.

Mr Vincent FANG voted against the motion.

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

THE PRESIDENT announced that there were 35 Members present, 33 were in favour of the motion and one against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Product Eco-Responsibility Bill.

PRESIDENT (in Cantonese): Honourable Members, earlier this afternoon, you have received the Script which is a very thick document of more than 170 pages. The Secretariat has asked me to tell all of you that the English version of the Script of this meeting is not available as there is not enough time for its compilation, and I hope you would not mind.

Also, each page of the Script is printed on one side only because we are afraid it would be more difficult for you to leaf through it if it is double-sided.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): This Council will resume the Second Reading debate on the Independent Police Complaints Council Bill.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

Resumption of debate on Second Reading which was moved on 11 July 2007

PRESIDENT (in Cantonese): Mr LAU Kong-wah, chairman of the Bills Committee on the above Bill will now address this Council on the report of the Bills Committee.

MR LAU KONG-WAH (in Cantonese): President, in my capacity as the chairman of the Bills Committee on Independent Police Complaints Council Bill, I now report on the highlights of the deliberations of the Bills Committee.

The object of the Independent Police Complaints Council Bill is to incorporate the existing Independent Police Complaints Council (IPCC) as a body corporate and to provide for its functions, powers and operation.

Under the existing police complaints system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating public complaints against members of the police force. The investigations into reported complaints are monitored and reviewed by IPCC to ensure that the complaints are fairly and impartially handled. Some members support maintaining the status quo. On the other hand, some members consider that a statutory entity, independent of both the police and IPCC, should be established to investigate complaints against members of the police force.

In the view of the Administration, the existing two-tier system has been operating effectively. The Administration has no plan at this stage to establish another independent body to investigate complaints lodged by members of the public against the police.

Under clause 2(1) of the Bill, "categorization" means the categorization by the Commissioner of Police of a complaint as a reportable complaint or a non-reportable complaint. In view of members' views, the Administration proposes to introduce an amendment to replace the Chinese term of "reportable complaint" (須具報投訴) by "須匯報投訴". As for "non-reportable complaint", the Administration proposes to replace it by "notifiable complaint". The Administration will revise the definitions and clause 13 to bring out the basis of the categorization in clearer terms.

On provisions about complaints categorized as reportable complaints, after considering members' views, the Administration will introduce Committee stage amendments (CSAs) to delete "in the opinion of the Commissioner" in clause 10(b) and "the Commissioner is of the opinion" in clause 11(b) and 12(1) to better reflect the legislative intent that IPCC may provide its opinion on whether a complaint is vexatious or frivolous or made in good faith, and whether a belated complaint is of a serious nature. The Administration will also amend clause 11 to expressly provide that a belated complaint must be categorized as a reportable complaint if it is serious in nature. Mr James TO will propose CSAs in connection with complaints to be categorized as reportable complaints.

On the membership of IPCC, some members have suggested providing in the Bill that Legislative Council Members to be appointed to IPCC should be elected among Legislative Council Members and allowing non-government organizations to nominate candidates for appointment to IPCC by the Chief Executive. These members have also suggested specifying in the Bill that some IPCC members should come from certain specific sectors or possess expertise in certain areas. In addition, they have suggested that representatives of non-government organizations and vulnerable groups be appointed to IPCC, and the criteria for appointing IPCC members should be transparent.

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

The Administration has responded that appointments to IPCC are made on an *ad personam* basis. In making such appointments, the Administration will continue to be guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. This is to ensure a balanced composition of IPCC. The Administration will give careful consideration to all potentially suitable candidates, including self-nominated candidates and any candidates put forward to the Administration on recommendation. With these, the Administration does not consider there to be a need to stipulate in the Bill the specific sectors from which IPCC members should be drawn.

Some members have suggested that a longer term of office for IPCC Chairman and members should be adopted. They have also suggested that IPCC Chairman should be appointed on a full-time basis, given the heavy caseload of complaints.

The Administration has agreed to introduce CSAs to provide for a term not exceeding three years for the IPCC Chairman and the term of reappointment should not exceed three years, but the six-year and the six-board guidelines should be observed. The Administration has advised that should the workload increase in future, consideration could be given to appointing more members to IPCC. Therefore, a full-time IPCC Chairman is not considered necessary.

Mr James TO will propose CSAs to provide for the composition and appointment of members of IPCC and a term of the IPCC Chairman and Vice-chairman.

Some members have raised query as to why it is necessary for the terms of appointment of the Secretary and Legal Adviser of IPCC to be approved by the Chief Executive. Given the independent status of the statutory IPCC, these members considered that the requirement for approval by the Chief Executive should be deleted.

The Administration has pointed out that the appointment of the executive heads of many existing statutory bodies and the terms and conditions of their appointment are subject to the approval of the Chief Executive. Taking into account members' suggestion, the Administration will introduce CSAs to expressly provide for the terms of employment of the Secretary and Legal Adviser of IPCC to be approved by the Chief Executive on the advice of IPCC. The Administration is agreeable to the Bills Committee's suggestion of amending the title of the IPCC Secretary as Secretary-General. Mr James TO will propose CSAs to provide for IPCC to appoint its Secretary-General and Legal Adviser on terms approved by IPCC.

Some members are of the view that IPCC should be empowered to conduct independent investigations if it is not satisfied with CAPO's investigation findings, and to determine the acceptability of the findings and results of the investigation of all complaints. This would enhance public's confidence in the police complaints system. Some other members consider it appropriate to keep IPCC as a monitoring body without vesting any investigative power in it.

The Administration does not agree to confer IPCC with investigative powers. In the view of the Administration, the current arrangement under which CAPO investigates the complaints it receives and IPCC reviews and monitors CAPO's investigations should be maintained. Mr James TO will propose CSAs to provide IPCC with investigative power.

On interviews with witnesses conducted by IPCC, some members consider that IPCC should be given a general power to interview any person at any time for the purpose of performing its functions under the Bill.

However, some other members are of the view that it is more appropriate for IPCC to interview any person after the investigation report has been submitted to IPCC. Given that the police have a duty to investigate complaints

against the police and IPCC has a monitoring role, providing IPCC with a power to interview any person prior to receiving an investigation report, in parallel with police's interviewing witnesses, will give rise to confusion in the process of investigation of complaints.

The Administration does not agree with the suggestion made by some members. In the view of the Administration, providing IPCC with a general power to conduct interview at any time would amount to giving IPCC an investigative power. This is not consistent with the policy of maintaining the existing two-tier police complaints system. Mr James TO will propose CSAs in connection with IPCC's power of conducting interviews.

Deputy President, the Bill provides that IPCC may require the CP to provide to IPCC any information relating to a reportable complaint. The existing IPCC has expressed concern about the intention of the Administration to withhold relevant legal advice which has been obtained by the police and which may be part and parcel of a complaint investigation on grounds of legal professional privilege, and that the CP has discretion to waive his right to legal professional privilege on a case-by-case basis. The existing IPCC strongly holds that legal professional privilege should not be invoked to allow the CP to withhold relevant information from IPCC and let IPCC see the information as he deems fit.

The existing IPCC has pointed out that as an oversight body whose role is to monitor the investigation of CAPO, IPCC should be given full and unrestricted access to information pertaining to complaints investigations, including legal advice. The existing IPCC has suggested that a provision should be added to the Bill in this connection and the wording of the relevant amendment is to be provided to the Bills Committee.

The Administration does not find the provision suggested by the existing IPCC acceptable. It has pointed out that the proposed provision amounts to a general abrogation of the CP's right to legal professional privilege. The protection of information subject to legal professional privilege under the common law should be preserved. Legal professional privilege is enshrined and safeguarded in the Basic Law. The Administration has stressed that IPCC will be provided with sufficient relevant information pertaining to the reportable

complaint concerned for performing its function of monitoring the handling of police complaints.

Some members support the Administration's position. Other members concur with the views of the existing IPCC and support its proposed provision. They are concerned that if the CP makes of legal professional privilege for the purpose of not disclosing information to IPCC, IPCC's monitoring function will be undermined and public confidence on IPCC will be adversely affected. Mr James HO will propose CSAs in this regard.

Under the Bill, IPCC may require the CP to provide explanations to support the categorization of a complaint as a notifiable complaint. The existing IPCC considers that IPCC should be given full and unrestricted access to information to a notifiable complaint for the purpose of determining whether the complaint should be re-categorized as a reportable complaint. It has suggested that complete access to such information should be provided for by an additional provision in the Bill.

The Administration considers clauses 7(1)(f), 7(2) and 15(3) should sufficiently empower IPCC to require CAPO to provide relevant information on notifiable complaints to facilitate IPCC in discharging its function of monitoring the categorization of notifiable complaints. However, the Administration will add a provision to empower IPCC to require the CP to provide information in support of the explanation for categorizing a complaint as a notifiable complaint.

Some members have expressed concern that the CP may withhold information from IPCC on the grounds that compliance would be likely to prejudice the security of Hong Kong or the investigation of any crime. They have made many amendment proposals, such as clause 27 should be deleted or alternatively, the reference to the CP in the clause should be substituted by the Secretary for Security or the Secretary for Justice.

The existing IPCC has expressed concern that the term "any crime" in clause 27 is unnecessarily wide and it has suggested that the term "any crime" should be replaced by "indictable offence" or setting a time limit for the CP not to comply with IPCC's requirements.

Having considered the views of the existing IPCC and members, the Administration will introduce a CSA to the effect that the CP must comply with

any requirement made by IPCC under the Bill, unless the Secretary for Security certifies that compliance with the requirement would be very likely to prejudice the security of Hong Kong or the investigation of any crime, and that a certificate signed by the Secretary for Security certifying such matters is conclusive evidence as to the matters so certified. Mr James TO will propose CSAs on the certificate.

Clause 28 of the Bill provides that IPCC may make reports to the Chief Executive as it thinks necessary. The existing IPCC considers that a provision requiring the Chief Executive to make a response to the IPCC's report to him should be added.

The Administration has explained that it is an established practice that the Chief Executive or his authorized officer will respond to the statutory body submitting the report. The Administration therefore considers that it is not necessary to add an express provision in the Bill. Mr James TO will propose CSAs to provide that the Chief Executive must respond to the reports made by IPCC.

On the disclosure of protected information, the existing IPCC has pointed out that in case of any disagreement between IPCC and the CP over the handling and classification of a reportable complaint, IPCC could only advance its case by making a report to the Chief Executive under clause 28, or to make public the unresolved issue for public scrutiny. An express provision is thus of paramount importance to ensure that IPCC may disclose the relevant matters. Some members agree with the existing IPCC on this.

The Administration has explained that clause 37(2)(a) already permits IPCC to disclose protected information as long as the disclosure is necessary for the performance of IPCC's functions under the Bill. However, the Administration has agreed to add an avoidance of doubt provision to the effect that IPCC may disclose protected information to the public.

Some members have suggested allowing IPCC to disclose information on the grounds of public interest or revealing abuse of power, serious neglect of duty or other serious misconduct as provided under section 30 of the Prevention of Bribery Ordinance.

The Administration has pointed out, however, that clause 37(2)(a) of the Bill allows disclosure of any unlawful activity, abuse of power, serious neglect

of duty or other serious misconduct of any members of the police force involved in reportable complaints. Mr James TO will propose CSAs in this regard.

Under the Bill, the Secretary for Security is the authority for appointing and removing observers. Some members consider that observers are to be appointed by IPCC on the recommendation of the Secretary for Security, or that observers are to be appointed by the Chief Executive. They also consider that the removal of an observer should be endorsed by the Chief Executive.

The Administration considers that the appointment arrangement provided in the Bill is appropriate. As the Secretary for Security is the authority for appointing observers, the Administration considers it appropriate for the Secretary for Security to remove observers. Therefore, the Administration does not see a need for such a removal to be endorsed by the Chief Executive. Mr James TO will propose CSAs on the authority for appointing and removing observers.

Members have expressed concern whether the Administration will appoint the immediate family members of members of the police force as an observer. The Secretary for Security undertakes that an explanation will be given during the resumption of the Second Reading debate that the Administration will not appoint the immediate family members of members of the police force as IPCC observers. Mr James TO will propose CSAs to the effect that an immediate family member of a member of the police force is not eligible for appointment as an observer.

Deputy President, at present, the IPCC Secretariat is included in Part II of Schedule 1 to The Ombudsman Ordinance and is subject to the scrutiny of The Ombudsman in respect of maladministration relating to the Code on Access to Information published by the Government. Clause 44 of the Bill provides for the removal of the IPCC Secretariat from this Part.

Members have raised query about the appropriateness to remove IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance, and sought the views of The Ombudsman on clause 44 and whether the statutory IPCC should be included in The Ombudsman's purview, that is, Part I of Schedule 1 to the Ordinance.

The Ombudsman considers that there is no need to remove the IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance, and points

out that the ICAC, similarly a statutory body, has all along been regulated by the Code on Access to Information. The Ombudsman has also pointed out that the statutory IPCC shares common features with the statutory bodies listed in Part I of Schedule 1 and it sees no objection in principle to bringing the statutory IPCC within its purview.

The Administration has explained that the Code on Access of Information serves as a framework for the provision of information by government departments. Subject to the passage of the Bill, the statutory IPCC will have its own secretariat, the Administration therefore does not consider it appropriate for the Government to mandate the application of the Code on Access of Information to the statutory IPCC. Hence, a consequential amendment to remove the IPCC Secretariat from Part II of Schedule 1 of The Ombudsman Ordinance is included in the Bill. The Administration considers that issues concerning the ambit of The Ombudsman should be examined separately.

Some members have pointed out that although the Prevention of Bribery Ordinance does not apply to the existing IPCC, clause 43 of the Bill includes the statutory IPCC in Schedule 1 to the Prevention of Bribery Ordinance. They consider that similar arrangement should be adopted by including the statutory IPCC in Part I of Schedule 1 to The Ombudsman Ordinance. They are also of the view that the IPCC Secretariat should not be removed from Part II of Schedule 1 to the Ordinance. Mr James TO will propose CSAs in this regard.

The Administration has accepted many views and suggestions from the Bills Committee and will introduce CSAs, including changing the Chinese name for IPCC into "獨立監察警方處理投訴委員會", with the abbreviation as "監警會", as well as providing for more detailed requirements on the declaration of interest of members and observers of the IPCC. As for CSAs proposed by Members, I am afraid I do not have the time to talk about each of them and I will leave them for Members to introduce them.

Lastly, members hope that the Administration will provide enough resources for the statutory IPCC so that it can effectively discharge the various duties prescribed by the Bill. Thank you, Deputy President.

MRS SELINA CHOW (in Cantonese): I wish to talk about the view of the Liberal Party on this Bill.

If Members would recall it, they will know that this Bill has got a rather long history and it has been discussed, consulted and even undergone a legislative process a countless number of times from the 1990s to the present. Now both Members and the public have reached a clear consensus and that is the Independent Police Complaints Council (IPCC) should be given a statutory position. But now and even to this day, we are facing a longstanding dispute and that is also a dispute on which Mr James TO has been insisting.

I have looked up a lot of information and I find that he has started this dispute at the beginning of the 1990s. His view on the IPCC bears a huge fundamental difference with that of the Government. The Government has clearly stated that the Complaints Against Police Office (CAPO) is tasked with investigating all complaints while the IPCC is tasked with monitoring and reviewing, so as to ensure that the complaints concerned are fairly and impartially treated. This position is clear enough. In other words, there is a two-tier framework. The CAPO is responsible for investigating into complaints and after the investigation is complete, during the process of investigation many people say that it is only people investigating into their own people. But is this really true? After discussing the issue repeatedly, we know that there exists an established framework within the police for investigations. From many films and TV series, we know that members of the police are very much afraid of their own internal investigation department.

However, the CAPO is after all an internal investigation department. Therefore, another monitoring framework has to be set up. And this monitoring framework is the independent IPCC. The problem is with how this word "independent" is to be understood. Deputy President, we have different views and understandings with the word "independent". And all along we have been hearing many Honourable colleagues say that being independent means that it has to be independent from the police force. Therefore, they are of the view that as it has to play a monitoring role under various circumstances, it has to have greater powers and the scope of such monitoring should even be expanded to include circumstances where any doubt arises during any investigation made by the police force, a new investigation can be made at its own initiative. So there has always been much argument over this power to investigate.

Earlier on Members have heard Mr LAU Kong-wah, chairman of the Bills Committee, say that Mr James TO is planning to take further action on this issue. And we have also heard his explanation. But I think there is a difference between how we understand this. The Liberal Party thinks that the IPCC can only be a monitoring organization, for if the IPCC is to exercise its power to investigate, then first of all, it must hire additional professionals before this job can be done well. Leaving other things aside, we will certainly have some idea of that when we look at the ICAC. Once it has this power to investigate, how many people and how many professionals it has to hire before work on this can be done well? By then the IPCC may have to set up an additional investigation framework.

Then how should "independent" be understood? The view of the Liberal Party is that being independent means being independent from the police force or the Commissioner of Police, but that does not mean overriding them. It is only a matter of every one playing his role and that is all. Of course, the police force, the Commissioner of Police and the CAPO have the responsibility to provide information so that the IPCC can do its monitoring work in a fair and impartial manner. So this is actually an equal and complementary relationship. On one hand, the Commissioner of Police will not rule over the IPCC and it is precisely because of this that the latter can be called independent. On the other hand, the IPCC cannot override the Commissioner of Police and so the Commissioner of Police does not have to report to it. They should belong to a framework which will check and balance each other and enjoy the same status. Each should be independent of the other. Therefore, we will not support the idea that the IPCC should be given any investigative power.

Also, there is also a very important point and that is the legal professional privilege which has just been mentioned. With respect to this, some Members from the legal profession have behaved in a rather strange manner during the discussions. I recall clearly that with respect to legal professional privilege, when deliberation was made on the interception of communications law, they advanced fierce arguments, asserting that it was a principle that could not be violated and that it should be insisted on and could never be changed.

However, they are not saying this anymore in the discussions on this occasion. They are of the view that with respect to the privilege, that is, the legal professional privilege enjoyed by the Commissioner of Police, some clear legal provisions have to be enacted. These should state that if the IPCC asks the Commissioner of Police to surrender some information concerned, he will have

to comply. During the discussions, I was rather baffled. As I do not have any background in law, I have to hear what these Members with a legal background say. I said to them that this principle could not be violated. This was what they had told me in the first place. But they said to my surprise that that was not the case. This was because public interest and other factors might be involved. So there could be some change in that and the Commissioner of Police did not necessarily have to be given the legal professional privilege. After hearing what they had said, of course I consulted some experts and I asked some lawyers. I found out that in 1996, there was a member of the House of Lords in Britain, Lord TAYLOR, who said that this was a sacred principle which should not be violated. He said, "A client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. It is a fundamental condition on which the administration of justice as a whole rests I am of the opinion that no exception should be allowed to the absolute nature of legal professional privilege once established." There may be a different view to this from the experts in law. I hope to hear their explanation on this later on.

However, I really feel very strange and I think that this principle must be upheld, for if not, especially when we talk about cases of complaints against the police, we will find that often they are linked to some criminal or intricate elements. If it is asked that the Commissioner of Police must surrender the legal advice that he has obtained, then this absolute principle — though I would not say it is the golden rule — will be shaken. I am sure that there is bound to be some problem about that.

Let us come back to our discussion. During the discussions, I have also looked into the overall operation of the IPCC. Deputy President, on the operation, composition and manpower of the IPCC, for many years I have got a query. In fact, according to what I recall, the Government before the reunification had invited me to join the IPCC during the mid-1980s. But I did not take up the offer because I was shocked when I saw its files.

I recall clearly the situation back in those days. The Members were indeed having a very hard time. They had to handle piles after piles of papers. Let me illustrate by citing the current figures. In 2007, there were a total of 2 569 complaints, involving 4 341 allegations. Of course, after taking away some minor and unsubstantiated cases, what are left are those more serious in nature and whose allegations could be substantiated. The number is of course

much fewer. But still there are still a good number of complaints. If this is the case, considering the fact that in the IPCC there is now only one chairman, three vice-chairmen and no less than eight members, the actual number might be more than that, but even if there are 10, or 12 members, what can be done about the cases? Actually, manpower in the IPCC is in great shortage. Also, the manpower at the secretariat of the IPCC is not much. The secretariat now asks that its establishment should be increased to six staff. But they have so many complaint files to read. Therefore, if they are to do their monitoring work well, then they will have to handle it very carefully. So, with respect to manpower, I would think that it does need further examination.

Also, with respect to the division of labour, we have heard that often times, files are just being circulated and it is extremely rare that members will really sit down and study a particular case. I think that is very strange. This is because no matter how many cases we have deducted, there are still 4 341 allegations and there are still some 100 cases that can be fully or partially substantiated in the end. Even if there are only some 100 cases, discussions will have to be held. I do not understand how come members will never sit down and discuss these cases. I think with respect to the operation, there is really a need to undertake a review. Also, there is a need to increase the supporting staff. In this regard, the Government has made it clear that it will not flatly deny an application for more allocation of resources. However, I would think that we have to look into that so that there can be greater public confidence in the work of the IPCC and that members of the IPCC can have greater confidence in their own work. Therefore, I think support and assistance are very important.

However, some Members said during the discussions that there was no need to ask more resources from the Secretary for Security and instead the Director of Administration should be sought. I do not quite agree with these Members. Why are they saying that? This is because they think that the Secretary for Security may refuse them. But I do not think the Secretary for Security should do that. This is especially because he has such high popularity ratings. I am sure he will not see things from this angle. He has to try his best to ensure that the police force, the CAPO and the IPCC can all face the public. So on the contrary, I am confident that the Secretary for Security is a better candidate to decide whether or not the request for more resources from the IPCC should be met. Of course, they are also making the pledge that if and when necessary, even the secretary-general can be redeployed. But I would think that

we must look into the resource issue more deeply so as to ensure the effective operation of the IPCC.

Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): I think if the Secretary wants to maintain his high popularity, he should not introduce a bill which is neither fish nor fowl.

Deputy President, the general public usually find the Complaints Against Police Office (CAPO) rather distant from them. Basically, the existing police force has experienced a great progress than before, and all of us agree that they are very professional. However, to a member of the public, if the police abuse their powers, he will be miserable. Most of the police officers perform quite well in enforcing their daily duties. However, even if there are just one or two cases of power abuse, the public involved may be severely humiliated.

I have a recent example. Secretary, Ms CHU is an ordinary citizen who has been working very hard as a domestic helper. But one day, her employer lost \$1,000 and called the police. Upon arrival, after realizing that the employer had lost \$1,000, the police officer immediately wanted to take Ms CHU into a room for frisking. As the toilet was too small, the police officer asked the employer to borrow the master bedroom and took Ms CHU into the room for frisking. How did he conduct the search? Not only did he ask the subject to take off all her clothes, he also bent down and checked thoroughly. This is a very great humiliation to the subject.

After being strip-searched, the subject was also asked to take out her wallet and bag for checking. This is in fact "outrageous" and logically incorrect. First, the police officer conducted the search in the master bedroom of the informant's home; second, he asked the subject to take off all her clothes before checking her wallet. If he thought that she had stolen the money, why did he not check her wallet directly but handled the case in this way? Ms CHU found it a great humiliation and lodged a complaint to the CAPO. But she did not know how much longer she had to wait before getting the results of the investigation.

The protesters arrested at Lee Tung Street in the past were also strip-searched after being taken to the police station. And we have also heard of complaints made by those working at "one sex worker in an apartment" that they were strip-searched after being taken to the police station as well. I think it is a kind of abuse to ask someone to take off all his clothes. Ordinary citizens would have never imagined that they would have such an encounter. I think neither Ms CHU nor the protesters arrested at Lee Tung Street have ever thought of being involved in such a situation. But it did happen to them. Therefore, if the police abuse their powers, it is really very horrible.

Secretary, if you do not want the police abuse their powers and hope that the public can have confidence in the police, I think the Bill you have introduced today is just a decorative vase, as the Independent Police Complaints Council (IPCC) does not have any independent investigative powers. What it can do is just reading files. I still do not understand why. In fact, when I attended the meeting of the Bills Committee for the first time on day one, I proposed that we must get it done thoroughly, that is to say, the IPCC must have independent investigative power and investigations must be conducted by the other group of people. Up till now, the system of "people investigating into their own people" remains. It is impossible for the public to believe in such a system.

The favourite comment of the Secretary is that there is a firewall. But what kind of fire can it prevent? There are two major questions involved: first, if they are under the same roof, a culture will then be formed. The police will find things unacceptable to others acceptable. As the police very much agree to this culture, they also find "people investigating into their own people" acceptable. Second, in the case of "people investigating into their own people", frankly speaking, being colleagues, it is only human to avoid certain matters and take their relationship into consideration. Frankly speaking, it is only human to consider these factors. But it may be unfair to the investigators as they will have to bear a burden. However, if they are independent to each other, they do not have any connection at all and their relation is clear-cut. I think only in this way can the public have confidence. To the public, although harbouring of their own people's wrongdoings is not an issue in every case, one case is too much. If the public consider that justice has not been upheld, the whole system will collapse.

Therefore, Deputy President, the most important part is — regrettably, the Bill has not touched upon it at all — the independent investigative power. I do

not want to repeat the part on the amendments to the other provisions proposed by the IPCC as they are not accepted. However, regarding the foundation as a whole, we object to it basically. The Hong Kong Confederation of Trade Unions objects to the system that is impossible to give confidence to the public; we object to the system of "people investigating into their own people". Such a Bill is in fact meaningless. Originally, James TO intended to propose a number of amendments to include the part on investigation. But some of those amendments are not allowed to be proposed. And even some can be proposed, it is very likely that they will not be passed in the end. Therefore, we find it very difficult to support the resumption of the Second Reading and the Third Reading of the Bill.

We think the Secretary is duty-bound to introduce a complete bill which can give confidence to the public and include the independent investigative power. Otherwise, even his popularity has maintained on the high side, after the introduction of such a Bill, it will "take a dive" eventually. The Secretary may not bother about it. Neither do I want him to be too much concerned about popularity. I just hope that he can put more emphasis on the people's basic rights, so that in case the police abuse their powers, the CAPO can really give the people protection.

Thank you, Deputy President.

MR JAMES TO (in Cantonese): Deputy President, at the outset, perhaps let me state a point to all those who are now listening to the broadcast or the live broadcast. Although we have made tremendous efforts to amend this Bill and to point out the shortcomings of the existing system, I believe the public may also be well aware of one point — being a relatively senior Member of this Council who have been monitoring this system for 10-odd years, I can tell all of you: the public please listen carefully — our existing police force and our present Government have no real interest to investigate the abuse of powers by the police. They have no such interest. What they are interested in is only to design a system, so that the public can have a so-called complaint mechanism, and to conduct some so-called investigations, so that the issue can be dropped. This is what our Government is doing now. We should have neither expectation nor hope that this Bill can be improved, as the Government is not interested to do so. Not only our Government but also our police force have no such interest at all.

Of course, if the police commit offences such as homicide, arson, robbery and rape, they will have an interest to arrest them, as they consider that these are their hard core. How come the police commit robbery with their guns? Then they will have much interest to arrest them. But for the abuse of powers which is commonly found in their daily operation, including "frame-up" cases in which police officers from the Criminal Investigation Department (CID) falsely accuse drug abusers and batter them, the "strip and search" incident that occurred in Lee Tung Street and the example in which the subject was asked to take out her wallet for checking after being strip-searched, the police think that this is their culture and they should act in this way. Sometimes, they will also think that this is efficiency. They just do whatever they want to do first, right?

The police officer concerned can even argue that in checking the wallet of that domestic helper, he may not be able to keep an eye on her. How can he know if she will throw the stolen money away suddenly? Therefore, he must of course strip-search her first and check thoroughly. He can use such a high-sounding excuse of efficiency. He can even use a very subjective reason which is acceptable to him, saying that he is upholding the righteousness and he should handle the case in this way.

If police officers can find some more drugs or force someone to tell the location or testify against others by framing or beating someone up, they should do so. Otherwise, how can they conduct investigations? In fact, such practices have become less common. Why? It is because the newly-recruited police officers have different educational levels, cultures and social contacts. However, if such cases still exist, we should have an effective system for investigations. But neither our existing Government nor the police force has the interest to do so.

With respect to the police investigating into the police, as I have proposed to withdraw the funding for the CAPO in the Budget each year, I will not repeat my views in details here. The crux of the question lies in, first of all, credibility. If people investigate into their own people, no matter whether there is any conclusion of the investigation, both sides will not be convinced. Even the police officer involved has neither committed any offence nor abused his power, there is no way for him to prove his innocence as those conducting the investigation are his "colleagues".

Moreover, as Mr LEE Cheuk-yan has just mentioned, they very much sympathize with each other and have a full recognition of their culture. It is because in order to be acceptable by others, it should also be acceptable by themselves. Even you are now working at the CAPO, you may be deployed to some districts as a CID officer in future. Have you not beaten others before? Have you not battered others? Have you not framed anyone up? I cited an example before. A police officer of the Organized Crime and Triad Bureau (OCTB) had to act as an undercover agent to filter in the triad society in order to gather information. It so happened that he was battered by the Eastern District Crime Squad. But he had to keep his mouth shut. Why? Has he never beaten others when he worked at the OCTB before? As he is an undercover agent, he of course has to "swallow it in silence". That is to say, the general public or the so-called people on the margins will be battered. This is a very telling example.

The second question is that when people investigate into their own people, in fact, it is impossible for any complaints — particularly those are serious in nature or those in which the complainants against the police are involved in a case — to be under investigation right away. Why? It is because the CAPO also belongs to the police force. It will certainly tell you that it will disclose your statement to the police officer of the district who has charged you. However, if you complain about police corruption, fitting someone up or machinating a frame-up, the Independent Commission Against Corruption (ICAC) will conduct investigation as normal and immediately, no matter what the police is investigating. If and when necessary, the ICAC will gather evidence at the scene, carry out interception, conduct surveillance and seize all information from the police, so as to see whether the team of police officers who have charged you for possession of drug have been involved in power abuse, corruption and machinating a frame-up. All these can be done simultaneously, so that every piece of facts can be revealed. However, being part of the police force, the CAPO has no way to do so. What do I mean by this? I mean only the police can change you, but you have no way to investigate whether they have abused their powers — it may be possible for you to do so two years later when their change against you has been completed.

The actual situation is: in many cases of complaints received by the CAPO, the complainants have been severely tortured by the prolonged delay and their determination has been undermined. As a result, they have lost the interest to pursue their complaints. In 1992, the then Legislative Council

passed a motion, urging that the CAPO should be independent of the police force.

Before 1997, why should we give the Independent Police Complaints Council (IPCC) a statutory status? It was due to a certain background at that time. Of course, Mrs Anson CHAN, our Honourable colleague should know it as she was a senior, a very senior public officer at that time. In fact, as there was political risk during the transitional period, some people even worried that the executive-appointed IPCC might be abolished. Of course, the concern at that time was justifiable.

However, 10 years later, for an executive-appointed IPCC — which may be named as "監警會" in Chinese later, but they are in fact the same thing — even the Chief Executive (CE) has the guts, does he dare have it abolished? Will he abolish it simply by administrative means? Of course, after the legislation is enacted, it is impossible for him to abolish it by the process of the Third Reading. This is indeed rather difficult and a higher price has to be paid. But frankly speaking, even it is executive-appointed and he really has the guts, he will not abolish the IPCC. As such, for the time being, I really cannot identify any merits regarding this Bill.

Some people say that this Bill is like a chicken rib, something one is reluctant to give up though it is both tasteless and meaningless. Is it really the case? As we all know, once the media find that something does not have any merits, they will describe it as a chicken rib as this is the easiest expression. However, I do not think so. I think this Bill is not only a chicken rib, but something even worse than a chicken rib. Why? It is because in the past, the IPCC was executive-appointed. If the CE wanted to confer it with more powers, he could immediately do so and there was no need to amend the law. As the CE was the boss, he only had to ask the Commissioner of Police to follow his instruction. However, after the enactment of the legislation, it is not allowed in the law. We will talk about this later. Even if they want to interview witnesses earlier, it is not possible to do so as it will be regarded as *ultra vires* once they exceed the scope. Moreover, there is also a confidentiality clause. If it is violated, prosecution may be taken and injunction and litigation may also be initiated, causing a lot of troubles. If the IPCC is executive-appointed, both sides are in fact not quite clear about their responsibilities. As everything is not well-defined, there is room for

manoeuvre in the grey area. As long as the request put forward is granted approval, it can be put into practice. For each and every case, it can be lobbied in this way.

Moreover, we can notice from the recent incident of leakage of confidential information by the IPCC that it no longer has any burden. In the past, the IPCC might bring its civil servants (such as the Secretary of the IPCC) into litigation, and it might even implicate the Security Bureau. Therefore, at that time, when members of the IPCC were sued, the officers of the Security Bureau would say, "Never put me in trouble. I will back you up anyway. In case you have any trouble, you will be compensated for the money so incurred or for your being successfully charged. In a word, do not implicate me. Otherwise, I will be fired. As it is obviously your own business, please do not bring any troubles to me." Although in the design of the system, both the Security Bureau and the Secretary of the IPCC should be held responsible, it can shift the responsibility to others. The best feature of the Bill is that our Secretary and the Secretary of the IPCC can shift their responsibilities, saying that these are others' business in future. When we asked the authorities that in case they were really sued until they went bankrupt, what could they do? The new Chairman of the IPCC attended the meeting that day. He said, "Then we will go bankrupt." What did the Government say? It said that if they really had difficulties, it would discuss with them. Obviously, this is a mentality of shifting responsibilities to others. This is like the establishment of a statutory body — perhaps we have to pass the Bill today — as resources are needed to have it established, the authorities may suggest putting off work in this regard until several months later. In fact, this should be completed a few months ago. But how many months has it been under discussion? A conclusion has yet been reached but a statutory body is required to be set up.

Worse still, there was the Code on Access to Information in the past. We did have such a Code. However, it is argued that as it is a statutory body, it is not required to comply with the Code of the Government. Perhaps, someone will request it to provide information. However, it can refuse to do so if it does not like it. In the past, we could still lodge complaints to The Ombudsman, but now, we cannot do so. In case it refuses to provide information, what can we do? We can only "kick up a fuss". Or we can find the Secretary or the CE to have a talk. As it is a statutory body, there is no way to ask it to do so, even the CE cannot give it an order. In case it refuses to provide information, what can

we do? We can only rely on its goodwill. If this is not a retrogression, what is it? This situation is even worse than before.

I can only say that the IPCC is an organization with "three-noes": it has no power to conduct investigation, no power to make a decision and no power to impose a penalty. It has the power to make a decision only by convincing the Commissioner of Police and obtaining his consent, that is, it has to lobby the Commissioner of Police for his endorsement of the decision made by the IPCC. If the Commissioner of Police does not agree to the decision, it has no alternative but to lobby the CE for endorsing the decision of the IPCC instead of that of the Commissioner of Police.

The IPCC even does not have the power to have access to information. Why? Our Deputy President has already given an account earlier on. But Mrs CHOW said that she did not understand, querying if this important privilege was sacred which should not be violated. Fortunately, she read out the judgment by Lord TAYLOR. What he said was "a man", an individual. In the case where the Government has to be held responsible and give an account of an incident to the public, the situation is completely different from that of an individual. This is how our Government acts, saying that as an individual has such a right, the Government should also have such a right. What is the privilege of an individual? It is the protection of his human rights, so that he can have free access to confidential legal opinions. How about the Government? As the Government has to be monitored by the IPCC, the Government thus has to be held accountable. It will be held accountable in future through a statutory system. Therefore, in the design, relevant information is provided for a monitoring body instead of being made available to the public. The Government does not even agree to it and refuses to include it in the legislation. This is an organization which is designated to monitor the Government, yet it is not allowed to have access to any information. Therefore, consideration has to be given case by case. What does it mean? If I were the Commissioner, you could monitor me if I wanted you to do so; and you had to go away if I did not want you to do so. This is our existing system. This is our mandated system currently in place — it is even a mandated system. In the past, the IPCC would make requests repeatedly and the authorities might provide it with information on one or two cases. But now, according to the law, the IPCC should not make such a request, as the authorities have such a right. We have also had debates on this point here before.

What do we have then? What we have is that our Government will continue to think that the system currently in place, that is the one in which people investigating into their own people, can meet the public expectation and is of sufficient credibility. As long as there is the IPCC in the system, it can give an account to the public. I just hope that the public can sharpen their vigilance to see that our existing Government is acting in this way. If you go to the IPCC or the CAPO to lodge a complaint after being strip-searched, you will not get justice — you will never get justice. I hope the public can be sober-minded. There are still a lot of things for us to do, but passing this Bill is definitely not one of them.

MS EMILY LAU (in Cantonese): Deputy President, we passed the Race Discrimination Bill this morning. As I said at the time, the three committees on human rights of the United Nations are all very concerned about that Bill. As for this legislation on the Independent Police Complaints Council (IPCC) under discussion now, the United Nations is also very concerned about it. This Bill has become a matter of concern even before 1997. What I mean is the Human Rights Committee which is responsible for the implementation of the International Covenant on Civil and Political Rights, Deputy President, has expressed its concern at each hearing. In March 2006, a hearing was held again, at which I was present. The closing statement made at that time was: "The Committee remains concerned that investigations of police misconduct are still carried out by the Complaints Against Police Office (CAPO)." The Committee also advised: "The IPCC does not have the power to ensure proper and effective investigation of complaints or for the effective implementation of its recommendations." That is to say, it has no power whatsoever. Its recommendations were: "The Special Administrative Region should ensure that the investigation of complaints against the police is carried out by an independent body, the outcomes of which are binding on relevant authorities."

I asked the authorities, particularly the civil servant who is now sitting next to the Secretary, on several occasions whether it was the case that the authorities were not prepared to do so. His answer was in the affirmative, saying that the authorities had no such intention. The current Bill is not dealing with issues in this aspect, either. Deputy President, he had such an answer as early as in 2006. We have to submit our report again one or two years later. However, the authorities will definitely refuse to do so. The United Nations has followed up this issue for 10-odd years. It has agreed that Hong Kong

should have an independent body to conduct investigations on complaints against the police. This is actually not a unique case in the world. Examples can be found in other places. However, no matter whether it was the colonial government or the present Special Administrative Region Government, they are reluctant to do so. But now this Bill is introduced to this Council.

I share the views expressed by Mr LEE Cheuk-yan and Mr James TO earlier, Deputy President, saying that we can hardly accept this Bill. Mrs CHOW has referred to some figures just now, and I am going to refer to them as well because this report was submitted by Dr LUI Ming-wah on behalf of the IPCC last week. Dr LUI is one of its vice-chairmen. Dr LUI has referred to some figures in his speech. How many complaints were received in 2007? He said there were 2 509 cases, involving 4 341 allegations. How many of them were substantiated? There were 38 cases, Deputy President, which is less than 1%.

Mrs Selina CHOW also said earlier that there was a need for discussion. In fact, there are three groups of people. How many people are there at present? Let us take a look here. They are all "extra-busy guys". There are altogether 18 people and they are divided into three groups. How many people are there in its secretariat? It does not have so many staff as our Secretariat. At present, there are "one plus 21" staff, who are responsible for handling more than 4 000 complaints. Deputy President, please do the calculation for me as you are stronger than me in mathematics. Deputy President, if you were one of the complainants and you knew that your complaint would be handled in this way, would you think it was fair?

There are still lots of people coming to my office. However, whenever they come, they will pull a long face and complain to me. I nearly want to pull a long face to them as well for I have no solution at all. What can I do? I tell them that lodging complaints is necessary. But after the complaint is lodged, it turns out that it is a case of "people investigating into their own people". The public are very frustrated. Deputy President, all those who come to my office are definitely frustrated. If not, they will not approach me. I will also tell them, "If the police prepare to charge you and you want to lodge a complaint against them, the investigation will be put on hold until the whole case is settled. Then your complaint will be handled. It may take three years or even six years." Therefore, what Mr TO said earlier is true. This is the way it handles

complaints. This is the policy. If the police charge you and you are involved in a case, the investigation will be put on hold. Let us take a look at the ICAC. Do you think that the ICAC will say, "As you are involved in a case now, how about we conduct the investigation four years later?"

Therefore, it is absolutely impossible to convince the public by handling complaints in this way, particularly those against "strip and search". Recently, I have also brought up an issue. It is also about a complaint under investigation at present. If the complainant is involved in a case, the investigation will not be continued. Even it is not so, the complainant will still be kept in the dark about the progress of the investigation. I always receive some complaints, Deputy President, in which most of the complainants said that they had lodged complaints to the CAPO. I asked them what the officers in the CAPO had done. They told me that the officers in the CAPO had asked them not to make so much trouble. This is exactly like what TUNG Chee-hwa told me. Officers in the CAPO may not ask them to "take a step back", but they will ask them not to make so much trouble and not to complain. What can we do then? It is always like that.

The authorities tell us that the CAPO is just and strict, and everyone in the police force is very afraid of it. But I think they are not afraid of it at all. In fact, the public are most afraid of it as they are worried that they cannot get justice. People always ask, "How can I get justice?" I will say, what a pity! I wonder whether it is like what "Bow Tie" said, justice can only be found in heaven. If this is the case, how can we get justice? The Secretary must answer this question later: If more than 4 000 allegations are received, how can investigations be conducted with 18 members being divided into three groups and a secretariat with a staff of "one plus 21"? Please ask him to answer me. Moreover, it is not necessary to hold any meetings for the investigations. Mr Alan LEONG will advise later that a meeting will be held once a month or every several months. But how can it be like that? Regarding these issues, a meeting must be held for discussion and to see if there is really such an incident and if the follow-up cases are under investigation. What is the point of just circulating the papers? Deputy President, for some bills, we even want to mark the papers as "circulation restricted". It is outrageous that complaints are

handled by the circulation of papers. In particular, how can these cases, be handled by the circulation of papers?

However, all those who have taken up the post of vice-chairman have now left. Only the former vice-chairman is still here. Do you know how many vice-chairmen are there? Apart from Dr LUI Ming-wah — no prize for a right guess — there are Mr Daniel LAM and Dr Joseph LEE who is sitting next to me. They are all extra-busy guys. Sometimes, even for our Council meetings, they are not free to attend, not to mention reading the papers for circulation. Those complainants are seeking their assistance. I do not intend to read out all the 10 names. I have all the names in hand, together with their detailed resume. Do these people have time to offer assistance? Conversely, if I were one of the complainants, that is one of the informants of the 2 500-odd complaints and 4 000-odd allegations, I could not help being annoyed when I learnt that the system was like this. And how many cases are successful? There are 36 cases only.

Former Chairman Ronny WONG told us that he was also very frustrated. Deputy President, I do not know whether you were present at that meeting. He said that he just acted as a tool to protect the police and it was very hard for him to identify a few successful cases. Let us take a look. Among the 4 000-odd allegations, only 36 cases are successful. I do not believe that the people in Hong Kong are aggressive to such an extent. Sometimes, when people come to my office and lodge complaints against the Government, I will ask them to clear things up first as they are too aggressive. However, generally speaking, how is it possible that there are only 30-odd successful cases among the 4 000-odd allegations? I find it really ridiculous. Moreover, there is also a supplementary system. Deputy President, what is it called? It is called the observers scheme. How many observers are there? There are around 80. It is mentioned here that there are 82 observers. They can carry out observations on a pre-arranged or surprise basis. What do they observe? Deputy President, they are responsible for conducting observations and interviewing witnesses. Surprisingly, information provided to us shows that observations on a surprise basis have never been conducted. I have conducted a surprise inspection at a prison, though it turned out to be a mess. In fact, the Secretary should very much support our actions on a surprise basis. No government officials dare criticize me for doing so. When I conducted a surprise inspection at the Tung Tau Correctional Institution the other day, someone approached me

and told me that he knew who I was. I said it was very good that he knew me as I was conducting a surprise inspection there.

These observers should also conduct surprise observations. If everything is well-prepared, telling them that I will pay a visit and ask them to reserve a parking space and prepare some snacks for me, I think this is really disappointing. I have the names of all these people in hand as well, but as time is running out, I do not want to waste time on this either. They are Members of the District Councils. It seems that most of them are from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). With such a practice, it is not that I do not believe those from the DAB can help. However, we hope that the whole system is presentable, so that we can tell others that it is a very fair and independent system which can really protect the public. However, what we can see now is the lack of manpower. And after the incident of leakage of confidential information, even Chairman WONG and the whole IPCC were implicated and had nothing to say. In fact, they just offered assistance in handling the cases. But civil servants seconded from the Government not only neglected their duties, but also leaked the information for no reason. Subsequently, the IPCC was asked to shoulder all the responsibilities. When Chairman WONG came to the Legislative Council, he was very dispirited and not in good shape. He had "swallowed" so much for the Government, but what did he get in return? Deputy President, it was a dismissal.

(THE PRESIDENT resumed the Chair)

I really find that sometimes, the practice of the authorities is really outrageous. In fact, these people have assisted in handling several thousand of cases and only identified several dozen successful cases. It is not that as if they have identified 3 000-odd successful cases among the 4 000-odd cases — if that is the case, I think the entire police force will jump up. The question is, they have tried their best to work for the Government and express a lot of opinions, hoping that improvements can be made. However, the Government simply turns a deaf ear to them. Moreover, with respect to resources, President, I have also mentioned during the debate on the previous Bill that in order to get things done, there must be resources. At present, the staffing is "one plus 21", with a funding of \$16 million. They have suggested that several posts have to be

created to take up these duties, and after calculation, a funding of more than \$16 million is required. I do not know whether it will turn out to be \$20 million. If the Secretary agrees to adopt the existing "messy" approach, I suppose he will, after reading all these papers, approve the additional funding and let it handle the issue by itself. However, that is not the case. Deputy Secretary TING said that it had to depend on whether it was really appropriate and necessary. They have raised this proposal for such a long time and Chairman JAT, the newly-appointed chairman of the IPCC, has also come here and advised that they had already examined and submitted all the information. Will they arrive at a figure without any basis? However, the authorities were unwilling to give consent, and asked them to bid the funding in the resource allocation exercise.

President and I are well aware of the amazing process of the resource allocation exercise. How can they bid for the funding? President, the Secretary should know that the resource allocation exercise is conducted once a year. If they want to create new posts, how can they bid for the funding in the resource allocation exercise? In the past, the Legislative Council Deputy Secretary TING said again that it was different. They might not be exactly the same. However, they are the same in the sense that the Legislative Council also has its secretariat. Legislation was then enacted to enable its restructuring and independence. At present, the Government has submitted a piece of legislation concerning the IPCC. It will be re-named as "監警會" in Chinese upon its so-called independence. In fact, the Government should have the law and the funding, as well as a structure in place to handle these duties. But there is nothing so far. The authorities hope that the civic servants will return to the Government in future. It has also stated that the D2 post will be upgraded to a D3 post. But nothing has been done so far. I really do not understand. I talked to the new chairman and members the other day, saying that they were really great that they did not hand in their resignation after receiving such treatment from the Government. They "swallowed" and shouldered the responsibility of the previous leakage of confidential information whilst the name of the civic servant involved could not be disclosed. If you lodge your complaint by phone, all the names will be disclosed, and those members have to shoulder the responsibility.

I think it is outrageous for the authorities to adopt such an attitude in treating people and performing its duties. The IPCC even has to help "swallow" the responsibility. However, I think "swallowing" the responsibility

is one thing, President, I really cannot "swallow" these figures. Among the 4 341 allegations, only 36 cases are successful. Secretary, I think the public hope to get justice. There are so many complaints. If they just adopt such a loose approach, concluding the cases by circulation of papers only, having no surprise inspection conducted by observers, and having no monitoring, I believe, on some of the processes of taking statement, and then tell the public and the international community that less than 1% of the complaints against the police in Hong Kong are successful, showing that we have a quality police force, but is it really the case? We have gone around in circles on this system for 10-odd years. I absolutely cannot see how this Bill will provide the new structure with credibility and transparency and put the mind of the public at ease.

Therefore, President, I am really disappointed in the Secretary. Although he enjoys a very high popularity, I am really disappointed. How on earth can he introduce such a Bill, thinking that the public will accept it? However, I think the Secretary should know that the United Nations will not accept it. When all these things are exposed, I think The Frontier and many members of the public will definitely not accept such a rubbish structure. With these remarks, I object to the Second Reading.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak

(Mr Alan LEONG raised his hand to indicate his wish to speak)

MR ALAN LEONG (in Cantonese): President, I have the honour to sit on the Independent Police Complaints Council (IPCC) for six years. During the last two years, I served the IPCC in the capacity of the Vice-Chairman. I have thus gained considerable knowledge of its operation. And I have every expectation with the Independent Police Complaints Council Bill (the Bill).

Some colleagues mentioned earlier that the public have considerable expectation towards the IPCC. This is perhaps the case, but the question is that

the difference between the expectation of the public and the reality is substantial. The public expects that when they fail to have justice done via their complaints lodged to the Complaints Against Police Office (CAPO) against police officers, they can turn to the IPCC. They liken such action to presenting petition to the emperor in the past, and they think that the IPCC will investigate the case and bring justice to them.

However, as mentioned by a number of colleagues earlier, the IPCC is indeed an organization with "three noes". It has no power of independent investigation, no power to make decisions, and no power to impose any penalty. In other words, the IPCC has no power to initiate investigation on any case, nor does it have the power to verify whether the decision on a certain case handled by the CAPO is valid or whether other situation is involved. The IPCC has no power to make decisions. It can only request the CAPO to conduct further investigation, or request the Commissioner for Police (the Commissioner) or the CAPO to review the decision concerned and see whether the decision is inappropriate. President, if a consensus cannot be reached eventually, there will be no other solutions, for the IPCC can do nothing about it.

With regard to the power to impose penalty, which I will give a brief account later, it is held tightly in the hands of the Hong Kong Police Force, and no one can cross the line, not even a step. In other words, if a complaint is proved to be substantiated after investigation, the IPCC can raise no doubt to the penalty imposed by the Commissioner on the police officer concerned. On this premise, the expectation of the public may be too high owing to certain beautiful misunderstandings they may have towards the IPCC. This still does not matter, President, for I always think that targets can hardly be achieved in one go, particularly on political issues. The wisdom of achieving things step by step also counts.

Therefore, during the scrutiny of the Bill, unlike other colleagues, such as Mr James TO and Mr LEE Cheuk-yan, I did not set my target on striving for independent power of investigation. I only hoped that the Bill would confer on the IPCC more power it should have, wishing that the Bill would add some teeth to this "paper tiger". Though it is only a "paper tiger", it is better than none. Am I right? I adopted this attitude as a start.

President, I would like to mention a particular point. During the scrutiny this time around, the Chairman and members of the IPCC have expressed their

views to the Bills Committee. I was surprised to learn that the Chairman and members, all appointed by the Chief Executive, who have been serving on the IPCC for years, had put forth some very important amendments. They hoped that by means of this Bill, their role would be brought to full play, so that they would not just act as a rubber stamp for the protection of the redress system of the police.

President, later, you will hear that the authorities have accepted some of the amendments. However, President, you may perhaps agree that I will examine the Bill in the context of some relatively major links, for I consider these links are of greater importance. President, as to whether this "paper tiger" can operate smoothly, I believe that this can be seen from three major links. Does the Government have the sincerity to let the IPCC act as the gatekeeper for the public? Is it simply trying to take advantage of the credibility of certain members of society appointed to the IPCC to override the police redress system, where no resources and power are provided, and give the public some confidence which may be misleading and unrealistic?

President, what are those links? First, it is the power to obtain information from the Commissioner. Second, since this "paper tiger" has no power of investigation, no power of making decision and no power to impose penalty, it can only let out its howl to the public. I call this the verdict of the public. This is an important power, which may also be regarded as the last resort. The members of the IPCC think that they still have a channel to make public their disagreement and difference with the Commissioner to let the public understand the actual situation.

The third major link is of course the provision of sufficient resources by the Government, for nothing can be done without money. In the last couple of days, the President might have noticed that the Privacy Commissioner for Personal Data, Mr Roderick Woo, expressed in high profile, which is not his usual practice, his dissatisfaction with the Government for refusing to provide additional resources, which has put him under various constraints, failing to fulfill his statutory duties. This is exactly the concern that worries the Bills Committee most.

President, I would now return to the first link. According to clause 27 of the Bill, the Commissioner does not have to comply with the requirement made by the IPCC when the Secretary for Security is satisfied that compliance with the

requirement would be likely to prejudice the investigation of any crime or the security of Hong Kong. In such case, he can refuse to provide the relevant information. I am not going to examine in specific whether the phrase "likely to prejudice the security of Hong Kong" is open to discussion, for it sounds rather serious. But on the phrase "the investigation of any crime", will crime like pick-pocket be included? Will smoking in public places also be included? The answer is definite, President, for the phrase "any crime" is used. In other words, whether certain information will be provided or not is entirely left to the Secretary for Security and the Commissioner to decide.

If the IPCC cannot get the relevant information, it can do no magic without a wand. Besides, the IPCC can only understand the whole story from the documents obtained. The CAPO will submit a report in black and white to the IPCC after the completion of the investigation. Members of the IPCC must possess the perspective and sharp sense of a detective to identify questionable issues by reading between lines in a careful and patient manner, and then start investigating the case. It is quite interesting. However, if the report is drafted tactfully, members of the IPCC can hardly identify any mistakes. This is the reality. Unfortunately, at present, even if one senses that there is something wrong and wants to investigate it further, given the power expressly specified in clause 27, one may not necessarily get the information required.

I would let other Members, such as Ms Margaret NG, to elucidate the point of legal professional privilege, and I would just say a few words about this. On the issue of legal professional privilege, President, I definitely share the views expressed by Mr James TO earlier. The Government keeps mentioning secrecy, but at issue is whether the IPCC, under the existing system on complaints against the police, can fulfill the function of a gatekeeper for the public. For instance, if a complainant complains a police officer of battery, apart from lodging complaints under the mechanism on complaints against the police, he may also initiate civil proceedings. An out-of-court settlement may eventually be reached for the civil case, but secrecy is included as a term for settlement. President, it is normal for the IPCC to check the relevant conditions, for it wants to know whether "hush money" is used to lure the complainant to give up testifying against the defendant and even withdraw his complaint from the CAPO. The IPCC only wants to understand the relevant case. If the authorities have no trust in the members of the IPCC, they should not appoint those members. But if, upon appointment, the authorities still cannot trust them, it may after all request them to make declaration of secrecy.

For the relationship between the IPCC and the CAPO is not like a third party or an outsider, it should act wholeheartedly towards the CAPO, so as to reinforce the confidence of the public.

President, what about the means of public opinion? The IPCC considers that clause 7(1)(b) of the Bill should be amended, for clauses 7(1)(a) and 7(1)(c) allow the IPCC to make recommendations on certain investigations of reportable complaints. The IPCC is of the view that when the clause is considered together with clause 24, which I will explain in detail later, the IPCC can in no way express its opinions on the punishment and penalty imposed. The IPCC thus requests for the amendment of clause 7(1)(b) to expand its scope, so that the IPCC may give opinions on the method of punishment and issues not covered in paragraph (a) and (c). However, this request is turned down. Nonetheless, President, the duty to keep confidence specified in clause 37 is my major worry. The IPCC have worked hard to strive for the amendment to the effect that the IPCC will not be subject to any legal liability if it considers the disclosure of information to the public is necessary for the performance of its functions. But this request has been turned down by the Government. They do not allow the use of the phrase "as the IPCC considers" but only accept the phrase "considers objectively". However, I do not agree with this, for the IPCC is appointed by the Government and the members should have the trust of the Government. Besides, the disclosure of information is a collective decision made by the IPCC but not individual members.

I have 10 more seconds. President, I think it is very strange that the allocation of funding will be refused at this juncture. If it wholeheartedly wants to perfect a system, it should invest the money on the "thick" side. Thank you, President.

DR KWOK KA-KI (in Cantonese): Madam President, today, we are discussing the Independent Police Complaints Council Bill (the Bill). However, I somehow consider the word "independent" an eyesore. Probably a wrong title has been chosen. For we may not necessarily consider it such an eyesore without the word "independent".

Having heard the speeches of many colleagues and read the relevant report, I think that this investigation organization is in no way independent nor does it have any credibility. Actually, the role of the Independent Police

Complaints Council (IPCC) has been overemphasized. What do I mean? The IPCC indeed shares the similarities of many internal appeal boards in the Government, such as the Social Security Appeal Board which I used to be a member, and the Town Planning Appeal Board. In fact, the IPCC mentioned in the entire Bill is in no way independent. All independent committees should possess three types of power of great importance, namely, the power of independent investigation, the power of making proposal independently and the power to impose penalty independently. However, the IPCC possesses none of these three types of power. In what way is it independent then? All investigations have to be conducted via the Complaints Against Police Office (CAPO), while the IPCC, which is so-called independent, can only make reference to the investigation report submitted by the CAPO, an office basically comprised of police officers.

The response given by the Government is ludicrous, for it said that the CAPO is independent. Certainly, the nameplate and the location of office are different, but after all, self-conclusive investigations are conducted on one's own officers. Madam President, no system in this world that allows self-investigations on one's own officers will have credibility. This is the most important point. This Bill was suddenly withdrawn in 1996. 12 years on, the general public, including the Legislative Council, have great expectation on this Bill. They think that with the introduction of this Bill by the Secretary to right the wrong, the IPCC will enjoy genuine independence and the public would see justice done. But this is not the actual case. These are all lies.

Madam President, the objective of every monitoring committee is to uphold justice, whereas the impartiality and fairness of a system is not judged by the committee itself. The framework specified in the Bill should be impartial and fair, it should be flawless, so that if my complaint is not substantiated after investigation, I will still willingly accept it. If the Government can set up such a monitoring organization and propose a bill to this effect, there will not be any problem. It can save us all the trouble to debate this Bill, which provides no protection at all to the public but instead trying to deceive them, today in this Chamber.

In fact, I find these reasons somehow familiar. Members perhaps remember that there was a task force responsible for anti-corruption in the police force before the establishment of the Independent Commission Against Corruption (ICAC). Investigations on police officers were also conducted by

the police, while anti-corruption work was carried out by the task force on anti-corruption. Madam President, I think this has been a long time ago. At that time, people said that it was unacceptable that self-conclusive investigations were conducted by the police on its own officers. The response given by the authorities at that time was completely the same as the one it has given today. The authorities said that the task force on anti-corruption was impartial, for it was comprised of independent officers working on anti-corruption. However, those officers were police officers after all. Though they were working for the task force at that time, they might be posted to other divisions the other month. Will those officers stay in the CAPO all along? Definitely not. If so, how can there be credibility? The Government has wasted much of our time, yet it still fails to meet the aspiration of the public. According to colleagues spoken earlier, the Bill it now proposes is intolerable.

If the system is fair, police officers will not be wronged, for police officers are in positions of power. They have the power that the public in general cannot oppose. The police force is an enormous organization in which many means for self-protection have been put in place. This is a known fact to all of us. Madam President, I do not believe that the Secretary knows nothing about it, for he used to be in the disciplined forces, and in his heart of hearts, he knows many of those situations. On the contrary, the public has nothing but bare hands. No channel is available for them to lodge complaints. As they pass a police station and consider that their grievances have not been redressed, they will look forward to an independent organization with credibility which may render them genuine assistance. However, I believe, in future, members of the public lodging complaints to this independent council will very likely be disappointed. They will eventually be left in a desperate state, for the council can in no way change the situation.

Let us look at the entire structure of the IPCC. First, all members are appointed by the Government, a fact that allows no more discussion and it will definitely be the case. Second, the IPCC has no independence at all. It is most important that a council like this can initiate independent investigation on cases which it considers necessary and conduct in-depth examination on issues that it considers it is able to tackle. If the IPCC cannot even achieve these targets, what is the point of setting up such a council?

During meetings, like us, they can only study the reports submitted. But even we do not stop there. Madam President, when we study a certain case, as

Members know, we will discuss the case with the complainant after listening to the content of the complaint. Sometimes, we may conduct on-site inspection and visit the scene concerned to verify and follow up the case. Each and every case is handled carefully. Though the Legislative Council has no power and no authority, nor does it have any investigation method, we do our level best to maintain independence. The Government is provided with ample resources and manpower. We only hope that it will put in place systems and methods to uphold fairness and impartiality, so that all complainants will consider the organization reliable and trustworthy, and that the decisions made under the system are reliable. Definitely, I do not believe that the independent council to be established under the Bill in future will be capable to achieve such goals.

There were times when we saw that a lot of evidence provided by the police in the report was unacceptable. I clearly remember, Madam President, I once heard a remark from the Chairman of the IPCC, Counsel WONG, who has just departed from the post — I do not know him, but I deeply respect him because of this remark he made, and he has handled a number of cases when he was the Chairman of the IPCC. He said that the Bill did not aim at helping the complainants, but would by all means prevent these complaints from undergoing fair investigation. Having heard that, I hold him in respect, for his remark came from his conscience.

We all know that the people appointed by the Government are all yes-men, to put it crudely. They only look forward to the appointment, most desirable if they are awarded specific honour, for they can thus bring glory to their families. Therefore, it is difficult to find someone who has the guts — Secretary, I do not know whether the former Chairman of the IPCC was identified by you, but the right man has been found. He pointed out the major failure of the IPCC. To someone who has involved in such a long-standing system, as well as a member of the judiciary sector, he still expressed grave doubt about it. I thought that the Government, including the Secretary for Security, would give a second thought about this and reflect on themselves, trying to guess the reasons for Counsel WONG to give such remarks. I thought the Secretary would probably think that, "He has a good relationship with the Government, and I have treated him well, so there is no reason that he will find excuses to trick me. If it is not his real intention to trick me, there must be something wrong with me." I thought that the Government would reconsider the issue upon hearing this remark, trying to amend, perfect and rectify this system which was filled with imperfections.

Regrettably, up to date, Madam President, the Government still acts obstinately, turning a deaf ear to all the content of the discussions, including opinions expressed by members, the public and people concerned about the IPCC, such as the Chairman and members of the IPCC.

I believe the incidents mentioned here today, which we have expressed profound regret, such as the Lee Tung Street incident and the power abuse incident regarding a home-helper being stripped off for body-search by the police, will not be stamped out under such a system, but will on the contrary be condoned. If we tolerate any unfair incidents be caused by or to take place under a certain system, it will first destroy the system itself. If Members consider that there is rule of law, justice and equality of rights in Hong Kong, sorry then, the IPCC is going against all these. Second, if it is the hope of Members to maintain a corruption-free and law-abiding police force which has credibility and the confidence of the public, sorry then, this Bill has scuppered the chance in this respect.

Innocence can only be proved under a stringent and fair system. If a system is corrupted, outsiders will not believe a person is innocent even if the system considers him so. As in the case where a police officer, who has done nothing wrong, is being complained, even though the future IPCC which claimed to be independent considers the police officer innocent, no one will believe him. Since the IPCC basically lacks credibility, the police officer though proved to be innocent will convince no one, for the public will regard him as being condoned by the system which allows self-conclusive investigation on one's own men. This is in a way unfair to the police officer.

Many members in the police have not abused their power. I believe a vast majority of members of the police will not abuse their power and I believe a vast majority of these members who have not abused their power wish that a fair system could be put in place. For with such a system, the black sheep in the police, if any, will be removed, society will be fairer, the police will gain higher reputation, and the rule of law and governance in Hong Kong will be upheld.

However, the Bill or the IPCC fails to provide such an opportunity while the Government allows this golden opportunity to slip. If the Government insists to adhere to this wrong course, not only the general public once aggrieved will be affected in future, the reputation of the police, the credibility of the

Government and the integrity in governance of the Hong Kong Government will too be affected.

When the Secretary or other people attend international conferences held by the United Nations or at other places and defend the sound system of Hong Kong, do you think they will believe it? Trust has to be earned from others and merits should be awarded by others. If the Government refuses to accept comments from outsiders, as well as proposals for perfecting the system, and insists to have its own way, it may continue wearing this ragged coat with holes all over, for the Government but not others should be ashamed of this. So, Mr James TO needs not be so angry.

The one who defends and introduces such a system should be the most shameful, for the international community knows that such a system is unacceptable. Despite all the criticism against the Bill expressed by us, I foresee that the Government will be able to secure more than sufficient votes to have the Bill passed. However, what is so happy about passing the Bill? The passage of the Bill will only facilitate the establishment of a more regrettable organization or structure, a system that lacks credibility, independence and fails to get justice done. I express my deepest regret about this.

I so submit. Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): President, concerning this so-called Independent Police Complaints Council (IPCC), criticisms on different aspects and from different perspectives have been put forth by many Members. However, I believe these criticisms fail to move the Secretary and the Government. In my view, having heard all the criticisms expressed, they will insist adopting the present proposal and system, for they have to adhere to the established policy now adopted by the Government, that is, never repent and never admit its mistakes. This policy toes the line of the philosophy and concept of governance adopted by TUNG.

Such a practice will definitely provoke public anger and dissatisfaction. However, under the system in Hong Kong, despite the dissatisfaction of the public, senior officials can still enjoy handsome salaries and senior posting, as well as limousines, houses, chauffeurs and protection provided by the Government. If the public stages demonstration or makes a scene outside their

houses, they will be prosecuted. However, debt collection agencies which threaten debtors until they commit suicide can escape the long arms of law. This is the unfairness of the entire system at present.

I often advise the public never to commit suicide, for if they want to die, they should make the senior officials die with them. They should make the one they hate the most to die with them. Just as what the people do on the Mainland. This is the best approach, for this is the only way to make them scared. Really, officials in Hong Kong do not scare. They think that the public would rather commit suicide, jumping down their flats with their whole families, instead of coming forward to stage demonstration. It is really unfortunate.

President, if the Chinese name of the IPCC, which is "獨立警監會", is pronounced slightly off the tone, it will become "毒辣警姦會", which means a sinister police raping council. The Chinese character "姦" carries the same meaning as the character "奸" (meaning wicked) in the Chinese idiom "狼狽為奸" which means doing evils in collusion, as well as the meaning of "姦", rape, in the context of raping public opinion. The name of the council should be rightly pronounced this way, for this is an apt description. The IPCC (獨立警監會) will be called "毒辣警姦會", the sinister police raping council, in future. The public does not need to go there. Once they are there, they will be poisoned and become dumb. Public opinions will then be raped. I do not know what else will be raped.

We should look at the problems in the past. I have been a District Council Member for 23 years and have received complaints against the police from the public at district level in the past. They were filled with fierce anger against the IPCC, which was only slightly milder than the anger they expressed in toppling TUNG. If we mobilize all those who have been unfairly treated by the police to go to "警姦會", the police raping council, they will think that "警姦會", the police raping council — I would like to make it clear that I am talking about "警姦會", the police raping council, so the verbatim record of Hansard must state clearly that I am saying "警姦會", the police raping council, but not "警監會", the IPCC. President, if I really mobilize those who have been violently and unfairly treated by police officers over the years, and those feeling aggrieved despite lodging complaints to the "警姦會", the police raping council, to take to the streets, I believe the number will definitely exceed 500 000. However, these people dare not come forward by fear of the despotic power of

the police. Their fear towards the police exceeds that towards the debt collection agencies.

Two weeks ago, a man came crying to me. His case was a family dispute case, as reported in the Oriental Daily News and the Sun Daily. When he was teaching his son to do his homework, he was overwhelmed by a moment of anger that he took out a knife. The teacher of his son was so scared and called the police. As a result, he was taken to the Tin Shui Wai Police Station. He was taken to the Tin Shui Wai Police Station at 6.00 that day. Since he was liable to prosecution, he was detained until 8.00 the next day when he was taken to the Court. During the 12 to 13 short hours in the Tin Shui Wai Police Station, he was asked to take off all his clothes, including his underwear, for three times. Later, when he arrived at the Court, he again had to take off all his clothes, including his underwear, in front of two women. In other words, during the 15 hours of prosecution and detention, he was asked to take off all his clothes for three times. I told him I could help him find a barrister to sue the police. I actually found a lawyer. But the man later said he was scared and dared not do so. I thus taught him to complain to "警姦會", the police raping council, but he still said he was scared and dared not go there.

Members can imagine how frightened the members of the public are. Even when they are insulted and unfairly treated, they dare not come forward to lodge a complaint. Though I have found him a lawyer and a barrister to state his intention to sue the police and do justice for him, he was not willing to do so. For he considered there was no way to do him justice. He thought that the entire system was completely biased towards police officers, and that it was impossible to have justice done for an average man like him under the governance of Donald TSANG and Secretary Ambrose LEE. He did not come forward to get justice done but rather hide himself in his house to cry.

President, Members should have identified the problems from these cases. I must present to Members the many cases in the past. A young man was stopped by the police when he was walking on the street at night. He was dragged into an alley and a pack of drug was stuffed into his pocket. He was then charged with possession of drug. Some drug addicts, who have been in jail for 10 to 20 years and used to the life in jail, told us angrily that some police officers had stuffed drugs into their pockets. Perhaps those police officers have not cracked any case successfully for some time and they try to do so to meet the quota.

These examples are numerous. However, if complaints against these cases are made to the police, no result will be found after every investigation. Sometimes, the victims of a case or two will be luckier. The case in Tai Wo Hau is one of these examples. Since the process of framing took place in a lift where the entire process was recorded by the close-circuit television inside the lift, and that the video was not yet erased, evidence was available to charge the several police officers involved. This is a rare case where specific evidence can be obtained.

A year or two ago, two police officers deliberately bumped their car towards the rear of a taxi in Tsim Sha Tsui. They then got off their car and wronged the taxi driver for changing lane improperly. They accused the taxi driver of ruining the bumper of their car and made him pay them some \$1,000 to \$2,000 as compensation. The taxi driver later made a complaint to me. I was suspicious of the case and thus revealed the problem via the press. Later, a number of taxi drivers told me that their taxis had also been bumped by the same car near the scene at the same period of time, where two men claiming to be police officers made them pay \$1,000 to \$2,000 as compensation. I collected the information on three to four similar cases and wrote to the police. Eventually, the two police officers were successfully prosecuted.

Have the police officers not known about the many loopholes in the system, have they not known about the incapability of the IPCC, would they make such blatant attempts at the risk of losing their job, pension and prospect? They dare do so for they know clearly that the system completely fails to impose regulation on them. Secretary, it is completely useless. The IPCC is only "警
姦會", the police raping council, which allows police officers to continue doing evils by collusion, leaving the general public to continue to suffer from bullying and deprivation of rights.

Some members of the League of Social Democrats (LSD) are members of Zi Teng. Two weeks ago, we met with them and they were filled with anger. Police officers take advantage of their posts to take improper actions against them. They were then wronged for committing different kinds of offences. These cases are common. In fact, for the existing police force — definitely, in comparison with the situation in the 1960s, improvement has been made, but still it is a big dye vat with all kinds of temptations and dirty deals. These dirty acts go on for our Government turns a blind eye to them.

The Government knows of the existence of these problems clearly. However, to uphold the so-called authority in governance of the Government, it chooses not to take any specific measures to tackle these problems. Its performance is even worse than that of the colonial government. In the 1960s, in view of the serious corruption problem, the colonial government established the Independent Commission Against Corruption. The Government at that time still had the determination to maintain good governance and punish the black sheep which undermine the governance and prosperity of Hong Kong. But what is the Government doing now?

Concerning the examples quoted by me earlier, I believe other Members in this Chamber will be able to list similar examples, which number may exceed those quoted by me by a hundred times, a thousand times or even 10 000 times. These problems emerge again and again. Cases of power abuse by police officers are often reported in the newspaper. If a police officer is involved in a traffic accident, when other police officers arrive at the scene to take statement, 99% of them will bias towards the serving police officer and make unfair charges against other drivers. I have heard a lot of these cases. If Members can listen to the grievance expressed by taxi drivers, you will feel terribly angry.

President, even if I quote another 1 000 or 10 000 examples, the Government will remain indifferent, it will shut itself up and act obstinately. As in the remarks I made earlier on the issue of Under Secretaries, I describe Norman CHAN as a self-absorbed official. Indeed, the problem of the present Government is being self-absorbed. This group of people shut themselves up to enjoy flattering and heaping praise among themselves. They keep praising each other on how well they perform, but they turn a deaf ear to criticism outside. They do not sense how unfair and ridiculous the outside world is, nor do they understand the plight of the public. Their self-absorbedness has reached an extremely serious stage.

Therefore, when the Vice-President of the State comes to Hong Kong next time, he should not only meet with the Chief Executive, but also the three Secretaries of Department and 12 Directors of Bureau. This scenario did happen one year. I recall that when "Ah TUNG" was the Chief Executive, he did come across that situation. All the officials lined up in a row, with the Chief Executive standing in the front row and the three Secretaries of Department and 12 Directors of Bureau in the back row. I remember that they were given a dressing-down by ZHU Rongji — not ZHU Rongji but President

HU. It should be President HU. The Chief Executive took such advice. It is strange, is it not? Perhaps people, who used to be serfs, only listen to their master obediently. They do not listen to others, even if what they say is the truth, they just turn a deaf ear to it.

Therefore, may I ask the deputy of the National People's Congress (NPC), "Uncle Fat", Mr LAU Wong-fat, to do one thing? Since you are the deputy of the NPC, will you please tell the President of the State that the three Secretaries of Department and 12 Directors of Bureau have turned a blind eye to the plight of the public, for they shut themselves up and listen to no views, they are self-absorbed. The only views they will listen to are the views of the President of the State. As such, will those deputies of the NPC — Dr Philip WONG, you are also a deputy of the NPC, pardon me, you have not been elected, but since you look at me, I think you are also a deputy of NPC. Never mind, your influence is still similar to that of the deputies of the NPC. The President of this Council is also a deputy of the NPC. May I ask these deputies of the NPC to reflect the aforementioned views? Perhaps this may take place on 1 July next year, or the coming 1 October, or even during the Olympics, for these officials will have to visit Beijing during the Olympics. They should be given a dressing-down and a slap in the face to make them come to their senses, so that they know the actual situation of the public.

President, I believe this Bill will be passed after all. I believe the miracle last night rarely happened. God performs miracles, but it will only be once in a blue moon. Concerning the punishment for the "eunuch" yesterday, I think it was God sent; the will of God. He thinks that the Hong Kong Government is incapable. In a circumstance where the views of the public are ignored, one can no longer rely on the voice of the public to call for the Government to right its wrong. It is only by the work of God that the mistake of the Government can be rectified. We probably need to rely on God's work and will to make the Secretary come to his senses, giving an opportunity for the "毒辣警姦會", the sinister police raping council, to transform into an organization with some humanity and justice, so that it can monitor the police independently.

President, I resolutely oppose the resumption of the Second Reading of the Bill.

MR MARTIN LEE (in Cantonese): Madam President, I hope that police officers will not consider the remarks made by Members of the Legislative Council directed against all police officers, for we all know that the police force of Hong Kong as a whole is very outstanding. Though there may be black sheep in the force, an overwhelming majority of them are good officers. As other Members said, the police force in general has made steady progress and the quality of its officers has been improving. So, first of all, I have to bring up this point to acknowledge that police officers are law-abiding.

In around 1981, I was the Chairman of the Hong Kong Bar Association, and John GRIFFITHS, QC, was the Secretary for Justice at the time. I discussed the issue on the Complaints Against Police Office (CAPO) with him. I asked him about the principles and conditions which the complaints would be considered substantiated? He told me one thing to my absolute astonishment. He said that, "For cases in a "one-to-one" scenario, that is, a member of the public complaining a police officer, where no other evidence but only the statement of the complainant and that of the police officer are available, the complaint case definitely cannot be substantiated." At that time, I immediately stated my opposition. I said, "If the statement of a police officer is reliable, it may lead to the conviction of a lot of people. Why then when a member of the public, who does not know the police officer concerned and has no reason to frame him, complains against a police officer, the case which is a "one-to-one" scenario will definitely not be substantiated? Why do they not examine whether the complainant is trustworthy? If he is trustworthy, why is the complaint case not substantiated?" He answered, "It is a matter of morale. If the complaint case in a "one-to-one" scenario is considered substantiated, it will undermine the overall morale of the police."

At that time, I told him immediately, "I do not understand. For instance, I am a good police officer who has arrested a thief. The thief has in fact admitted stealing things, but he later wanted to deny his statement and lodged a false accusation against me for beating him, claiming that his statement was made under threat. Certainly, the case may be handled by the Court. But if it has not been submitted to the Court, the investigation of the case will be carried out by other police officers. But this arrangement is problematic, for even if I am proved innocent, I will not be proud of the result. People may consider the result only natural, for the investigation of a police officer is done by other police officers." Thus, I would like to put forth two points. First, there is no reason that "one-to-one" complaint should not be substantiated. Second, more importantly, investigation of police officers should no longer be carried out by

police officers. To good police officers and police officers who have been wronged, they will prefer the investigation be carried out by people other than police officers. Only those black sheep in the force who have committed crimes or done something wrong would prefer the investigation concerned be carried out by other police officers. They perhaps hope that the other police officers will let them go, and if they have the opportunity to investigate those other police officers in future, they will also let them go. Hence, if it is said that the establishment of an independent CAPO, in which investigation of police officers is not carried out by police officers, will undermine the morale of police officers, it will indeed suggest to me that most of the police officers have sinister motives and consider themselves having something wrong.

Concerning morale, there is another point which I do not understand. Years ago, I told the Financial Secretary at the time, Hamish MACLEOD, "Among the cars used by the Hong Kong Government, one of the licence plates is No. 1 and the other is No. 2. Why are these two licence plates not put up for auction?" He acted promptly to put the licence plate No. 2 up for auction, but the licence plate No. 1 has not been put up for auction until now. Why? He said, "Police officers are strongly against this. For they fear that the licence plate representing the number one man in the police force will be successfully bid by bad elements or members of triad society." I then said, "You may find a respectable number one man in the business sector to bid for the licence plate. Then, it will be all right. No one will be able to win him, am I right?" However, the licence plate No. 1 is still used by the Commissioner of Police now. As for the Directors of Bureau, I do not know the licence plate numbers of their vehicles. But they should start with the letters "AM". Why does the morale of police officers have to rely on these things? I am really baffled.

Actually, when police officers know that in "one-to-one" complaint cases, they will not be charged and the case will not be valid, there is no reason that they will be so silly to admit their fault. Is it not easy? A police officer may say, "I was actually not at the scene. He was crazy to say that I was at the scene on that day, for I was not there." In a "one-to-one" case like this, the police officer can get away. However, for a relatively silly police officer, he may say, "Yes, I was at the scene on that day." When he admits more details, there will be problems. Hence, "one-to-one" cases cannot be substantiated. I have asked James TO about this and he said he did not have any idea. However, according to his experience, "one-to-one" complaint cases have never been substantiated. Certainly, if the entire process is recorded and other evidence is available, the situation will be different. Against this backdrop, if my good

friend comes to me and asks me, "I have been involved in a traffic accident and the police officer concerned has wronged me. I would like to lodge a complaint against this, what should I do?" I will ask him how many police officers are on the scene, and if he says two, I will ask him whether he has other friends with him. If his answer is in the negative, and he is the only one on the scene, I will tell him not to lodge a complaint, for the result will surely make him angrier. For even a "one-to-one" complaint case cannot be substantiated, not to mention a "one-to-two" complaint case. If I have to give such advice to my friend, does the Secretary think that there are some problems with the system?

If the mere alteration of the Chinese name of the IPCC "警監會" to "監警會" will improve the situation, I have nothing to say then. When James TO was making his speech, I have all along been listening in the Dining Hall. He said it would be better not to change it, and other Members too said so. I notice that the only merit of changing the Chinese name to "監警會" is that it is more logical. However, if the Bill is passed merely to make the name a little bit more logical, I agree that it is uncalled for.

Why can we not look at the issue from a positive perspective? Madam President, why can police officer not look forward? It is well-recognized that the police as a whole has made progress, and that members of the police, who possess higher entry qualification, are more outstanding than those in the past. If so, why should we fear that the morale of the police force will be undermined when investigations of police officers are not carried out by police officers and "one-to-one" complaints are substantiated? Why can police officers not act bravely as brave police officers do? Why can we not follow the slogan chanted by Barack OBAMA, the candidate now running for President of the United States, "Change! Yes, we can! "? Thank you, Madam President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now 9.45 pm. Two Members are still waiting for their turn to speak on the resumption of the Second Reading of the Bill. I think it is not necessary for us to continue the meeting. Members may rest earlier tonight and attend the meeting at 9 am sharp tomorrow. I notice Members in advance that Ms Margaret NG will be the first Member to speak tomorrow morning, to be followed by Mr LEUNG Kwok-hung.

MR LEUNG KWOK-HUNG (in Cantonese): I have to go to the Court tomorrow morning and will only attend the Council meeting later. May I request to speak at a later time?

PRESIDENT (in Cantonese): No problem, it will be fine. I now suspend the Council until 9 am tomorrow.

Suspended accordingly at fourteen minutes to Ten o'clock.

Annex I

RACE DISCRIMINATION BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;” and substituting “to amend certain definitions, and the provisions on discrimination against contract workers, in existing anti-discrimination legislation as well as the provision on unlawful sexual harassment by creating a hostile or intimidating environment in the Sex Discrimination Ordinance for alignment with corresponding provisions in this Ordinance;”.
1(2)	By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
2(1)	In the definition of “club”, by deleting everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”.
2(1)	By deleting the definition of “estate agent” and substituting – ““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”.
2(1)	By deleting the definition of “near relative” and substituting – ““near relative” (近親), in relation to a person, means – (a) the person’s spouse; (b) a parent of the person or of the spouse;

- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

3 By deleting the clause and substituting –

“3. Application to Government

This Ordinance binds the Government.”.

4 By deleting subclauses (2), (3), (4) and (5) and substituting –

“(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.”.

7(2) By deleting everything after “that” and substituting “creates a hostile or intimidating environment for the second-mentioned person.”.

15(1) By deleting everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

15 By adding -

“(7) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person

directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

18 By deleting the heading and substituting –

“18. Organizations of workers or employers or professional or trade organizations, etc.”.

18 By deleting subclause (5) and substituting –

“(5) Where, immediately before the enactment of this Ordinance, the main object of an organization to which this section applies was to enable the benefits of membership to be enjoyed by persons of a particular racial group (defined otherwise than by reference to colour), then, in so far as that continues to be its main object, this section is not to be construed as affecting that object and does not render unlawful an act which is done in order to give effect to that object.”.

18(6) By deleting “an organization of workers, an organization of employers, or an organization of both workers and employers” and substituting “an organization to which this section applies”.

20(2)(b) By deleting “on those matters” and substituting “regarding holidays or medium of instruction”.

26 By deleting subclause (2)(b) and substituting -

“(b) to make different arrangements regarding holidays or medium of instruction for persons of any racial group.”.

- 27 In the Chinese text, by deleting subclause (1)(b) and substituting –
- “(b) 前者在正常情況下，會按某方式及某些條款向其他公眾人士，或(如後者屬於某部分的公眾人士)向屬該部分的其他公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕按相同方式及相同條款(或故意不按相同方式及相同條款)向後者提供具有相同品質或質素的該等貨品、設施或服務。”
- 34 By deleting subclause (2).
- 44(1)(b) In the English text, by deleting “threatening” and substituting “threatening to subject”.
- 45 In the Chinese text, by deleting subclause (1) and substituting –
- “(1) 任何人如藉公開活動，煽動基於另一人的種族或屬某類別人士的成員的種族的、對該另一人或屬該類別人士的成員的仇恨、嚴重的鄙視或強烈的嘲諷，即屬違法。”
- 45 By adding –
- “(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to –
- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,
- another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”
- 45 By deleting subclause (2)(b) and substituting –
- “(b) an activity in public that –
- (i) is a communication or the distribution or dissemination of any matter; and
- (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”

46 By deleting subclause (1) and substituting –

“(1) A person commits an offence if –

- (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) or members of a class of persons, on the ground of the race of the second-mentioned person or the members of the class of persons;
- (b) the person intentionally incites such hatred, serious contempt or severe ridicule on such ground; and
- (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, the second-mentioned person or the members of the class of persons; or
 - (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(1A) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”.

- 52 By deleting the heading and substituting –
“52. Discriminatory training by employers, organizations of workers or employers or professional or trade organizations, etc.”.
- 64(3) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
- 65 By deleting the clause and substituting –
“65. Power to conduct formal investigations
Without limiting section 60 –
(a) if the Commission thinks fit, it may conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section; and
(b) if required by the Chief Secretary for Administration, the Commission shall conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.”.
- 71 By deleting subclause (1) and substituting -
“(1) A claim by or on behalf of any person (“the claimant”) that another person (“the respondent”) –
(a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;
(b) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4;
(c) has committed an act which is unlawful by virtue of section 45; or

(d) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),

may be made the subject of civil proceedings in like manner as any other claim in tort.”.

72(5) By deleting “67(4)” and substituting “67(5)”.

81(3) By deleting “conciliation under section 79 was concluded” and substituting “the complaint was disposed of under section 79(3) or (4)”.

84(1) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.

89 By deleting the cross-heading immediately before the clause and the clause.

93 By deleting the clause and substituting –

“93. Interpretation

(1) Section 2(1) of the Sex Discrimination Ordinance (Cap. 480) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person,

means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

(2) Section 2(4) is repealed.

(3) Section 2(5)(b) is amended –

- (a) by repealing “sexually”;
- (b) by repealing “work”.

- (4) Section 2(6) is repealed.”.

New By adding immediately after clause 93 –

“93A. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 13 is amended by adding –

“(5) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93B. Discrimination in provision of goods, facilities or services

Section 28 is amended, in the Chinese text, by repealing subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人，如藉以下做法歧視一名謀求獲得或使用該等貨品、設施或服務的女性，即屬違法 —

(a) 拒絕向她提供或故意不向她提供任何該等貨品、設施或服務；或

(b) 該人在正常情況下，會按某方式及某些條款向男性公眾人士，或(如她屬於某部分的公眾人士)向

屬該部分的男性公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而該人拒絕按相同方式及相同條款（或故意不按相同方式及相同條款）向她提供具有相同品質或質素的該等貨品、設施或服務。”。

93C. Discrimination in disposal or management of premises

Section 29(3) is amended, in the Chinese text, by repealing “地產中介人” and substituting “地產代理”.

93D. Claims under Part III or IV

Section 76(1) is amended –

- (a) by repealing paragraph (b);
- (b) in paragraph (c), by repealing the comma and substituting “; or”;
- (c) by adding –
 - “(d) is to be treated, by virtue of section 46 or 47, as having committed an act of discrimination or sexual harassment referred to in paragraph (a) or (c) against the claimant,”.

93E. Period within which proceedings to be brought

Section 86(2A) is amended by repealing “conciliation under section 84 was concluded” and substituting “the complaint was disposed of under section 84(3) or (4)”.

Disability Discrimination Ordinance**93F. Interpretation**

(1) Section 2(1) of the Disability Discrimination Ordinance (Cap. 487) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person, means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a

grandchild,
and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(5) is repealed.

93G. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 13 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93H. Vilification

- (1) Section 46 is amended by adding –

“(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.”.

(2) Section 46(2)(b) is repealed and the following substituted –

- “(b) an activity in public that –
- (i) is a communication or the distribution or dissemination of any matter; and
 - (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

93I. Section substituted

Section 47 is repealed and the following substituted –

“47. Offence of serious vilification

- (1) A person commits an offence if –
- (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) with a disability or members of a class of persons with a disability;
 - (b) the person intentionally incites such hatred, serious contempt or severe ridicule; and
 - (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, the second-mentioned

person or the members of the class of persons; or

- (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(2) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
(b) serious contempt for; or
(c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.

(3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.”.

93J. Claims under Part III or IV

Section 72(1)(d) is repealed and the following substituted –

- “(d) is to be treated, by virtue of section 48 or 49, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),”.

93K. Period within which proceedings to be brought

Section 82(2A) is amended by repealing “conciliation under section 80 was concluded” and substituting “the complaint was disposed of under section 80(3) or (4)”.

Family Status Discrimination Ordinance**93L. Interpretation**

(1) Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by adding –

““near relative” (近親), in relation to a person,

means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of such a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent

or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(4) is repealed.

93M. Discrimination against contract workers

(1) Section 9(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 9 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93N. Discrimination in provision of goods, facilities or services

(1) Section 19(1)(a) is amended, in the English text, by adding “or” at the end.

- (2) Section 19 is amended, in the Chinese text, by repealing subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人(“前者”),如藉以下做法歧視任何具有家庭崗位且謀求獲得或使用該等貨品、設施或服務的人(“後者”),即屬違法 —

- (a) 拒絕向後者提供或故意不向後者提供任何該等貨品、設施或服務；或
- (b) 前者在正常情況下，會按某方式及某些條款向並無家庭崗位或並無某家庭崗位的公眾人士，或(如後者屬於某部分的公眾人士)向屬該部分的並無家庭崗位或並無某家庭崗位的公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕按相同方式及相同條款(或故意不按相同方式及相同條款)向後者提供具有相同品質或質素的該等貨品、設施或服務。”.

930. Period within which proceedings are to be brought

Section 64(3) is amended by repealing “conciliation under section 62 was concluded” and substituting “the complaint was disposed of under section 62(3) or (4)”.

94 By deleting the cross-heading immediately before the clause and the clause.

Schedule 1 (a) In item 14, by deleting “and Manpower”.
(b) By deleting item 15.

Schedule 2, By deleting “remains to be” and substituting “remains”.
section 7

Schedule 2, By deleting “remains to be” and substituting “remains”.
section 8

Schedule 2, (a) By deleting “remains to be” and substituting “remains”.
section 9
(b) In paragraph (b), by deleting “and Manpower”.

- Schedule 2, section 11
- (a) In the definition of “public officer”, in paragraph (b), by deleting “and Manpower”.
 - (b) In the definition of “specified English teacher”, in paragraph (c)(i), by deleting “and Manpower”.

Annex IIMANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL
2008**COMMITTEE STAGE**Amendment to be moved by the Honourable CHAN Yuen-han, SBS, JPClauseAmendment Proposed4
[NEGATIVED]

By adding immediately before the proposed section 19B -

"19AA Interpretation of Part IIIA

In this Part, "special contribution" (特別供款) refers to the contribution paid into an account of a member of a registered scheme by the Government when the annual consolidated surplus of the budget is more than \$50 billion."

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
4 [NEGATIVED]	In the proposed section 19B(3), by deleting “section 78(6)(c), (7)(b) or (8)(a)” and substituting “section 78(6)(f), (7)(d) or (8)(b)”.
4 [NEGATIVED]	In the proposed section 19F(b), by deleting “a mandatory contribution paid under section 7A(1)(b) or (2)(b) or 7C” and substituting “a voluntary contribution paid under section 11 by a relevant employee or a self-employed person who is a member of a registered scheme”.
8 [NEGATIVED]	By deleting the clause and substituting – <p style="margin-left: 40px;">“8. Separate accounts for each scheme member</p> <p style="margin-left: 80px;">(1) Section 78(6)(f)(iii) is amended by repealing the full stop and substituting a semicolon.</p> <p style="margin-left: 80px;">(2) Section 78(6)(f) is amended by adding –</p> <p style="margin-left: 120px;">“(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof.”.</p> <p style="margin-left: 80px;">(3) Section 78(7)(d)(iii) is amended by repealing the full stop</p>

and substituting a semicolon.

(4) Section 78(7)(d) is amended by adding –

“(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof.”.

(5) Section 78(8)(b)(iii) is amended by repealing the full stop and substituting a semicolon.

(6) Section 78(8)(b) is amended by adding –

“(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof.”.

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
5	In the proposed section 26G(5), in the Chinese text, by deleting everything after “凡” and before “第(4)款” and substituting “局長藉着為施行第(1)款而具有效力的首份技術備忘錄，而作出任何分配，則”。
5	In the proposed section 26I – (a) in subsection (1), by adding “of a specified licence” after “any term or condition”; (b) in subsection (1), by deleting “to the specified licence” and substituting “to the licence”; (c) in subsection (2), by deleting “section 30A” and substituting “section 30B”.
5	In the proposed section 26K – (a) in the heading, by deleting “ etc. ” and substituting “ or failure to acquire emission credits ”; (b) in subsection (2)(b), by deleting “and”; (c) by deleting subsection (2)(c) and substituting – “(c) (i) in the case of a special event, the occurrence of the event could not reasonably have been foreseen by the

applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, the applicant exercised all due diligence to prevent the occurrence of the event; or

- (ii) in the case of a failure, the applicant exercised all due diligence to prevent the failure; and”;

(d) in subsection (2), by adding –

“(d) in the case of a special event, the applicant has also –

- (i) within 5 working days after the occurrence of the event, notified the Authority in writing of the occurrence of the event; and
- (ii) from promptly after the occurrence of the event, exercised all due diligence to minimize the quantity of that type of pollutant being emitted in the emission year from the licensed premises as a result of the occurrence of the event.”.

5 In the proposed section 26L(3)(b), in the Chinese text, by adding “或” after “3 月 31 日”.

5 In the proposed section 26M –

- (a) in the heading, by adding “**under recognized emission trading scheme**” after “**emission**

credits”;

- (b) in subsection (2), by deleting “Where” and substituting “Subject to subsection (4A), where”;
- (c) in subsection (4)(a), by deleting “31 December” and substituting “30 June”;
- (d) by adding –

“(4A) For the purposes of a specified licence, the total quantity of allocated allowances that may be increased under subsection (2) for a type of specified pollutant in respect of an emission year may not exceed the quantity obtained by multiplying the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by the percentage specified in Schedule 2C.

(4B) The Authority shall as soon as reasonably practicable after receiving an application referred to in subsection (4)(a), consult the Advisory Council on the Environment for the purpose of making a decision in respect of the application.”;

- (e) in subsection (5), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (f) in subsection (6), by deleting “20 working days” and substituting “180 days”;
- (g) in subsection (6), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (h) by adding –

“(6A) A specified licence holder who has, in respect of an emission year, transferred to another person any quantity of emission credits as described

in subsection (3) shall notify the Authority in writing of the transfer and accompany the notification with such supporting documents or information as may be required by the Authority, within 5 working days after the transfer, and in any event not later than 31 March in the year immediately following the emission year.”.

6 By deleting everything after “is amended” and substituting “by repealing “A licence holder who contravenes any term or condition subject to which the licence is granted to him by the Authority” and substituting “Subject to section 30B, a licence holder who contravenes any term or condition of the licence”.”.

New By adding –

“6A. Section added

The following is added immediately after section 30A –

“30B. Contravention of terms and conditions of specified licence for excessive emission or supply of incorrect information, etc.

(1) A person who contravenes any term or condition of a specified licence that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the licence in respect of the emission year commits an offence and is liable –

- (a) on a first conviction, to a fine of \$30,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and
 - (b) on a second or subsequent conviction –
 - (i) to a fine of \$60,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and
 - (ii) to imprisonment for 6 months.
- (2) Where –

-
- (a) any term or condition of a specified licence requires a person, as a specified licence holder, to make any statement, or give any particular or information, in relation to a type of specified pollutant; and
- (b) the person, in purported compliance with the term or condition –
- (i) makes any statement, or gives any particular or information, which he knows to be incorrect in a material respect;
 - (ii) recklessly makes any statement, or gives any particular or information, which is incorrect in a material respect; or
 - (iii) makes any statement, or gives any particular or information, from which he knows that any material particular has been omitted,

the person commits an offence and is liable to a fine at level 6.

(3) Where a person is liable for the payment of a fine imposed under subsection (1) or (2) in relation to a specified licence, for the purposes of a scheme of control agreement, the fine is not to be taken to be part of the operating cost incurred by the person in relation to the specified process to which the licence relates.

(4) For the purposes of subsection (3) –
“operating cost” (經營費用) means any cost directly or indirectly incurred in relation to –

- (a) the generation, transmission, distribution or sale of electricity;
- (b) energy efficiency or conservation; or
- (c) reduction of air pollution;

“scheme of control agreement” (管制計劃協議), in relation to a person, means an agreement entered into by the Government with the person (whether or not with any other person) that, among other things, provides for the calculation of the amount of return allowed to the person by reference to matters including the operating cost incurred by the person in relation to the specified process to which the relevant specified licence relates.”.”.

- 7 In the proposed section 31(1)(na), by deleting “etc.” and substituting “or failure to acquire emission credits”.
- 12 In the proposed section 37D(1), by deleting “and 2B” and substituting “, 2B and 2C”.
- 13 By deleting everything after “varied” and substituting “, transferred or cancelled, or that any exemption is granted, continued or cancelled,”.
- 15 (a) In the heading, by deleting “**2A and 2B**”.
- (b) By adding –

“SCHEDULE 2C

[ss. 26M &
37D]

PERCENTAGE SPECIFIED FOR PURPOSES OF
SECTION 26M(4A) OF THIS
ORDINANCE

15%.”.

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Honourable CHOY So-yukClauseAmendment Proposed

5

NOT PROCEEDED
WITH

In the proposed section 26M –

- (a) in the heading, by adding “**under recognized emission trading scheme**” after “**emission credits**”;
- (b) in subsection (2), by deleting “Where” and substituting “Subject to subsections (4A) and (4B), where”;
- (c) in subsection (4)(a), by deleting “31 December” and substituting “30 June”;
- (d) by adding –

“(4A) For the purposes of a specified licence, the total quantity of allocated allowances that may be increased under subsection (2) for a type of specified pollutant in respect of an emission year may not exceed the quantity obtained by multiplying the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by the percentage specified in Schedule 2C.

(4B) For the purposes of subsection (2), in relation to a specified licence, the quantity of emission credits acquired for a type of specified pollutant in a

project may only be used to increase the quantity of the allocated allowances for that type of pollutant as applicable to the licence for not more than a number of emission years specified in Schedule 2D.

(4C) The Authority shall as soon as reasonably practicable after receiving an application referred to in subsection (4)(a), consult the Advisory Council on the Environment for the purpose of making a decision in respect of the application.”;

- (e) in subsection (5), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (f) in subsection (6), by deleting “20 working days” and substituting “180 days”;
- (g) in subsection (6), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (h) by adding –

“(6A) A specified licence holder who has, in respect of an emission year, transferred to another person any quantity of emission credits as described in subsection (3) shall notify the Authority in writing of the transfer and accompany the notification with such supporting documents or information as may be required by the Authority, within 5 working days after the transfer, and in any event not later than 31 March in the year immediately following the emission year.”;

- (i) in subsection (7), by deleting the definition of “emission

credit” and substituting –

““emission credit” (排放配額), in relation to a type of specified pollutant, means the entitlement, as generated in a project, to emit one tonne of that type of pollutant as may be acquired or transferred (as the case may be) under a recognized emission trading scheme; and, for the avoidance of doubt, each such entitlement is quantified as one emission credit;”;

(j) in subsection (7), by adding –

““project” (項目) means any project under a recognized emission trading scheme;”.

12

NOT PROCEEDED
WITH

In the proposed section 37D(1), by deleting “and 2B” and substituting “, 2B, 2C and 2D”.

15

NOT PROCEEDED
WITH

(a) In the heading, by deleting “**2A and 2B**”.

(b) By adding –

“SCHEDULE 2C [ss. 26M & 37D]

PERCENTAGE SPECIFIED FOR PURPOSES OF SECTION
26M(4A) OF THIS ORDINANCE

15%.”.

(c) By adding –

“SCHEDULE 2D [ss. 26M & 37D]

NUMBER OF EMISSION YEARS SPECIFIED FOR
PURPOSES OF SECTION 26M(4B) OF THIS

ORDINANCE

5 emission years.”.

PRODUCT ECO-RESPONSIBILITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting subclause (1)(b) and substituting –</p> <p>“(b) to that end, to introduce producer responsibility schemes, schemes based on the “polluter pays” principle, or other measures, which may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, or the recovery, recycling or proper disposal, of those products.”.</p>
4	<p>By deleting the clause and substituting –</p> <p>“4. Prescribed products to which Part 2 applies This Part applies in relation to plastic shopping bags.”.</p>
5	<p>By deleting everything before subclause (1)(a) and substituting –</p> <p>“5. General provisions as to regulations made under this Ordinance</p> <p>(1A) In this section, “regulation” (規例) means any regulation made under section 27.</p> <p>(1) A regulation may do all or any of the following –”.</p>

6 By deleting subclause (1) and substituting –

“(1) The Director may, in writing, authorize a public officer not below the rank of Environmental Protection Inspector to perform such functions of the Director or an authorized officer under this Ordinance as are specified in the authorization.”.

7 (a) By deleting the heading and substituting –

“7. Powers to obtain information, enter places for routine inspection, etc.”.

(b) By deleting subclauses (2) and (3) and substituting –

“(2) An authorized officer may require a person to provide information relating to any levy or fee imposed under this Ordinance that is in the possession of the person and is reasonably necessary to enable the officer to ascertain whether this Ordinance has been or is being complied with.

(3) For the purpose of ascertaining whether this Ordinance has been or is being complied with, an authorized officer may, at any reasonable time, enter a place to which the public are permitted to have access, and may do all or any of the following –

- (a) observe and inspect any activity, operation, process or procedure involving prescribed products;
- (b) require a person in charge of the place to produce any record or document relating to prescribed products or to any levy or fee imposed under this Ordinance;
- (c) make copies of any record or document produced under paragraph (b);

- (d) subject to subsection (4), take such samples of any products as the officer may reasonably require for the purpose of examination and investigation.”.

8 By deleting the clause and substituting –

“8. Power of entry and search

(1) Where a warrant has been issued under subsection (2) in respect of a place, an authorized officer may enter and search the place in accordance with this section.

(2) A magistrate may issue a warrant authorizing an authorized officer to enter and search a place only if –

(a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that –

- (i) an offence against this Ordinance has been or is being committed in the place; or
- (ii) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and

(b) the magistrate is satisfied that –

- (i) it is not practicable to communicate with a person entitled to grant entry to the place;
- (ii) such a person has unreasonably refused entry to the place by an authorized officer;
- (iii) an authorized officer apprehends on reasonable grounds that entry to the place is unlikely to be granted unless a warrant is issued; or

(iv) the purpose of entry to the place would be prejudiced unless an authorized officer arriving at the place can secure immediate entry.

(3) An authorized officer who enters and searches a place under a warrant must, if required, produce the warrant for inspection.

(4) A warrant issued under this section continues in force until the purpose for which the entry is necessary has been satisfied.

(5) An authorized officer who enters a place under this section may do all or any of the following –

(a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance;

(b) search and seize anything that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance;

(c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(6) An authorized officer must perform his functions under this section at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.

(7) In this section, “place” (地方) includes any vehicle and vessel.”.

9 By deleting the clause and substituting –

“9. Providing false information, etc.

(1) A person who, in purported compliance with this Ordinance, produces or provides any record, document or information that is false or misleading in any material particular commits an offence and is liable on conviction to a fine at level 6.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that –

(a) he did not know and had no reason to believe the record, document or information to be false or misleading; or

(b) he exercised due diligence to avoid the commission of the offence.

(3) A person who, without reasonable excuse, omits any material particular from any record, document or information required to be produced or provided by him under this Ordinance commits an offence and is liable on conviction to a fine at level 6.”.

10 By deleting the clause and substituting –

“10. Obstructing authorized officers, etc.

(1) A person who wilfully obstructs or delays an authorized officer in the performance of any of his functions under this Ordinance commits an offence and is liable on conviction to a fine at level 5.

(2) A person who, without reasonable excuse, fails to comply with a requirement properly made of him by an authorized officer under this Ordinance commits an offence and is liable on conviction to a fine at level 4.”.

- 11 By deleting the clause and substituting –
- “11. Offences by body corporate**
- If –
- (a) a body corporate commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of a director of, or a person concerned in the management of, the body corporate,
- the director or that person also commits the offence and is liable on conviction to the penalty provided.”.
- 14 By deleting the heading and substituting –
- “14. Establishment of Appeal Board”.**
- 15 By deleting subclause (1) and substituting –
- “(1) The Appeal Board may exercise its jurisdiction in hearing and determining an appeal only if it is duly constituted.
- (1A) The Appeal Board is duly constituted for the purpose of hearing and determining an appeal if it consists of the following members –
- (a) the Chairman; and
- (b) at least 2 other members appointed by the Chairman from among the panel members to hear the appeal.”.
- 16 By deleting subclauses (5) and (6) and substituting –
- “(5) If there is a change in the membership of the Appeal Board (whether in respect of the Chairman or any other member) during the hearing of an appeal, the following applies –

- (a) in the case where the Appeal Board remains duly constituted according to section 15(1A) without the participation of any new or acting member, the Appeal Board may continue the hearing despite the change;
- (b) if paragraph (a) does not apply and every party to the appeal consents, the Appeal Board may continue the hearing after reconstitution; or
- (c) in any other case, the Appeal Board shall start the hearing afresh after reconstitution.

(6) Any party to an appeal may be represented by a legal representative in the proceedings before the Appeal Board.”.

- 17
- (a) In subclause (2), in the Chinese text, by deleting “以下情況獲符合” and substituting “符合以下情況”.
 - (b) In the Chinese text, by deleting subclause (2)(c) and substituting –
“(c) 署長未有根據第19(7)條批准任何就該店提出的撤銷登記申請，不論該店是否持續是一間合資格零售店。”.
 - (c) By adding –
“(3) For the purposes of this Part, a plastic shopping bag is provided if it is given free of charge or sold at a price, whether or not it is given or sold together with another product as a single item of goods.”.
- 18
- By deleting subclause (4).
- 19
- (a) By deleting subclause (2).
 - (b) In subclause (5)(a), by deleting “of \$200,000” and substituting “at level 6”.
 - (c) In subclause (5)(b), by deleting “\$500,000” and substituting “\$200,000”.

- (d) By deleting subclause (6)(a) and (b) and substituting –
- “(a) that retailer ceases to carry on a retail business in that outlet;
 - (b) that outlet is no longer a qualified retail outlet;
 - (c) that retailer ceases to provide plastic shopping bags from that outlet; or
 - (d) that retailer is no longer a prescribed retailer.”.

New By adding immediately after clause 20 –

“20A. Secretary may amend Schedules

(1) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2, 3 or 4.

(2) An order made under this section to amend Schedule 1, 2 or 4 is subject to the approval of the Legislative Council.”.

21 (a) By adding –

“(2A) A registered retailer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.”.

(b) By deleting subclause (4) and substituting –

“(4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.”.

22 (a) In subclause (1), by deleting everything before “from –” and substituting –

“(1) A registered retailer shall charge a customer an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to the customer”.

(b) In subclause (6)(a), by deleting “of \$200,000” and substituting “at level 6”.

- (c) In subclause (6)(b), by deleting “\$500,000” and substituting “\$200,000”.

23 By deleting subclause (3) and substituting –

“(3) A registered retailer who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 5.”.

24 By deleting subclause (2) and substituting –

“(2) A registered retailer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.”.

25 (a) By adding immediately before subclause (1) –

“(1A) This section applies if a registered retailer –

- (a) is convicted of an offence under section 9 relating to any record, document or information on any amount of levies stated in a return submitted by the retailer in respect of a period under section 23(1);
- (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9;
- (c) is convicted of an offence under section 23(3) for failing to submit a return in respect of a period according to the requirements in section 23(1); or
- (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 26.”.

(b) In subclause (1), by deleting everything before “may –” and substituting –

“(1) The Director”.

(c) In subclause (2), by deleting “at any time”.

- (d) By adding –
- “(2A) An assessment notice served under this section in respect of plastic shopping bags provided during a period may only be served within 5 years after the end of that period.”.
- (e) By deleting subclauses (4) and (5) and substituting –
- “(4) A registered retailer shall pay the amount of the demanded levies under an assessment notice within such time limit as is prescribed by the regulation.
- (5) A registered retailer who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.”.

Part 3,
Division 4 In the heading, by deleting “**Defence**” and substituting “**Supplementary provisions as**”.

26 By deleting “21(4),”.

New By adding immediately after clause 26 –

“26A. Liability of franchisees

(1) In this section, “franchised retail outlet” (專營加盟零售店) means a qualified retail outlet at which a retail business is carried on under a franchise agreement.

(2) If an offence under section 19(5), 21(2A) or 22(6) involving a franchised retail outlet is committed, or would have been committed except for the reliance on the defence under section 26 (if applicable), by its franchiser owing to an act or default of its franchisee –

- (a) the franchisee also commits the offence and is liable on conviction to the penalty provided, whether or not the franchiser is charged with or convicted of the offence; and

- (b) the franchisee may also rely on the defence under section 26 in the case of an offence under section 19(5) or 22(6).”.
- 27 (a) By renumbering the clause as clause 27(1).
 (b) In subclause (1), by deleting “for and”.
 (c) By adding –
 “(2) A regulation made under this section is subject to the approval of the Legislative Council.”.
- Schedule 1 (a) By deleting “[s. 18(1) & (4)]” and substituting “[ss. 18(1) & 20A(1) & (2)]”.
 (b) By deleting section 1(1)(b) and substituting –
 “(b) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag.”.
- Schedule 2 (a) By deleting “[s. 18(2) & (4)]” and substituting “[ss. 18(2) & 20A(1) & (2)]”.
 (b) In section 1, by deleting “This Ordinance” and substituting –
 “(1) Subject to subsection (2), this Ordinance”.
 (c) In section 1(1)(c)(i), by deleting “item” and substituting “piece”.
 (d) In section 1, by adding –
 “(2) Subsection (1) does not apply to a bag mentioned in subsection (1)(a) or a pack of bags mentioned in subsection (1)(b) if –
 (a) it is given free of charge or sold at a price together with another product as a single item of goods; or
 (b) a rebate or discount is offered to the purchaser of the bag or pack,
 with the effect of directly offsetting the price or part of the price of the bag or pack, so that it is in effect given free of charge or sold at a net price of less than \$5.00.”.

Schedule 3 By deleting “[s. 18(3) & (4)]” and substituting “[ss. 18(3) & 20A(1)]”.

Schedule 4 (a) By deleting “[ss. 17(1) & 19(1) & (2)]” and substituting “[ss. 17(1), 19(1) & 20A(1) & (2)]”.

(b) By deleting section 1(1)(a) and (b) and substituting –

“(a) 5 or more qualified retail outlets in Hong Kong; or

(b) at least one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.”.

(c) In section 1(2), by adding “all of the following categories of goods” after “include”.