

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 11 February 2009

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, 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

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 MARGARET NG

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

DR THE HONOURABLE JOSEPH LEE KOK-LONG, 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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

MEMBERS ABSENT:

THE HONOURABLE JAMES TO KUN-SUN

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

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

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE TANYA CHAN

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.
THE FINANCIAL SECRETARY

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

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

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

THE HONOURABLE TSANG TAK-SING, J.P.
SECRETARY FOR HOME AFFAIRS

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

THE HONOURABLE MRS RITA LAU NG WAI-LAN, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2009.....	20/2009
Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2009.....	21/2009
Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2009	22/2009
Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 (Commencement) Notice 2009	23/2009

Other Papers

- No. 58 — Employees' Compensation Insurance Levies Management Board Annual Report 2007/08
- No. 59 — Employees Compensation Assistance Fund Board Annual Report 2007-2008
- No. 60 — Occupational Deafness Compensation Board Annual Report 2007-2008
- No. 61 — Pneumoconiosis Compensation Fund Board Annual Report 2007
- No. 62 — Report on the Administration of the Fire Services Department Welfare Fund together with the Director of Audit's Report and Audited Statement of Accounts for the year ended 31 March 2008

- No. 63 — Annual Report 2007 to the Chief Executive by The Commissioner on Interception of Communications and Surveillance (together with a statement under section 49(4) of the Interception of Communications and Surveillance Ordinance)

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. Question time normally does not exceed one and a half hours. After a Member has asked a main question and the relevant official has given reply, the Member who asks a question has priority to ask the first supplementary question. Other Members who wish to ask supplementary questions will please indicate their wish by pressing the "Request to speak" button and wait for their turn.

Members can raise only one question in asking supplementary questions. Supplementary questions should be as concise as possible so that more Members may ask supplementaries. Members should not make arguments when asking supplementary questions.

PRESIDENT (in Cantonese): First question.

Prevention of Outbreak of Influenza and Human Infection of Avian Influenza

1. **MS AUDREY EU** (in Cantonese): *President, a number of confirmed cases of human infection of avian influenza have occurred on the Mainland since January this year, resulting in five deaths. At the same time, the World Health Organization (WHO) has indicated that there is an increasing likelihood of a major global outbreak of influenza on a scale similar to that in 1968. In this connection, will the Government inform this Council:*

- (a) *of the latest information about the avian influenza epidemic on the Mainland that the Government has obtained through the exchange and notification mechanism on infectious diseases; and*

- (b) *in the face of the recent spate of fatal avian influenza cases on the Mainland and WHO's warning, what measures the Government will take to prevent the outbreak of influenza and human infection of avian influenza in Hong Kong?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, Ms EU's question touches on seasonal influenza and avian influenza. First of all, I would like to explain the differences between the two.

Seasonal influenza is caused by different strains of influenza virus transmitted among people. There are three known categories of influenza: A, B and C. The most common types of influenza in Hong Kong are influenza A H1N1 and H3N2. Minor changes of the antigen of influenza viruses every year lead to seasonal influenza. As such, reformulation of the influenza vaccine is required every year to cope with the mutation of viral strains. Influenza is mainly transmitted through air or droplet in crowded and enclosed areas, or through direct contact with the secretions of a person suffering from the disease.

As for avian influenza, it is usually caused by influenza A H5N1 and H9N2. While avian influenza normally infects birds, poultry are especially vulnerable to infections resulting in epidemics. According to the WHO, there have been over 400 human cases of avian influenza H5N1 globally since 2003, with the fatality rate of about 60%. Cases of human infection of avian influenza are usually the result of close contact with live poultry and their droppings. Wild birds are not a major channel of spreading avian influenza to humans. Up till now, there is no epidemiological evidence to show that avian influenza can be transmitted to humans through consumption of properly cooked poultry according to the WHO. Neither is there any evidence of efficient human-to-human transmission of the virus. In the circumstances, our strategy to prevent avian influenza is primarily on prevention of poultry from avian influenza infection, and minimizing contact between the members of the public and live poultry.

An influenza pandemic occurs when there is an extensive human-to-human transmission of a new influenza virus or an influenza virus which has not been around for a long time. An influenza pandemic takes large toll as the majority of the population lack immunity to the virus.

My replies to the two parts of the question are as follows:

- (a) As at 9 February, the Department of Health (DH) has received notifications from the Ministry of Health (MoH) concerning eight confirmed human cases of avian influenza A H5N1 so far this year. Of these cases, five were fatal. Investigations conducted by the mainland health authorities reveal that seven cases had contact with diseased poultry or exposure history to live poultry market in the Mainland prior to the onset of symptoms. The mainland Government has taken preventive and control measures accordingly, including placing the close contacts of patients under medical surveillance and carrying out epidemiological investigations. The MoH's investigation reveals that all eight cases are sporadic cases without epidemiological linkage and there are no obvious signs of human-to-human transmission of the virus at the moment. Details of the cases are at the Annex.
- (b) To mitigate the effect of seasonal influenza, the Centre for Health Protection (CHP) has been closely monitoring the local influenza situation through different channels, including the sentinel surveillance in general out-patient clinics, private clinics, homes for the elderly, child care centres, and so on.

We provide free influenza vaccination for some high-risk target groups under the Government Influenza Vaccination Programme every year. The Influenza Vaccination Subsidy Scheme was also launched in November last year to provide government subsidies to encourage young children to receive influenza vaccination at private clinics, so as to reduce their risk of hospitalization due to influenza.

In addition, at end of last year, we have stepped up our preventive publicity and education efforts before the arrival of the winter influenza season. The CHP has set up a dedicated webpage in its website to publish the updated figures and information on the influenza daily situation for public reference. The CHP also disseminates relevant messages and guidelines to doctors, homes for the elderly, hostels for people with disabilities, schools, kindergartens and child care centres from time to time, so as to strengthen the surveillance, prevention and control of influenza.

These measures have not only facilitated effective surveillance of influenza in Hong Kong, but also significantly heightened public alertness to influenza.

As for avian influenza, the Government has already put in place a series of measures to reduce the risk of virus transmission from poultry and birds to humans. These measures include banning the keeping of backyard poultry, requiring the compliance with biosecurity measures in local farms, requiring vaccination for chickens in local farms and imported chickens, banning the keeping of live poultry overnight at retail level, as well as enhancing the testing of antibodies for chickens in local farms and imported chickens. Besides, we have also arranged influenza vaccination for poultry workers and cullers to reduce the chance of genetic reassortment between human and avian influenza viruses. We are also actively pursuing the development of a poultry slaughtering plant to achieve complete segregation of humans from live poultry.

In respect of surveillance, avian influenza H5, H7 and H9 are currently notifiable infectious diseases under the Prevention and Control of Disease Ordinance. In addition to statutory notifications, the CHP also maintains close monitoring of the avian influenza situation locally through various means including laboratories and hospitals.

On the other hand, the DH has implemented temperature screening for inbound travellers in all Immigration Control Points and will conduct further assessment on those with fever or illness. For any suspected avian influenza cases, rapid diagnosis using molecular methods will be conducted by the DH. Once avian influenza cases are detected, the DH will conduct epidemiological investigations promptly and take necessary control measures including contact tracing, environmental investigation, finding the source of infection and prevention of the spread of diseases.

We have all along been maintaining close communication and co-operation with the mainland and Macao health authorities to ensure expeditious and effective exchange of important information about infectious disease outbreaks and incidents of the three places.

Contingency measures have been taken to reduce the chance of infectious disease outbreak. In addition, we have been maintaining close liaison with the WHO and the health authorities of other regions to obtain the latest information on avian influenza cases. Regular exercises and drills are also conducted to test and enhance the emergency preparedness of government departments in case of public health emergencies. Besides, health authorities in Hong Kong, the Mainland and Macao organize joint exercises regularly to review the emergency response and notification mechanism of the three places in handling cross-boundary public health emergencies.

Despite the occasional cases of human infection of avian influenza in other countries and places in recent years, there is no evidence yet of efficient human-to-human transmission of the virus. We will continue to minimize the risk of avian influenza and influenza pandemics through the above measures.

Annex

Confirmed cases of human infected with H5N1 avian influenza A virus notified by the Mainland since 2009 (position as at 9 February 2009)

No.	Date of Notification	Province/City where the patient resided	Sex/Age	Date of onset	Condition	History of exposure to poultry or poultry market
1.	6 January	Chaoyang District, Beijing City	Female/19	24 December 2008	Deceased	Yes
2.	17 January	Xiaoyi City, Luliang City, Shanxi Province	Female/2	7 January 2009	Discharged	Yes
3.	18 January	Jinan City, Shandong Province	Female/27	5 January 2009	Deceased	Unknown
4.	19 January	Qiandongnan, Guizhou Province	Male/16	8 January 2009	Deceased	Yes

No.	Date of Notification	Province/City where the patient resided	Sex/Age	Date of onset	Condition	History of exposure to poultry or poultry market
5.	24 January	Urumqi City, Xinjiang Autonomous Region	Female/31	10 January 2009	Deceased	Yes
6.	25 January	Guiyang City, Guizhou Province	Male/29	15 January 2009	Discharged	Yes
7.	26 January	Beiliu City, Guangxi Autonomous Region	Male/18	19 January 2009	Deceased	Yes
8.	31 January	Xupu County, Hunan Province	Female/21	23 January 2009	Stable	Yes

MS AUDREY EU (in Cantonese): *President, the reply given by the Secretary dwells only on the existing measures but no response is given to the latest information which I asked for in my oral question at all. President, my supplementary is related to vaccines. Concerning avian influenza, President, this is the latest press report and it is said therein that no stock of avian influenza vaccines for humans is kept in Hong Kong. I have also noticed a news report which says that Professor CHAN of the Department of Microbiology of The Chinese University of Hong Kong suggested that the Government should follow the practices of the United Kingdom, France, Taiwan and Singapore by keeping stocks of avian influenza vaccines for humans.*

President, concerning seasonal influenza, although the Government has introduced the Influenza Vaccination Subsidy Scheme to provide influenza vaccination to 300 000 children aged between six months and six years, we learnt from news reports that so far, only 80 000 children have received vaccination, accounting for some 20% of the children in this group. In the United States, the proportion of children aged between six months and two years who have received influenza vaccination is about 46% and even among children between two years

and four years old, 34% of them have received vaccination. In view of this, it is obvious that the vaccination programme of the Government has not yet achieved its target.

President, my supplementary is: Are the measures taken by the Government in respect of influenza vaccines or avian influenza vaccines for humans inadequate? Will the Government consider doing more in this regard?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in fact, two different issues are involved. However, I wish to say that concerning vaccines for seasonal influenza, it was in the winter this year that the Influenza Vaccination Subsidy Scheme was introduced for the first time. The present Scheme will run until the end of March. For this reason, it is perhaps not possible to know so soon how many people will make use of the Scheme. The market survey conducted by us indicates that the number of vaccines sold this year has already exceeded those of the past by at least over 10%. This is proof that the number of Hong Kong people receiving vaccination has increased. We will carry out an analysis on the situation in respect of influenza vaccines during the peak influenza season this year.

As regards avian influenza vaccines for humans, at present, we know that internationally, an increasing number of pharmaceutical companies have made progress in this regard. However, in future, when an influenza pandemic occurs, will using H5 avian influenza vaccines be the most effective? According to our prediction, in view of the past history of influenza pandemics, the likelihood of an H5 influenza pandemic is not the greatest. There is also the likelihood that other types of influenza pandemic, such as that of H1 or H2 influenza, will occur. For this reason, insofar as the future policy on vaccines is concerned, we will consider stocking which vaccine will be more effective after listening to the advice of the expert team. It will take a period of time to carry out the analysis and look at the progress made by the pharmaceutical companies in various countries as well as the results of clinical trials. In addition, we will look at the global trend of influenza virus mutation to decide which area will pose greater risks. Most importantly, the vaccines against human-to-human transmission of avian influenza or any influenza pandemic must be able to target the disease squarely if it is to be efficacious in targeting the future virus. Otherwise, even if the

Government buys various types of vaccines but there is no chance to try them or they are useless in the event of an influenza pandemic, the harm done may be even greater. For this reason, we are more cautious when making investments in this area. However, I wish to make it clear that if any kind of vaccines can offer some protection or is effective in this area, we will definitely give consideration to it.

MR WONG YUNG-KAN (in Cantonese): *President, recently, someone in my neighbourhood asked me a question and I also pointed out yesterday that some Announcements of Public Interest (API) of the Government gave publicity to both influenza and avian influenza together. In view of this, which kind of scenario should they guard against in order to achieve the greatest effectiveness? In view of this, may I ask the Government whether, with regard to publicity, such a practice may make the public feel confused, thus making them not knowing what to do to guard against influenza? What better arrangement can the Government make to improve the publicity machine?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, concerning these two areas, whenever preventive measures can be taken, we will always advise the public to take them as early as possible. Preventing avian influenza is easier. For example, the likelihood of contracting avian influenza is not great if one avoids contact with poultry or sick poultry. However, the most important thing is that we will also monitor whether the avian influenza virus will turn out to be the virus in a pandemic. As regards seasonal influenza, I believe everyone here has contracted influenza before. If our goal were to make all members of the public in Hong Kong immune from infection, I believe this goal cannot be attained anywhere in the world. However, we hope that we can be well prepared before the outbreak of seasonal influenza, so that children, elderly people and patients with chronic diseases can be vaccinated in advance. If members of the public have contracted influenza, they should avoid passing it to their family members, fellow students or colleagues as far as possible. In our API or other APIs, we have placed great emphasis on putting across this point. I believe that at present, the majority of members of the public understand the differences between avian influenza and seasonal influenza. They are both infectious diseases that we are concerned about. This being so, I think it is the duty of the Government to give greater publicity to this area.*

MS CYD HO (in Cantonese): *President, with regard to maintaining close communication and the effective exchange of information as mentioned in the second last paragraph in part (b) of the main reply, the reply of the authorities did not give any account of the relevant measures adopted in response to the new outbreak. Direct flights have been arranged between Taiwan and the Mainland and there are also over 20 flights between Hong Kong and Taiwan each day. However, Taiwan still cannot establish an effective notification mechanism with the WHO. Why is it not possible to establish an effective notification mechanism for these four places in China, that is, for the Mainland, Taiwan, Hong Kong and Macao? I hope this is not due to political reasons. I wish to ask the Secretary if, in order to ensure the health and safety of the people at these four places, there is any plan to establish such a notification mechanism; if there is, when a timetable will be available.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, concerning the relationship between the Mainland and Taiwan, of course, this is not the place for discussing this issue, nor are we one of the two stakeholders. However, insofar as infectious diseases are concerned, no differentiation according to boundaries or territories is made. We will communicate with the authorities concerned to obtain information on any infectious disease and this includes Taiwan and Hong Kong. Therefore, be it under the framework of the WHO or through the relationships between governments, there is close co-operation in the academic. If Members have paid attention, they will find that often, we would also invite representatives from Taiwan to take part in seminars on public health or in working groups on other studies. In view of this, we can definitely obtain the information on the control of infectious diseases and on any other developments relating to epidemics in Taiwan.*

PRESIDENT (in Cantonese): *Which part of your supplementary has not been answered?*

MS CYD HO (in Cantonese): *President, the supplementary put by me just now is about whether there is any effective notification mechanism. When it comes to the control of epidemics, of course, it is necessary to give notifications immediately instead of doing so only when a seminar is being held.*

PRESIDENT (in Cantonese): Secretary, Ms Cyd HO is asking about the notification mechanism.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have said just now that be it government or non-government channels, this kind of mechanism is available.

MR TOMMY CHEUNG (in Cantonese): *President, many of the replies given by the Secretary just now are "old stuff". Not only are they "old stuff", he even made no mention of the poultry farms on the Mainland. Yesterday, in a meeting of the relevant Panel, we found that it was only in recent days that the department concerned dispatched its officers to the Mainland to inspect the poultry farms there. It was only after the occurrence of many problems on the Mainland that our officials belatedly went to the Mainland to inspect the poultry farms there. Does the Secretary think that this situation is acceptable or does he think that it is necessary for him to instruct his colleagues in the departments concerned to take follow-up actions on the chickens imported from mainland poultry farms at an earlier time?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, it is not just in this week that we communicate with the Mainland. On 28 and 29 January, when we found that some poultry carcasses carried the virus, we immediately got in touch with the Mainland and specifically requested them to look into whether there was any problem with the poultry farms supplying poultry to Hong Kong. They confirmed quickly that there were no problems with the registered poultry farms supplying poultry to Hong Kong. However, we were more cautious and requested that officers be sent to inspect poultry farms located near Hong Kong that supply poultry to Hong Kong. For this reason, from yesterday on, we have dispatched officers to perform a series of tasks. Our communication does not just consist of physical inspections. The Mainland also has the responsibility to do its share of work. We will maintain close co-operation in this regard and we also know that the Mainland is definitely very concerned about this. In view of the situation, we believe that in the past few weeks, the Department of Agriculture of the Guangdong Province and the Inspection and Quarantine Bureau have also carried out intense inspections on these places.

MR TOMMY CHEUNG (in Cantonese): *In fact, the Secretary did not answer my supplementary. I am not asking him about communication but whether he thinks there is anything wrong with the fact that his colleagues in the departments concerned or the officials concerned went to the Mainland to carry out inspections on poultry farms supplying chickens to Hong Kong only at a very late stage. Should the inspections not have been carried out earlier? Was it not necessary to task his colleagues with doing so?*

PRESIDENT (in Cantonese): Secretary, have the inspections been carried out too late?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not think that the inspections were too late. We have obtained a certain amount of information and at the same time, at Man Kam To and in the wholesale markets, we have also stepped up the random tests on the blood samples taken from chickens supplied to Hong Kong. Therefore, we are able to obtain all the information in this regard.

PRESIDENT (in Cantonese): Second question.

Provision of Civil Service Medical Benefits by Hospital Authority

2. **DR LEUNG KA-LAU** (in Cantonese): *President, at present, the Government provides medical benefits to civil servants, retired civil servants, and their eligible dependants (civil service medical benefits) and the Hospital Authority (HA) is the major service provider. In this connection, will the Government inform this Council:*

- (a) *whether it knows the numbers of "in-patient days", "discharges and deaths", "accident and emergency services attendances", "specialist out-patient (clinical) attendances" and "general out-patient attendances" in respect of the above persons who used HA's services in each of the past three years, as well as the respective percentages*

of such numbers in the relevant totals; based on the "unit costs" referred to in HA's Annual Report, of the total costs for the provision of civil service medical benefits by the HA in the past three years; and in order to provide services to the above persons, the resultant increase in the average number of days that new cases of the out-patient clinics of each specialty have to wait at present;

- (b) given that HA's main service target is the public, of the reasons and justifications for the Government to shift to the HA its responsibility, as the employer, to provide medical benefits to its employees; and*
- (c) whether it has any plan to purchase private medical services and medical insurance to substitute the services provided by the HA, with a view to providing better civil service medical benefits and addressing the problem of imbalance between the public and private health sectors?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, regarding part (a) of the question, based on the information provided by the HA, a breakdown of the number of attendances and the percentage of civil service eligible persons using HA services against the total number of persons using such services in each of the past three financial years is at Annex 1. The costs of medical services provided for civil service eligible persons by the HA in each of the past three financial years are set out at Annex 2.

Currently, according to the triage system under the HA, specialist out-patient clinics will determine the urgency of the clinical conditions of new specialist out-patient patients based on various factors including the patients' clinical history, the presenting symptoms, and the findings of physical examinations and investigations before arranging the dates of medical appointment. The status of a patient is not a factor of consideration. The dates of medical appointment for serving/retired civil servants and their eligible dependants, like that for all other members of the public, are arranged according to the triage system for new specialist out-patient cases. Therefore, the waiting time for specialist out-patient patients will not be prolonged or shortened due to HA's provision of medical services for civil service eligible persons.

Regarding part (b) of the question, before the HA was established, the Government provided medical and dental benefits to civil service eligible persons through the facilities managed by the Department of Health (DH) and the then Hospital Services Department (HSD). When the HA was established in late 1990 and took over the public hospitals and general out-patient clinics previously managed by the HSD and DH in 1991 and 2003 respectively, the Government considered it most appropriate and effective for the HA to provide the relevant medical services for the civil service eligible persons. The annual lump sum provision given by the Government to the HA has included the resources required for the provision of medical benefits to civil service eligible persons.

Regarding part (c) of the question, the Government, as an employer, is committed to honouring its employment contractual obligation of providing medical and dental benefits to civil service eligible persons. Through the Standing Committee on Medical and Dental Facilities for Civil Servants (SCMDF), the Government discusses with the staff sides various feasible measures regarding civil service medical benefits. Besides, taking the opportunity of the release of the consultation document on health care reform by the Food and Health Bureau in mid-March last year, we issued letters to invite civil service staff bodies to express their views, in particular on how we could leverage the possible reforms to the public health care system to improve the provision of medical benefits to civil service eligible persons.

At present, the Government does not have any plan to purchase private medical services and medical insurance for civil service eligible persons to substitute the services provided by the HA. We will continue to discuss with the staff sides through the SCMDF all feasible proposals that can improve the medical benefits for civil service eligible persons. In considering any improvement proposals, we will weigh up the Government's financial capability, cost-effectiveness of the proposals and the views of the staff sides.

As regards addressing the problem of imbalance between the public and private health sectors, I understand this is one of the objectives of the Food and Health Bureau in launching its consultation on health care reform, which is to optimize the use of public and private resources to ensure sustainability of the overall health care system and pave the way for improved quality and efficient health care services in both the public and private sectors.

Annex 1

A breakdown of the number of attendances and the percentage of civil service eligible persons using HA services concerned⁽¹⁾ against the total number of persons using such services from 2005-2006 to 2007-2008

	<i>Total</i>	<i>Civil service eligible persons</i>	<i>%</i>	<i>Total</i>	<i>Civil service eligible persons</i>	<i>%</i>	<i>Total</i>	<i>Civil service eligible persons</i>	<i>%</i>
	2005-2006			2006-2007			2007-2008		
In-patient days	7 209 732	311 102	4.32%	7 126 390	317 226	4.45%	7 153 036	327 416	4.58%
In-patient discharges and deaths ²	1 125 265	73 282	6.51%	1 155 224	74 860	6.48%	1 224 643	79 571	6.50%
Accident and emergency services attendances	2 019 451	142 765	7.07%	2 052 774	142 791	6.96%	2 087 902	141 848	6.79%
Out-patient attendances for all specialties	6 018 338	594 008	9.87%	6 005 257	590 955	9.84%	6 117 618	596 794	9.76%
General out-patient attendances	5 179 203	665 883	12.86%	4 842 247	666 129	13.76%	4 841 927	685 414	14.16%

Notes:

(1) The figures are consolidated based on the categories given in HA's Annual Report.

(2) The figures include attendances for inpatient and day care services.

Annex 2

The costs of medical services provided to civil service eligible persons by HA from 2005-2006 to 2007-2008

	<i>2005-2006</i> <i>(\$ billion)</i>	<i>2006-2007</i> <i>(\$ billion)</i>	<i>2007-2008</i> <i>(\$ billion)</i>
The costs of medical services provided to civil service eligible persons by HA	18.590	19.990	21.076

Note:

The "unit costs" in HA's Annual Report refers to the total costs for the provision of various services. The above costs for the provision of medical services to civil service eligible persons by HA are calculated on the basis of the actual number of attendances of civil service eligible persons using paid HA services and the relevant cash cost.

DR LEUNG KA-LAU (in Cantonese): *President, the main reply of the Secretary is not logical. In paragraph two of the main reply, the Secretary said that civil service eligible persons wait for specialist out-patient consultation in the same way as all other members of the public. If that is the case, how could the waiting time for specialist out-patient patients not be lengthened or shortened? That is illogical. Besides, it was mentioned in paragraph three of the main reply that the provision granted to the HA included the expenditure on medical services offered to civil servants. Could the Government provide this Council with historical or current documents instead of mere talks? The Government has to provide documents for proving that the provision was actually granted and how the calculation was arrived at.*

PRESIDENT (in Cantonese): Please state your supplementary question clearly. You should raise one question for the Secretary to reply.

DR LEUNG KA-LAU (in Cantonese): *I have to point out that, firstly, her main reply is illogical; secondly, I would like to ask whether the Secretary can provide documents to confirm that resources involved in the provision of medical benefits for civil servants were included in the provision to the HA.*

PRESIDENT (in Cantonese): You have raised your supplementary question. Secretary, please answer.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I would like to thank Dr LEUNG for the two supplementary questions. The first supplementary question involves civil servants' identity. According to our employer-employee relationship, the Government is the employer, and civil servants certainly are the employees. However, there is another identity for the civil servants, that is, they are also the citizens of Hong Kong. I believe that as Hong Kong citizens, they are eligible for requesting and enjoying medical services from the HA. Therefore, I do not regard that paragraph two of my main reply is in any way illogical.

As regards the second supplementary question of Dr LEUNG, prior to the establishment of the HA in the end of 1990, there were discussions by a task force on this issue. The conclusion arrived at was that we should, upon the establishment of the HA, make use of the then annual provision to the HSD as the basis for granting provision to the HA. This basis is highly important because not only did the then HSD provide hospital and hospital-related medical services to civil servants, it also provided the same services to other citizens of Hong Kong. Therefore, the expenditure of the HSD at that time included medical services provided to the citizens and civil service eligible persons. Hence, when the HA was established, the provision granted to the HA was based on the expenditure of the HSD at that time. The document concerned is an internal document.

DR LEUNG KA-LAU (in Cantonese): *Could the document be provided to this Council?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, as I have said, that is an internal document. Please allow me to contemplate the issue after the meeting.

MRS SOPHIE LEUNG (in Cantonese): *President, I was of the expectation that the Secretary for Food and Health would participate in answering this question. My supplementary question is it was pointed out in paragraph three of the main reply that the Government granted an annual lump sum provision to the HA. I remember there was such a saying at that time. However, perhaps it should be calculated at present as to how much of the sum granted is for the use of civil servants, especially for those who are entitled to first-class and second-class wards, the number of whom is so great that it has outnumbered our original estimation. For the phrase "optimizing the use of public and private resources" mentioned in paragraph six of the main reply, I would like to ask the Secretary whether consideration would first be made to provide civil servants who are entitled to first- or second-class wards with other means of treatment such as allowing them the choice of private medical organizations or providing them with medical insurances, and so on.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I would like to thank Mrs Sophie LEUNG for the supplementary question. According to my understanding, when the need arises for civil service eligible persons to be hospitalized, they could request for a certain class of bed, depending of course on the availability of that class of beds. Therefore, we are not saying that civil service eligible persons could have preferential treatment in utilizing first-class beds. This is not the actual situation. When a patient is in need of the service and hopes to be provided with a certain class of bed, it would all depend on whether there is any vacancy for that class of bed. I believe the issue behind Mrs Sophie LEUNG's supplementary question may probably be about whether we should or would consider streaming some of the civil service eligible persons to private hospitals. At present, we do not have this in mind; nor is this in accordance with the medical benefits provided by the Government as an employer to its employees, for according to our employment contract, medical benefits are provided to civil servants mainly through the HSD and the HA.

MR ALBERT CHAN (in Cantonese): *President, I would like to follow up with the issue about the unreasonable percentage in patient number taken up by civil servants in out-patient clinics. Looking at the Annex, it can be seen that in the past three years, the percentage of civil servants using the services of specialist clinics is continuously rising. If calculated by percentage of the population ratio, the degree of rise has exceeded the percentage in population ratio, which is unreasonably high. Only two logics could be deduced from here: (a) the proportion of civil servants falling ill as compared with that of the general public has been higher, and the level has been to such a high extent that it is regarded as unreasonable; (b) the out-patient service arrangement has been particularly favorable to civil servants.*

We have received a lot of complaints at the district level. The elderly often fail in securing telephone appointments for general out-patient consultation. Is it due to the availability of a more convenient arrangement for civil servants in making telephone appointments that results in their high percentage of use of specialist out-patient services when compared with the general public? Would it be unfair to the general public, especially the elderly? Could the Secretary conduct a more detailed examination to see why the percentage this is a very acute percentage, the percentage of in-patient attendances averages at 4%

per year; the percentage of the number of discharges and deaths is 6%; the percentage of accident and emergency services attendances stands at 6% to 7%, while that for specialist out-patient services is always 9%. However, in general out-patient attendances, the percentage has increased from 12.86% in 2005 to 13.76% in 2006-2007 and 14.16% in 2007-2008. Although telephone appointments have been available for out-patient services in the last two years, the elderly have always failed to secure specialist out-patient appointments. Is it because of the related regulation or a change in the system that results in the formation of a privileged class and bringing unfairness to the elderly?

PRESIDENT (in Cantonese): Mr Albert CHAN, just now you have raised several figures and a series of queries. I hope you could clearly state your supplementary question.

MR ALBERT CHAN (in Cantonese): *My supplementary question is: If we compare the percentage of general out-patient attendances with that of other services attendances, the figure is considerably high*

PRESIDENT (in Cantonese): Are you asking the reason for the rapid increase in the percentage concerned?

MR ALBERT CHAN (in Cantonese): *Yes, I am asking about the unfair situation concerning the general out-patient services.*

PRESIDENT (in Cantonese): Secretary, please answer.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, I would like to thank Mr CHAN for the supplementary question. Actually I also have some doubts about those figures. However, the doubt that I have is not only about the figures for general out-patient attendances, but also those for other

areas. If we look at Annex 1, we could see that under the item of "in-patient days", the percentages of civil service eligible persons against the total number of persons using such services in Hong Kong are relatively low. Currently there are around 520 000 civil service eligible persons, making up a total of around 7.5% of Hong Kong's total population. However, why is it that the percentages for each item shown in Annex 1 are not 7%, 7.5% or 8%; but that some of the percentages are as low as 4.3% or 4.5%, while some are as high as 12.8% or 14.1%?

Before I could follow up the matter with the HA, President, I could only speculate that the various kinds of treatments necessitated by the various symptoms displayed by the civil service eligible persons are different. As the Secretary for the Civil Service, since I am not from the medical profession, I have no way to tell why the percentage of in-patient attendances of civil service eligible persons is lower than the percentage of them against the total population; but the percentage of their attendances at specialist clinics is higher than the percentage of them against the total population. I really would not want to make any speculation, but I deeply believe that colleagues from the civil service and the eligible persons would not, under a healthy physical condition, make use of the general out-patient services. Hence, I have to enquire with the HA on this point, but I am not sure whether the HA would be able to arrive at a more objective and rational analysis. However, I would still try.

MR ALBERT CHAN (in Cantonese): *President, my supplementary question is whether the Secretary would conduct comprehensive, in depth study and investigation as to why the general out-patient services the investigation should include an examination on whether there is any deviation in the system or mechanism.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, the information contained in Annex 1 is all about the out-patient services provided under the HA. All the systems are set up mainly by the HA, but I will try to look into it.

There is one issue which Mr CHAN might feel interested in, that is, there is a system in place in the over 60 general out-patient clinics under the HA whereby

priority chips would be distributed to serving civil servants but not retired civil servants or their dependants. Why is it that there is such an arrangement in the some 60 general out-patient clinics under the HA for distributing priority chips to serving civil servants? The objective is to enable civil servants, when suffering from minor ailments, to resume work and serve the public as soon as possible after seeking medical consultation at general out-patient clinics. Hence, there is the said system of arrangement for distributing priority chips to serving civil servants. The number of priority chips is subject to strict control and the chips are allotted to serving civil servants in the two half-hours during 9 am to 9.30 am and 2 pm to 2.30 pm. Any remaining priority chips would be distributed to the general public, so there would not be any wastage. The rationale behind this arrangement is to enable serving civil servants who suffer from minor ailments to return to work as soon as possible after seeking medical consultation.

PRESIDENT (in Cantonese): This Council has spent almost 20 minutes on this question. Although several Members are waiting for their turn to ask questions, I could only allow one more Member to raise supplementary question.

DR LEUNG KA-LAU (in Cantonese): *President, I would only like to clarify some figures, that is, the "unit costs" in Annex 2, for it seems that the calculations were not made on the basis of "unit costs". The general public has to pay \$100 for every accident and emergency services attendance; however, the unit cost is only some \$600. I would like to ask whether the figures in Annex 2 were arrived at using some \$600 as the basis of calculation, or using the \$100 as is required of the general public but is paid by the Government on their behalf.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): \$600 was used as the basis of calculation in the example quoted just now.

PRESIDENT (in Cantonese): The third question.

Composition and Powers of District Councils

3. **MR WONG YUK-MAN** (in Cantonese): *President, in as early as 1994, all appointed seats of District Boards (DBs) were abolished, and all DB members (except the 27 ex-officio members of the New Territories DBs, who were all Rural Committee chairmen) were returned by geographical constituencies through direct elections. Yet, the Government re-instated 102 appointed seats in the District Councils (DCs) in 2000. There have been criticisms that the re-instatement is tantamount to changing the voting results of the DC elections. Moreover, the Government often appoints people who support its policies as DC members, leading to imbalance in the political "ecology" in the districts. Furthermore, the Government has so far not fully honoured the promise it made when the Urban Council and Regional Council were dissolved on 1 January 2000, that is, to allocate more resources to the DCs and enhance their functions to encourage public participation in public affairs at the district level. In this connection, will the Government inform this Council whether:*

- (a) *at present it has any plan to amend the District Councils Ordinance to abolish all appointed DC seats and have all DC members returned by geographical constituencies; if it has, when it will implement the plan; if not, of the reasons for that; and*
- (b) *it will delegate to the DCs all the powers of the two former Municipal Councils; if so, when it will be implemented; if not, of the reasons for that?*

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

- (a) The appointment system of District Councillors has provided a channel for community leaders and individuals with different experience to serve the community. Appointed members have made constructive and useful contributions to the work of the DCs.

In 2006, a public consultation exercise was conducted on the review of the role, functions and composition of the DCs. In the process,

individuals who have put forward their views generally recognized the contributions of the appointed members to the DCs. People who agreed to retain the appointed seats commented that such seats would allow more people of different backgrounds, such as professionals and businessmen, to take part in the management of district affairs. Their professional knowledge and experience could complement the elected DC members and contribute to the DCs. Even those who objected to the retaining of appointed seats also commended the appointed members for their quality and their contributions to the DCs.

The recommendations in the 2006 District Councils Review (2006 DC Review), for example, enhancing the involvement of the DCs in the management of district facilities, have been implemented fully territory-wide in the 18 districts in 2008. To ensure the smooth operation of district services in implementing these recommendations, we consider retaining the appointed seats will be more prudent.

Among the serving appointed members, about 90% are of business, industrial, professional or management background. This is higher than the respective 64% among territory-wide DC members. We believe that appointed members can continue to contribute to the management of district facilities by their expertise and experience.

The future composition of DCs will be considered in the light of the actual operation experience of the current term of the DCs, in particular after the role and functions of the DCs in managing district facilities have been enhanced.

- (b) When the two Municipal Councils were abolished, we suggested strengthening the functions of and resources for the DCs so as to enhance their involvement and monitoring of district affairs.

The Government has reviewed the role and functions of the DCs in 2001 and recommended enhancing the DCs' role and functions. The recommendations were implemented following consultation with the DCs, the Legislative Council and the public.

To further develop district administration and enhance the functions of DCs, the Government has introduced new arrangements for enhancing the role and functions of the DCs in the 18 districts when the new DC term commenced in 2008.

Under the new arrangements, the DCs have begun to involve in the management of some district facilities including community halls, public libraries, leisure grounds, sports venues, public swimming pools and beaches.

Furthermore, starting from 2008-2009, we have increased the annual provision to the DCs to \$300 million for organizing community involvement programmes with district characteristics. We have also made available to the DCs a dedicated capital works block vote of \$300 million, on an annual basis, for carrying out district minor works projects.

To enhance communication between the Government and the DCs, heads of departments providing direct services to the public would continue to attend DC meetings regularly to explain government policies to the members. We have also arranged briefings by heads of departments to DC members on the overall development strategies and future directions from a macro point of view on issues under their respective purview.

The Summit on District Administration chaired by the Chief Executive was held in May 2008. The Summit provided a forum for exchanges between DC members and the policy bureaux and departments on issues relating to the livelihood of the general public. Over 800 people attended the Summit including Principal Officials, relevant permanent secretaries and heads of departments.

As these new arrangements were only launched territory-wide last year and the implementation period is short, we would continue to monitor the operation of the DCs and would only consider at an appropriate time whether the functions of the DCs should be further enhanced.

MR WONG YUK-MAN (in Cantonese): *The main reply of Secretary Stephen LAM can be found on government websites. He was dissatisfied when we called him a "human tape-recorder", right? But he virtually did not answer any question just now. Nevertheless, I would like to respond to him.*

To begin with, the Secretary said retaining the appointed seats was a prudent approach, but on the other hand he said that democracy in Hong Kong had to be taken forward. Then, how is he going to justify himself? He now told us that the Government definitely would not abolish the appointed seats of the DCs, right? No matter what we say, the Government will not abolish them. When we asked for dual elections for the Chief Executive and the Legislative Council by universal suffrage, the Secretary said that the Standing Committee of the National People's Congress (NPCSC) had laid down its interpretation of the Basic Law and it had made the decision, and that although such a decision had slowed down democratic development, nothing could be done because such a "high-handed" decision was laid down by Beijing, our "Grandfather", and nothing could be done. But "bro", abolishing the appointed seats of the DCs does not need to be approved by our "Grandfather". Re-instating such seats is a rollback of policy made by the Government after the reunification. The appointed seats were abolished in 1994

PRESIDENT (in Cantonese): Mr WONG Yuk-man, as there are 8 Members waiting to ask supplementary questions, please ask your question directly.

MR WONG YUK-MAN (in Cantonese): *When I called the Secretary a "human tape-recorder", he refuted that I was outdated, saying that it should be MP3. Let me adopt his boss's remark. I do not wish to engage in a war of coarse words with him*

PRESIDENT (in Cantonese): Mr WONG Yuk-man

MR WONG YUK-MAN (in Cantonese): *Does he want to listen to what his boss said?*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please raise your supplementary question quickly.

MR WONG YUK-MAN (in Cantonese): *My question is: Why can the District Councils Ordinance not be amended? Why can amendments not be introduced? Please ask him to answer this question. Why must the appointed seats be retained?*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you have already asked your supplementary question. Please sit down.

(Mr LEUNG Kwok-hung clapped)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please keep quiet. Secretary, please reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, my answer to Mr WONG Yuk-man's supplementary question is, first of all, there will be universal suffrage in Hong Kong. A decision was reached by the NPCSC in December 2007 that the Chief Executive shall be returned by universal suffrage in 2017, and all Members of the Legislative Council shall be returned by universal suffrage in 2020. Regarding the appointed seats of the DCs, we in fact had an opportunity in 2005 to abolish such seats in phases if Members could reach a consensus at that time. Unfortunately, Members did not grasp that opportunity

MR WONG YUK-MAN (in Cantonese): *You have said this for nine times. My question now is unrelated to the political reform package. "Bro", why can the Government not amend the District Councils Ordinance now, so as to abolish the appointed seats of the DCs?*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please sit down.

MR WONG YUK-MAN (in Cantonese): *President, let me finish my supplementary question first. My second question is that the Secretary said that about 90% of the serving appointed members were of business, industrial, professional or management background*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you have violated the Rules of Procedure.

MR WONG YUK-MAN (in Cantonese): *..... This was higher than the respective 64% among territory-wide DC members. If so, why not abolishing all DC elections and turning all seats to appointed ones? Are Members aware that the Secretary is smearing the elected DC members?*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please sit down immediately.

(Mr WONG Yuk-man remained standing)

PRESIDENT (in Cantonese): Mr WONG Yuk-man, if you violate the Rules of Procedure again, I cannot let you remain in this Chamber.

MR WONG YUK-MAN (in Cantonese): *I think that if he continues to reply like this, he is an idiot.*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, if it is not your time to speak, please keep quiet. Secretary, please reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Yes. Secondly, in 2005, Members could have an opportunity to abolish the appointed seats of the DCs in phases, provided that a consensus was reached. Unfortunately, Members did not grasp that opportunity and let it slip. Thirdly, I wish to further respond to Mr WONG Yuk-man's question just now about the proportion of appointed and elected DC members with business, industrial, professional or management background. In fact, we have only mentioned one circumstance, that is, about 90% of the appointed DC members are of business, industrial or professional background. As compared with other members

(Mr WONG Yuk-man turned on a recording device)

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please turn it off. Mr WONG Yuk-man, if you do not remain quiet immediately, I will have to ask you to leave this Chamber.

(Mr WONG Yuk-man turned off the recording device)

MR WONG YUK-MAN (in Cantonese): *You should listen to your boss mumbling coarse words.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): As compared, other DC members with such background only account for 64%. This is a fact. Our ground is that, by retaining the appointed DC members, we wish to facilitate the work of the DCs and their involvement in managing district facilities.

MR LEUNG KWOK-HUNG (in Cantonese): *I remember a baroness once said that the more she understood men, the more she liked dogs. That is why the more I understand Secretary Stephen LAM, the more I like dogs. Secretary LAM did not answer just now a part of the question raised by our party leader Mr WONG Yuk-man. That is, under the provisions of the Basic Law and its*

Annexes, the Government of the Hong Kong Special Administrative Region (HKSARG) has neither the responsibility nor the obligation to abolish, under this framework, the democratically-elected Urban Council and Regional Council. Neither is the HKSARG duty-bound to be answerable to the Central Authorities in increasing the appointed seats. Secretary Stephen LAM did not answer this point just now. Does the Government have the constitutional responsibility to do this? I now have this question for Secretary Stephen LAM: Given that the HKSARG is not required under the Basic Law and the Sino-British Joint Declaration to do this, whether your bosses — I mean your boss TUNG Chee Hwa and your boss Donald TSANG — have sold the people of Hong Kong down the river? Are they using the Central Authorities as an excuse? You answer this question right now. Are you involved in asking your bosses to do these vile deeds?

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please sit down. Secretary, please reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in relation to Mr LEUNG Kwok-hung' supplementary question, I have the following three-parted reply. First, the existing District Councils Ordinance is fully in line with the Basic Law; secondly, thorough discussion and debate on abolishing the two former Municipal Councils were held in this Chamber before the relevant ordinance was passed; and thirdly, Article 97 and Article 98 of the Basic Law prescribe that district organizations may be established according to our legislation. Thus, the 18 DCs now are fully in line with the Basic Law.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): *I asked him whether TUNG Chee Hwa and Donald TSANG of the HKSARG are required or duty-bound under the framework of the Basic Law and the Sino-British Joint Declaration to abolish all*

democratically-elected institutions and to introduce appointed seats to institutions which are originally democratically-elected. The Secretary did not answer this part of the supplementary question. He said that there was a responsibility to change

(The recording device was turned on again)

PRESIDENT (in Cantonese): Mr LEUNG, please turn off that recording device immediately.

MR LEUNG KWOK-HUNG (in Cantonese): *I really do not know how to turn it off. This recording device also cannot put up with* It was on automatically.

PRESIDENT (in Cantonese): Mr LEUNG, you have made your supplementary question clear. Please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *..... the Gods are watching.*

PRESIDENT (in Cantonese): Please sit down. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Yes, let me make a brief supplement.

A few years ago, in the ruling handed down by the Court of First Instance of the High Court in a judicial review sought by CHAN Shu-ying, Justice HARTMANN held that "Clearly, Article 97 is no more than an empowering provision. It is permissive in the sense that it permits the establishment of district organizations but does not create a constitutional obligation to establish them." Hence, the HKSARG proposed the ordinance concerned to the legislature in accordance with Article 97 and Article 98 of the Basic Law, and the present composition of the 18 DCs is in line with the Basic Law.

MRS REGINA IP (in Cantonese): *President, Secretary LAM mentioned an advantage of retaining the appointment system, that is, among the appointed members, about 90% are of business, industrial, professional or management background, which is higher than the respective 64% among territory-wide DC members. Does he mean that it is difficult for elected seats to attract candidates with these backgrounds? Does the Secretary agree that this is due to the fact that remunerations of DC members are too low? Although this is a full-time job, it lacks many basic benefits, medical insurance and Mandatory Provident Fund. Will the Secretary consider advising the top government officials to improve the remunerations of DC members, so that more candidates with business, industrial, professional or management background will stand for election?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, I thank Mrs Regina IP for her supplementary question and for Members' questions as well. Regarding the composition of the DCs, over the years, we wish to seek wider participation of people aspired to a political career to stand for DC elections. Thus, we increased 10 elected seats from 390 seats to 400 seats in the DC term in 2003, and further increased the number of seats from 400 to 405 seats in the DC term in 2007. To a certain extent, I believe that we have successfully attracted people with different backgrounds to stand for election, including those with professional or management background. Moreover, Mrs Regina IP also specifically asked about remunerations. In fact, the allowance for a DC member was raised from \$10,000 to \$17,000 in 2001; and starting from the DC term in 2008, the remuneration of a DC member has been further raised to over \$19,000. Admittedly, we have to review the relevant financial arrangement before the commencement of each new DC term. We shall conduct such a review before organizing the new DC election in November 2011.*

MR FREDERICK FUNG (in Cantonese): *I wish to further ask a question relating to part (b) of the main reply. When the Government abolished the two Municipal Councils, it promised that it would transfer the power of the two Municipal Councils to the newly-established DCs. I have the following supplementary question for the Secretary: In the 1990s, the former Urban Council promised that there would be a municipal services building with a market inside in Sham Shui Po. To date, however, the Food and Environmental*

Hygiene Department still refuses to construct the building. It has been 15 years since then. Moreover, the power of the former Urban Council covered leisure, culture and environmental hygiene. It was stated in the fourth paragraph of part (b) of the main reply that the DCs will be involved in the management of community halls, public libraries, leisure grounds, sports venues, public swimming pools and so on. All these facilities fall on the leisure and cultural aspects. But the DCs are not empowered to manage markets and hawkers at all, and they have neither the influence nor the actual power over these aspects. The Secretary now told us that the promise was being honoured. The Government pledged for our support in this Chamber then, but 10 years have passed and the Government has not honoured its promise so far. Has the Secretary reviewed whether the Government has beguiled the former Legislative Council?

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Constitutional and Mainland Affairs.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I will first answer Mr Frederick FUNG's supplementary question and I wish also to thank Mr FUNG for his concern over the years about development in the district. First of all, as far as I know, after the abolition of the two former Municipal Councils, the Legislative Council as well as the Government have followed up in past years the capital works left behind by the two former Municipal Councils, and I know that most of these capital works have been completed. Regarding the municipal services building and the market in Sham Shui Po, which was raised by Mr FUNG today, we will relay this concern to colleagues of the Food and Environmental Hygiene Department. Secondly, why did we only focus on leisure and sports facilities when we expand the functions of the DCs in 2008? This is because after conducting the public consultation in that year, we found it more appropriate to let the DCs be more actively involved in new areas of work. Speaking about work concerning food and environmental hygiene, this is related to public health and prevention of diseases. As the policy purview of this area of work involves territory-wide consideration, we found it more appropriate to let departments taking charge of food and environmental hygiene directly handle it.

Regarding the question raised by Mr Frederick FUNG on whether the Government has honoured the promise it made when the ordinance on abolition of the former Municipal Councils was passed in 1999, the answer is affirmative. We have honoured the stance we expressed to this Council at the time. The then Secretary for Constitutional Affairs said, " some Members asked whether we would consider the possibility of enhancing the status and role of District Councils. I can only say that we do not rule out such a possibility. But I cannot say that the Government has arrived at any positive views in this respect, nor can I say that the Government has already drawn up any timetable." Thus, we enlarged and expanded the scope of work of the DCs in 2001, and further expanded their scope of work again in 2008.

PRESIDENT (in Cantonese): Although six Members are still waiting to ask questions, this Council has already spent more than 23 minutes on this question. Members will thus have to follow up this issue on other occasions.

PRESIDENT (in Cantonese): Fourth question.

Interest Rates Charged by Banks

4. **MR ALBERT HO** (in Cantonese): *President, under the Money Lenders Ordinance (MLO), if the effective interest rate on a loan exceeds 48%, the loan transaction concerned shall be presumed to be extortionate. Yet, authorized institutions (AIs) (including banks) are exempt from MLO, so that they are free to set interest rates under the Currency Board arrangement in Hong Kong. It has been reported that a bank has recently charged its credit card customers an annualized percentage rate (APR) of interest of nearly 50% on cash advance service. In this connection, will the Government inform this Council whether the Hong Kong Monetary Authority (HKMA) has:*

- (a) *performed the functions of the Monetary Authority as stipulated in section 7 of the Banking Ordinance by requesting the bank concerned to provide, in accordance with section 12.3 of Chapter 1 of the Code of Banking Practice (the Code), sufficient justifications*

to explain that the charging of a high interest rate of over 48% is not unreasonable or unfair; if so, of the relevant details; if not, the reasons for that;

- (b) regularly monitored the interest rates charged by banks for various types of loans; if so, of the relevant details and the monitoring results in the past year; if not, what measures HKMA has in place to ensure that banks comply with the provisions on interest rates under the Code; and*
- (c) assessed if it is necessary to review the current practice of relying solely on the Code to regulate the level of interest rates charged by banks; if it has not, of the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, while AIs are exempt from complying with MLO, section 12.3 of the Code sets out certain restrictions on the charging of interest rates by AIs. It stipulates that the APRs charged by AIs should not exceed the level presumed to be extortionate under section 25 of MLO, that is, 48%, unless the AI concerned can justify that such a rate is not unreasonable or unfair. One possible situation is that the customer to which the credit facilities in question are provided is assessed as having exceptionally high credit risk, and hence there is a need for the AI concerned to charge a comparatively higher interest rate to compensate the possible default losses that may be suffered by the AI. The provision further states that APRs charged by AIs should not exceed the legal limit specified in section 24 of MLO, that is, 60%, unless justified by exceptional monetary conditions.

HKMA has all along been adopting and enforcing the principle that AIs should provide their customers with clear and up-to-date information about the terms and conditions of banking services so that customers can select the service most suitable for them. AIs are obliged under the Code to make readily available to customers information on credit card cash advance services, including but not limited to APRs, to facilitate customers' comparison of different charging structures.

HKMA monitors AIs' compliance with the Code as part of its regular process in the supervision of AIs. It also requires AIs to undertake regular self-assessment of their compliance with the Code. In addition, in case HKMA becomes aware of information through different channels such as regular supervisory activities or complaints from customers, which raises question about certain AIs' compliance with the Code, it will follow up with the relevant AIs and take appropriate actions. In respect of the case mentioned in the question, HKMA has already followed up with the bank concerned. The bank has agreed to adjust the relevant interest rate to a level below 48%.

HKMA will closely monitor the situation and consider the need to improve the relevant regulatory arrangements and enhance its monitoring actions, with a view to further improving the supervision with regard to the requirements under the Code on the charging of interest rates by AIs.

MR ALBERT HO (in Cantonese): *President, to one's surprise, a bank takes advantage of the exemption from MLO by charging its customer an APR of over 48% without reasonable justification, which is presumed to be extortionate. For such a shameful act which is tantamount to loan-sharking, we consider it completely unacceptable. Why did HKMA not perform its monitoring duties properly?*

According to the Secretary's reply, at present, the bank concerned has adjusted the so-called extortionate interest rate back to 48%, in fact, it means that it has admitted its mistake. May I ask HKMA, with regard to this case, in addition to asking the bank to lower the interest rate, has HKMA taken any punitive action against the bank, including public reprimand, or to urge the repayment of excessive interest charged to the customer, so as to deter anyone from committing the same mistake? If not, why not?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to thank Mr HO for raising the supplementary question. With regard to the interest level of 48%, I have pointed out in the main reply that if a bank charges an interest rate exceeding 48%, HKMA would follow up and see whether there are justifiable reasons for the bank to do so. One of the

possibilities is that the bank makes the decision against the result of a borrower's credit risk assessment. HKMA will follow up and see if the reasons put forward are justifiable or not.

With regard to the bank incident mentioned earlier, after following up the case, HKMA considered that it was open to question, and after the case was followed up by HKMA, the bank adjusted the relevant rate. As for reprimanding the bank, HKMA does not have such power. HKMA's job is to follow up with the bank in accordance with the Code when such cases arise and see whether there is adequate justification. Generally speaking, if the bank believes that there is leeway for discretion on the justification, it will make an adjustment corresponding to the follow-up.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR ALBERT HO (in Cantonese): *President, my supplementary question was whether punitive actions were taken, he did not give a direct answer. He only said that HKMA had no power to make a public reprimand However, may I ask him whether HKMA has virtually no power to take punitive actions, that is, it is just a "toothless tiger" in respect of the enforcement of the Code?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): With regard to this case, after the bank and HKMA had studied the situation, the bank considered that the interest could be reduced to the level below 48%. Generally speaking I wish to explain that in this regard, we have to see whether there is any justification, including the risk assessment on the money lender no, on the borrower. Usually, there is room for negotiation in respect of these data. In this regard, the bank responded positively to HKMA's follow-up efforts.

MR ALBERT HO (in Cantonese): *President, he should answer whether HKMA has no power at all.*

PRESIDENT (in Cantonese): Has the Secretary still not answered your supplementary question?

MR ALBERT HO (in Cantonese): *Yes, if HKMA has no power at all?*

PRESIDENT (in Cantonese): Secretary, Member asked whether or not HKMA had the power to take punitive actions.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Of course, under the purview of HKMA, banks have to follow the Code as a common practice. HKMA will monitor whether the Code is complied with by banks from the overall regulatory perspective. In case of non-compliance in fact, the banks themselves have to satisfy the long-standing and regular requirement. If a bank fails to comply with the Code, HKMA will, of course, take punitive actions.

MR LEUNG KWOK-HUNG (in Cantonese): *President, the Secretary's answer is actually a fragmented one. I have a very good memory. He said at the beginning that HKMA had no power to reprimand the bank. That was the answer given by him. Members spent a lot of time to ask him, but now he says that HKMA has the power to take punitive actions. I will not waste my time on these two points. Since his good self made such an answer, please ask him to clarify it later.*

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

MR LEUNG KWOK-HUNG (in Cantonese): *My supplementary question is very simple. It is said that "scholar-officials" are immune from penalty. As it is a bank, such a practice has actually violated MLO. The authorities said that the bank agreed to lower the relevant interest rate after some discussions were made, then, why did the authorities not punish the bank? Since Mr HO has*

raised the question, I am just trying to follow up on his behalf. Has the bank offered any cash-back deal? Has the bank been reprimanded? Even the Consumer Council will make public which supermarket is selling milk powders at a higher price and which is selling at a lower price, but not in this case President, I have to explain to him, because he is too

PRESIDENT (in Cantonese): Please ask your supplementary question as soon as possible.

MR LEUNG KWOK-HUNG (in Cantonese): *This is not a matter of my good self, Long Hair, who needs to borrow some money from the bank to bail myself out, but a matter relates to the use of credit cards. As there are many credit card users, what explanation have you actually made? In fact, the bank charged an excessive interest rate under the circumstances that credit card users have no knowledge at all and the risk is not disclosed — he always talks about risk disclosure — why has the bank not been reprimanded? It is already a blessing that no arrest has been made*

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

MR LEUNG KWOK-HUNG (in Cantonese): *I was asking why HKMA neither reprimanded nor punished the bank. If he cannot give an answer, please ask Joseph YAM to take a taxi and come here to answer it. If he has not consulted Joseph YAM, he has neglected his duties.*

PRESIDENT (in Cantonese): You have already raised a supplementary question, please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, thank you, President. Please speak up my supplementary for me.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I wish to extend my thanks once again to Mr LEUNG for raising the supplementary question. If he wants me to explain once again, the so-called 48% interest rate is in fact not a rigid level. As to the fact that APRs charged to the loan provided to customers should not exceed 48%, it is not stipulated in the relevant guidelines that it would be wrong once this level is exceeded. The major reason is that the relevant credit risk may be fairly high. If we make it mandatory that no interest rate should exceed 48%, then banks may refuse to provide loans to customers under some circumstances. The genuine purpose and objective of regulation is to allow banks to set the interest rate exceeding 48% with reasonable grounds. Therefore, if any bank charges the interest rate higher than the level of 48%, the regulatory objective is to see whether the bank concerned can provide a reasonable explanation. Generally speaking, if a bank considers that it has the leeway, it will take follow-up actions after HKMA showing concern. According to the data we have seen, banks only charge a small number of individual customers an interest rate exceeding 48% under certain circumstances after assessing the credit risk of such customers.

MR LEUNG KWOK-HUNG (in Cantonese): *President, you are a mathematics major*

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, it is called tautology. He did not answer at all. I asked him why there were no punitive actions he did not make any disclosure at all. He only explained the general situation, but I was asking about the special circumstances. I asked him why the bank concerned was not punished. He said no punitive actions could be taken. "Bro", you are a mathematics major, please speak up my question for me*

PRESIDENT (in Cantonese): Mr LEUNG, you have put forward your follow-up question.

MR LEUNG KWOK-HUNG (in Cantonese): *You must speak up my follow-up question for me.*

PRESIDENT (in Cantonese): I have heard that the Secretary has already answered.

MR LEUNG KWOK-HUNG (in Cantonese): *He was just giving a tautological answer. It was wrong to do so.*

PRESIDENT (in Cantonese): Let me ask the Secretary if he has anything to add?

MR LEUNG KWOK-HUNG (in Cantonese): *Giving a tautological answer is wrong. It is a waste of time.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have nothing to add.

MR LEE CHEUK-YAN (in Cantonese): *President, I think the Secretary made an ambiguous reply because he wished to show that he still had some conscience and he could not make some unpleasant remarks. However, I think this government policy is actually rather ridiculous. How can the Government allow some legitimate loan sharks such as banks to charge an interest rate — in its own words — exceeding the level presumed to be extortionate? In other words, the Government's policy actually allows banks to extort members of the public in a legitimate way. How can it be so ridiculous? Just now the Secretary said that perhaps due to the relatively high credit risk of individual customers or persons, thus it was reasonable for the bank to charge a relatively high interest rate. It is outrageously ridiculous. Loan sharks are also charging extortionate interest rates because of the same factor of high risk as they do not check the information of the borrowers before giving them loans. Then, it had better relax all the requirements, allowing the whole world to provide loans without assessment and it is all right for them to extort afterwards*

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

MR LEE CHEUK-YAN (in Cantonese): *..... the reason is the same. So, may I ask whether the Secretary considers that the current policy is the legalization of loan-sharking, that is to say, whether it is a ridiculous policy to allow banks to become legitimate loan sharks? Will prompt action be taken to amend the legislation, so that such a ridiculous policy will be submitted to the Legislative Council for amendment?*

PRESIDENT (in Cantonese): Please sit down. Secretary, please reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to thank "Brother Yan" for the supplementary question. I have leafed through MLO. In fact, as to whether the so-called 48% interest rate is extortionate, it means that this interest rate level is presumed to be extortionate. The Court will determine whether the interest rate is extortionate according to the actual situation, that is, whether there is any justification behind, if such complaint cases are received. Therefore, MLO has empowered the Court to see whether the actual level charged is extortionate. This is the same approach HKMA has adopted in the monitoring of banks. In other words, if a 48% interest rate is charged, it will see if the bank concerned has a reasonable justification. For that reason, the spirit of regulation is consistent.

MR LEE CHEUK-YAN (in Cantonese): *President, he did not answer my supplementary question, that is, will the legislation be amended eventually?*

PRESIDENT (in Cantonese): You are asking him whether the legislation will be amended?

MR LEE CHEUK-YAN (in Cantonese): *He just hemmed and hawed in his reply. Does it mean that the legislation will be amended?*

PRESIDENT (in Cantonese): I believe that the Secretary's explanation is very clear. Let me see if the Secretary will provide a further reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): This has nothing to do with the legislation but the Code. Of course, HKMA can monitor the situation all along. It can also consider ways to strengthen the supervision of banks in this area. For example, it may collect some data and look at the number of banks with such a practice, so that we can strengthen the intensity of our monitoring efforts. This is something that can be considered.

MR LEE CHEUK-YAN (in Cantonese): *President, MLO is a piece of legislation. Amendments can be introduced to exclude banks from the exemption list. This can be done through legislative amendment.*

PRESIDENT (in Cantonese): Mr LEE, I believe that the Secretary has already answered your follow-up question.

MR PAUL CHAN (in Cantonese): *President, whether the interest rate is 48% or 60%, actually it is still very high. Very often, the borrowers are not on an equal footing as far as bargaining power is concerned. For example, if credit card users owe credit card debts, they may not be able to make immediate repayment when the interest rates are being adjusted. May I ask the Secretary, the interest rate mentioned just now was set many years ago, will the authorities review the relevant level of interest rate and examine whether it is reasonable and to draw reference to international experiences?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr Paul CHAN is right. No matter it is 48% or 60%, it is stipulated in the legislation, and this is the current legislation. For the time being, we do not intend to amend the law.

MR KAM NAI-WAI (in Cantonese): *What I would like to ask is exactly this point. As we all know, the Government is rendering great help to the banking industry now because of the financial tsunami. It has provided a 100% bank deposit protection and offered the SME Loan Guarantee Scheme with more than one hundred billion dollars. Under these circumstances, why in response to Mr Paul CHAN's supplementary, the Secretary also mentioned the interest rates of 48% and 60%, why did he not make a review? In fact, the general public actually cannot afford such an interest rate. If he applies it to a particular but as credit cards are widely used, the interest rate will often reach 48%, needless to mention the fact that some unscrupulous banks will charge more than 48%. May I ask the Secretary why a comprehensive review will not be conducted? It is our wish to have the rate lowered, can it be done?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I believe that Mr KAM Nai-wai has pointed out the crux of the matter, that is, how to increase competition in the market, so as to lower the interest rates. What MLO refers to is actually the level presumed to be extortionate. When this level is set, a higher percentage should be adopted, otherwise it would not be a percentage presumed to be extortionate. At present, I do not think the legislation needs to be amended. As to banking services, I believe that our monitoring policy is to increase the transparency, so that banks will provide unambiguous data in the course of providing their services. For example, we have required banks to make public the information on APRs in the past, so that consumers can make a clear comparison between the interest rates charged by credit cards issued by different banks. In this regard, I believe we have achieved the goal of increasing competition and enhancing transparency, which will provide a much wider choice for consumers.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR KAM NAI-WAI (in Cantonese): *President, frankly speaking, if the public are to rely on the protection of the Secretary, then they will be in trouble*

PRESIDENT (in Cantonese): Mr KAM Nai-wai, please do not argue anymore.

MR KAM NAI-WAI (in Cantonese): *In fact, it is apparent that he has not*

PRESIDENT (in Cantonese): You simply need to repeat the part that has not been answered by the Secretary.

MR KAM NAI-WAI (in Cantonese): *What I can only say is: Will MLO or the Code that we have just mentioned be amended? He only mentioned MLO, but I have asked about the Code just now. Is there any room for amendment on these two aspects?*

PRESIDENT (in Cantonese): Please sit down. Secretary, will the Code be amended?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The Code is drawn up in accordance with the relevant ordinance, thus the Code will not be amended but we

PRESIDENT (in Cantonese): We have already spent more than 20 minutes on this question. Fifth question.

Outsourcing Winding-up Cases by Official Receiver's Office

5. **MR PAUL CHAN** (in Cantonese): *President, with the economy of Hong Kong sliding into recession recently, the Official Receiver's Office (ORO) announced earlier that the number of petitioned cases of winding-up of companies had continued to rise. It has been learnt that at present, the ORO contracts out liquidation cases to private firms. In this connection, will the Government inform this Council:*

- (a) *how the ORO ensures that private firms of different sizes have equal opportunities of being awarded the above outsourcing contracts; whether it had conducted any review of the procedure for granting its outsourcing contracts in the past five years, including whether the tender prices (for example, those as low as \$0) were reasonable; if it had, of the details and results of the reviews, and how the ORO will improve its outsourcing procedure in the light of the results of the reviews;*
- (b) *whether the ORO has, since it started to contract out the above work in 2002, found the performance of any outsourced services contractor falling short of the contractual requirements; if it has, of the number of cases involved, as well as the follow-up actions taken and the outcome of such cases; and what mechanism and measures the ORO have put in place to ensure the quality of the outsourced liquidation work; and*
- (c) *of the follow-up actions which outsourced services contractors must take when they uncover misconduct on the part of the management of the liquidated companies, with a breakdown, by type of misconduct, of the number of such cases in the past five years, the follow-up actions (including the number of cases in which prosecution was instituted) taken by the relevant outsourced services contractors and the ORO, as well as the outcome of the cases?*

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

- (a) In executing the outsourcing scheme for liquidation cases, the ORO considers it important to ensure the professional quality while providing opportunities for private firms of different sizes (including those of a small or medium size). In fact, the selection of private firms under the scheme of contracting out such cases is not based on size. On the contrary, the professional standard of applying firms is the most important criterion.

For example, in the scheme of contracting out smaller-scale liquidation cases (that is, those cases in which a liquidated company has assets estimated to be below \$200,000), one of the key criteria is that an applying firm should have at least two professionals with appropriate experience. Firms of different sizes which meet the relevant criteria can apply to join. Since the introduction of the scheme in 2001, more than 50 firms, including small and medium firms, have taken up such liquidation work.

In the past five years, the ORO had conducted a total of three tender exercises for contracting out smaller-scale liquidation cases. The ORO will periodically review the outsourcing procedure and consult the trade to ensure that the entire procedure is conducted in a fair and open manner.

On the basis of the Government's principle of prudent financial management and value for money, tenderers must meet the relevant professional standards before their bids are selected on the basis of price in the tender exercise. In the previous outsourcing schemes carried out by the ORO, there was only one selected firm which offered zero tender price in the 2001-2002 and 2002-2003 exercises, and the liquidation work performed by that firm was up to standard as confirmed in the ORO's subsequent monitoring.

Based on the past reviews, the ORO's outsourced work has generally been conducted smoothly. The outsourcing schemes helped the ORO cope with the upsurge in liquidation and bankruptcy cases in the late 1990s and that the ORO could make use of the expertise in the private sector without having to make increases to its establishment. At the same time, outsourcing serves to build up a pool of insolvency practitioners from the private sector with considerable experience, thereby promoting the development of the professional services sector in Hong Kong. The ORO will continue to review the professional criteria in the outsourcing schemes periodically in response to market needs and monitor the work carried out by the participating private firms, so as to ensure the quality of the outsourced services.

- (b) To ensure the quality of the outsourced services, the ORO monitors the performance of the outsourced services contractors throughout various stages of the liquidation work specified under the Companies Ordinance. Monitoring work includes, but is not limited to:
- (i) Liquidators are required to apply to the Court for a summary procedure order within three months from the date of the liquidation order for cases with assets estimated to be below \$200,000;
 - (ii) Liquidators are required to submit a report stating the details on the progress of cases to the ORO every six months from the time of their appointment;
 - (iii) Liquidators are required to submit accounts to the ORO for audit or review twice a year;
 - (iv) After realizing all the assets of the company concerned, liquidators should make dividend payment (if any) to creditors and apply to the Court for an order of release; and
 - (v) Liquidators are required to report to the ORO on the conduct of the directors concerned.

In addition, the ORO has set up a bring-up system to monitor the performance of the liquidators from private firms until the above work has been completed and it will regularly conduct field audit on selected accounts.

Since the ORO started to contract out smaller-scale liquidation cases, two firms have been released as liquidators, and/or were not granted remuneration by court orders following applications by the ORO for substandard performance and personal misconduct. In addition, case allocations were discontinued for another four firms that had breached tender terms, including sub-contracting and failure to directly employ staff to handle cases.

- (c) Under the Companies Ordinance, if it appears to a liquidator (including private firms taking up the outsourced cases) that a director of a liquidated company may have committed some misconduct which will render him unfit to be involved in the management of a company, the liquidator is required to report the matter to the ORO for investigation. 2 220 such reports were filed by the liquidators of outsourced cases between 2004 and 2008, averaging some 400 per year (Details are set out in Annex 1). Matters of unfit conduct that are required to be reported to the ORO for investigation include:
- (i) Failure to keep proper books of account of the company as required by the Companies Ordinance;
 - (ii) Failure to prepare financial statements of the company as required by the Companies Ordinance;
 - (iii) Failure to submit a statement of affairs of the company as required by the Companies Ordinance; and
 - (iv) Acting as director during bankruptcy period in breach of the Companies Ordinance.

Upon receiving such reports from liquidators, the ORO will commence investigation into the case. If there is sufficient evidence, the ORO will instigate prosecution against the directors in question. Between 2004 and 2008, the ORO issued a total of 2 268 summonses under the Companies Ordinance and the Court imposed fines totalling over \$2.5 million (Details are set out in Annex 2).

Where there is sufficient evidence to prove that a director of a liquidated company is unfit to be involved in the management of a company, the ORO will apply to the Court for a disqualification order to be made against the director so that the person concerned shall not act as director or be concerned with the management of a company for a specified period to be ordered by the Court. The Court issued a total of 248 disqualification orders between 2004 and 2008 (Details are set out in Annex 3).

Annex 1

Reports Filed by the Liquidators

<i>Year</i>	<i>Number of reports filed by the liquidators</i>
2004	643
2005	445
2006	427
2007	388
2008	317

Source: The ORO

Annex 2

Statistics on Prosecution Instigated under Companies Ordinance

<i>Year</i>	<i>Number of summonses issued by the ORO</i>	<i>Number of convictions adjudicated by the Court</i>	<i>Amount of fines (HK\$)</i>
2004	286	203	338,400
2005	294	175	317,800
2006	638	267	431,300
2007	587	565	968,600
2008	463	275	492,000

Source: The ORO

Annex 3

Statistics on Disqualification of Directors

<i>Year</i>	<i>Number of originating summonses issued by the ORO</i>	<i>Number of director disqualification orders issued by the Court</i>	<i>Average disqualification period (number of years)</i>
2004	30	32	4.02
2005	23	54	4.11
2006	29	60	4.02
2007	29	43	3.48
2008	23	59	2.98

Source: The ORO

MR PAUL CHAN (in Cantonese): *President, according to the figures set out in Annex II, each of the directors who had exhibited misconduct was only fined \$1,700 or so on average. I would like to ask the authorities this: Will a conviction be adjudicated and even an imprisonment be imposed on directors who have exhibited misconduct, in addition to disqualification or such a small fine? If so, what are the figures for the past five years? If not, what are the reasons for that? Is the penalty too lenient?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr CHAN, under the Companies Ordinance, the Court is entitled to impose a fine and an imprisonment on a defendant upon conviction. Except for the following three cases, the Court will usually impose a fine on a defendant. For example, in March 2008, two former directors of a company contravened sections 121 and 274 of the Companies Ordinance by failing to keep proper books of account. Taking into account their advanced age and inability to pay a fine, the Court adjudged that they be bound over in the sum of \$500 for a period of 12 months. In addition, there were two defendants I am not prepared to go into the details. They were respectively sentenced to 28 days' imprisonment suspended for three years and four weeks' imprisonment suspended for two years.

MR PAUL TSE (in Cantonese): *According to my understanding, it is a requirement under the individual bankruptcy mechanism that the individual concerned must have a bank account for the purpose of having his financial situation monitored and managed during the bankruptcy period. I am aware that the mechanism mentioned by the Secretary just now provides for a certain serves the function of overseeing the outsourcing procedure. However, when the ORO appoints a bank to a bankrupted individual, there is no such outsourcing mechanism. I wish to understand why there is not. Why are these bankruptcy cases exclusively assigned to some banks, while the terms may be unfair to bankrupted individuals? Will the Secretary please give an answer to this?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Since bankruptcy and liquidation are regulated under different

statutory frameworks, I am not in a position to provide a detailed explanation here in respect of the question raised by the Member. However, with the President's permission, I can provide further information.

PRESIDENT (in Cantonese): Secretary, are you saying that you will provide a written reply after this meeting?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Yes, that is correct. (Annex I)

MS STARRY LEE (in Cantonese): *President, I have handled complaints made by bankruptcy groups against those outsourced services contractors. Their major complaint is about the liquidation fee being too high in their view. Of course, I understand that the authorities have criteria for determining the fee and the Secretary also said in the main reply that field audits would be conducted. I wish to understand this: Over the past five years, how many field audits had been conducted in total and how many outsourced services contractors were involved?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I had also asked my colleagues just now whether they had such figures because the information I have does not. With the President's permission, I can provide an addition in writing. (Annex II)

MR PAUL CHAN (in Cantonese): *I wish to follow up the supplementary I raised just now. Will the Secretary please provide a written reply to us after this meeting regarding the several cases he mentioned just now?* (Annex III)

PRESIDENT (in Cantonese): Last question seeking an oral reply.

Services for Building Management

6. **MS STARRY LEE** (in Cantonese): *President, last year, the Independent Commission Against Corruption (ICAC) received 943 corruption reports relating to building management. The figure accounts for some 40% of the corruption reports against the private sector for the whole year and represents an increase of more than onefold over the figure of 10 years ago. Moreover, a number of government departments and related organizations (including the Home Affairs Department, the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) are providing various support services to owners' corporations (OCs) of private buildings at present, while the Small Claims Tribunal and the Lands Tribunal are responsible for handling related legal proceedings. In relation to improving the management of buildings and reducing related disputes, will the Government inform this Council whether:*

- (a) *it will consider establishing a dedicated department to provide one-stop building management advisory service to replace the current practice of providing support services to OCs through various government departments and relevant organizations; if it will, of the details; if not, the reasons for that;*
- (b) *it will consider establishing a building affairs tribunal or arbitration centre to provide a way to resolve building management disputes professionally and expeditiously; if it will, of the details; if not, the reasons for that; and*
- (c) *it will consider amending the law to relax the existing requirement that the consent of all owners of the building is required for any alteration to a deed of mutual covenant, with a view to reducing various types of building management disputes relating to a deed of mutual covenant; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): *President, to assist owners and OCs to be vigilant about and take effective preventive measures against corruption, the Home Affairs Department, the ICAC and the HKHS have jointly organized education and publicity activities to widely publicize the*

message of integrity and quality building management and maintenance through television, radio, newspapers, websites, as well as workshops and roving exhibitions co-organized with the 18 District Councils.

My reply to Ms Starry LEE Wai-king's main question is as follows:

- (a) Building management and maintenance involve different professions. Government departments have been working closely in taking enforcement actions and providing support in accordance with law under their respective portfolio. It is unrealistic to provide "one-stop" service by pooling different professional services under one roof. To provide advisory service to owners on building management in a more focused manner, the 18 District Offices have established the District Building Management Liaison Teams to provide OCs with various services, including handling enquiries and complaints about building management and assisting in resolving disputes among owners, OCs and management companies.

In addition, non-governmental organizations such as the HKHS and the URA also make use of their own resources and experience to provide support services on building management and maintenance. For example, the HKHS has set up 10 Property Management Advisory Centres to render professional financial and technical support to owners and OCs in maintenance works. Our District Offices also maintain close co-operation with the above two organizations.

- (b) The Government has been encouraging owners to resolve disputes on building management by means other than litigation, such as communication or mediation, in order to attain a win-win solution and reduce the financial burden on both parties. If a dispute has to be resolved by litigation, it may be dealt with by the Lands Tribunal. Cases involving a relatively small amount of money, that is, \$50,000 or below, may be taken to the Small Claims Tribunal as other small claim disputes.

The proposal to establish a building affairs tribunal involves a number of complicated policy and legal issues, such as the legal status of the tribunal, its institutional arrangements and its interface with the Lands Tribunal. Moreover, during the public consultation earlier on the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme, there were views that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism. The Government will carefully consider these views in deciding the way forward.

At the same time, the Government is aware that the Judiciary launched the Pilot Scheme on Building Management Cases in the Lands Tribunal early last year, with a view to facilitating the parties involved to seek mediation and enhancing the efficiency of the Lands Tribunal in processing such cases. The Judiciary has also advised that a review of the pilot scheme will be carried out early this year and the result of the review will be available in the middle of this year.

- (c) A deed of mutual covenant is a private contractual agreement among the owners, manager and developer of a building, stipulating the rights and obligations of the parties to the agreement. Therefore, as in the case of any other private contracts, no party to a deed of mutual covenant shall unilaterally modify any provisions of the deed of mutual covenant without the consent of all the other parties. This is an important legal principle.

On the other hand, the Government appreciates the concern of members of the public about deeds of mutual covenant. The Government has, therefore, stipulated in newly granted land leases for non-industrial land since 1986 that the relevant deeds of mutual covenant have to be approved by the Lands Department and have to be drawn up in line with the current Guidelines for Deeds of Mutual Covenant issued by the Lands Department, which regulates the remit of developers, owners and managers. In addition, to facilitate owners to effectively manage their buildings, some mandatory provisions applicable to all deeds of mutual covenant have been

introduced in Part VIA and Schedule 7 of the Building Management Ordinance. These provisions override the provisions of deeds of mutual covenant and provide for important matters, such as financial management, appointment of property management companies and right of owners to form OCs, with a view to reducing disputes over building management relating to deeds of mutual covenant.

To promote effective building management, the Government does not have objection in principle to amending any provisions of deeds of mutual covenant or introducing a mechanism for so doing through legislative means. However, any amendment made to the provisions of a deed of mutual covenant inevitably has an impact on the rights and responsibilities of the parties to the agreement and even the property rights of owners. We have to be careful in considering the impacts that a deed of mutual covenant amendment mechanism may have on property rights and how to ensure proper protection of those owners who are affected by or who oppose to such changes. We will continue to review the Building Management Ordinance with a careful balancing of the above considerations, with a view to assisting owners in effective management of their buildings.

MS STARRY LEE (in Cantonese): *President, I feel very disappointed at the main reply given by the Secretary. To put it simply, the Government basically will not immediately handle or even consider the three suggestions raised by some residents living in old buildings.*

Residents living in old districts want an energetic government that can solve the current building management problems for them. I have at hand two newspaper clippings that relate to some typical building management problems. The first one purports that 72 households living in an old building in Tsim Sha Tsui had formed six OCs, so as to observe the provision of its deed of mutual covenant. The other one also describes the same problem. Let us ponder this: There are only 72 households living in a building and this is actually a small number. However, they were compelled to form six OCs because they could not amend any provisions of the deed of mutual covenant since the existing law

provides that the consent of all owners of the building is required for this purpose. Whatever matters these six OCs were dealing with, they could not reach a consensus. To put it simply, the management of that building had shown no improvement. This newspaper clipping is dated 27 September 1999. It has been as long as some 10 years since the incident was reported. In fact, similar problems have been discussed in society for a long time. It is apparent that over the decade, the Government has been rigid in its policy and support services. I would like to ask the Secretary this: Can he tell us that he will conduct a serious review of the support services on building management, including liaising with the Secretary for Development (because at present, many related organizations, such as the HKHS and the URA, are under the purview of the Development Bureau), so as to save the confusion in members of the public, thereby helping residents living in old districts handle building management problems?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, as Ms LEE has just said, this is indeed a problem existing in buildings in old districts. I mentioned in the main reply that this kind of problems linking to a deed of mutual covenant would not happen in buildings of which the construction was completed after 1986.

As for the specific incident brought up by Ms LEE, a solution has to be sought with regard to the specific circumstances of that building. I do not think that a complete amendment to the provisions of the deed of mutual covenant can handle and solve the problem.

Regarding the suggestion that the Home Affairs Bureau joins force with the Development Bureau to conduct studies on these issues, we will do, and have done, this.

MR TAM YIU-CHUNG (in Cantonese): *President, very often, members of OCs complain that the Government has not rendered sufficient support services. As they usually spend their spare time on serving residents, when major maintenance works are conducted, a heavier workload will bear upon them. However, very often, complaints alleging that they have reaped profits are lodged with the ICAC because of these maintenance works. The aforesaid instances will cause*

much disturbance to them. Will the Government consider stepping up its assistance rendered to them, especially in terms of making increases to the manpower of the District Offices, for example, enhancing the training of liaison officers and members of OCs, so that more experienced people can offer assistance to them? In this regard, what plans or specific measures have the Government formulated?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, building management is the responsibility of owners after all. They can form OCs and make decisions on matters concerning the maintenance works of their respective buildings through a collective discussion-making mechanism.

The District Offices and the Home Affairs Department have undertaken the work in this regard. First, regarding the manpower for handling matters relating to the management and maintenance of buildings, as well as property management disputes, there are liaison officers in the District Offices who carry out their duties in this regard. We have also received opinions from members of the public and owners as to whether the scope of their work can be further widened. Upon receipt of their opinions, we have taken some enhancement measures accordingly, including organizing training on building management and disputes for all the newly recruited liaison officers. As for the in-service liaison officers, we have also organized these courses for them so that they can acquire the knowledge concerned. In addition, training on interpersonal skills will also be arranged for them.

In relation to the legal matters concerning building management, it is difficult for our liaison officers to assume the role of adjudicator because those matters involve the interpretation of law.

MS STARRY LEE (in Cantonese): *President, the example I cited just now is actually not a single incident. According to a news report released in 1999, there were almost 100 buildings in old districts that encountered this problem in Hong Kong. In fact, there is more than one building that wishes to form a single OC to no avail. In the many cases I have handled, there are some instances in which residents want to have a deed of mutual covenant divided into sub-deeds*

because of historical reasons but fail. If 10 years has passed but this problem still has not been addressed, residents living in old districts will still encounter the same problem after 10 years.

Although residents highly appreciate that the responsibility for building management rests upon them, complementary measures, including the present support services rendered to them and even the legal arrangements for handling matters relating to a deed of mutual covenant and building management disputes, are simply unable to help them handle the problems that they are encountering at present. No matter how much effort they put in, they are not able to improve their present living environment. I wish to ask the Secretary this: Can you tell us the exact time as to when this review will be finished because you said just now that you would discuss this problem with the Development Bureau?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the matters that we are discussing with the Development Bureau involve every aspect, ranging from building maintenance to the handling of illegal structures.

Regarding the deed of mutual covenant amendment mechanism mentioned by Ms LEE just now, we will continue to look into this. However, I am not saying that we will not examine at all whether the deed of mutual covenant mechanism can be amended, nor am I of the view that it is absolutely impossible for this to be done. I mentioned in the main reply just now that we could look into matters concerning the deed of mutual covenant mechanism and amendments could be made to it.

Ms LEE also mentioned some difficulties existing in old buildings. In fact, various programmes have been launched by different government departments in recent years, including the HKHS and the URA, while some have been introduced jointly with other departments. Under these programmes, one-stop maintenance services are specifically provided to 150 old buildings a year.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Counselling and Treatment Services for Problem and Pathological Gamblers**

7. **MR WONG SING-CHI** (in Chinese): *President, in 2003, the Government introduced a three-year pilot scheme under which an annual funding of \$3.5 million was provided through the Ping Wo Fund respectively to two non-governmental organizations (NGOs) to subsidize each of them to operate a counselling and treatment centre for problem and pathological gamblers. Subsequently, the Government extended the pilot scheme by two years and then by 15 months up to December 2009, but the level of annual funding remained unchanged. Caritas — Hong Kong, the operator of one of the centres, wrote to the Home Affairs Bureau (Bureau) in the middle of last year requesting for additional funding to cope with the financial pressure of rent increase, pay rise, and so on, faced by the centre in recent years. However, the request was not approved. In this connection, will the Government inform this Council:*

- (a) *why the Government has not increased the level of annual funding for the two centres since 2003; whether it will increase the level of funding; if so, of the details; if not, the reasons for that;*
- (b) *what criteria the Government has adopted for determining the allocation of the funds of the Ping Wo Fund, financed by donations from the Hong Kong Jockey Club (HKJC), to various NGOs for the provision of the services concerned; what the current balance of the Fund is and how the amount concerned will be utilized;*
- (c) *whether it will make reference to the relevant practices adopted by the governments of the United States, Canada, Australia and New Zealand and legislate to require HKJC to contribute a certain percentage of its revenue to the Ping Wo Fund; and*
- (d) *why the Government had set a time frame for the pilot scheme, and whether it will provide the services concerned on a long-term basis instead; if it will, when it will be implemented; if not, for how long the pilot scheme will be further extended?*

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

- (a) The Government provided funding through the Ping Wo Fund for the Caritas — Hong Kong and the Tung Wah Group of Hospitals to operate, on a pilot basis, two counselling and treatment centres for problem and pathological gamblers from October 2003 to September 2006. According to the service contracts, the centres would each receive an annual funding of \$3.5 million.

In September 2004, the Bureau commissioned The Hong Kong Polytechnic University as a consultant to assess the effectiveness of the two centres. The consultancy report recommended that the two centres should continue their operation at the prevailing service scale until September 2008. The recommendations of the report were supported by the Ping Wo Fund Advisory Committee (the Committee) and accepted by Bureau. The consultancy report also recommended that another in-depth research be conducted to evaluate the cost-effectiveness of the two centres with a view to ascertaining whether the service needed to be continued after September 2008. It was also recommended in the consultancy report that two small treatment centres be established to provide services to problem and pathological gamblers with a community-based approach. The operators of these two centres subsequently established were Zion Social Service Limited and the Hong Kong Federation of Youth Groups. According to the service contracts which were valid from February 2007 to January 2009, the centres would each receive an annual funding of \$1.3 million.

While the Bureau has commissioned The Hong Kong Polytechnic University to conduct the second phase consultancy study, the Committee recommended to Bureau that as an interim arrangement, the service contracts of the four centres be extended to 31 December 2009 at the current service scale and funding level.

- (b) In 2003, the Government invited tenders from NGOs to operate the counselling and treatment centres for problem and pathological

gamblers. It was stated in the tender document that funds to be received by each centre would be at \$3.5 million each year. Having considered the proposals submitted by the NGOs, the Government selected the Caritas — Hong Kong and the Tung Wah Group of Hospitals as the operators.

Apart from financing the operation of the counselling and treatment centres, the Ping Wo Fund also supports research work relating to gambling as well as publicity and public education programmes preventing gambling-related problems.

The Secretary for Home Affairs Incorporated (SHAI) submitted the audited financial statement of the SHAI for the last financial year to the Legislative Council in accordance with the requirement of the Secretary for Home Affairs Incorporation Ordinance in December 2008. According to the financial statement, the balance of the Ping Wo Fund was about \$5.5 million as at 31 March 2008.

- (c) The Ping Wo Fund is financed by contribution from the HKJC and public donation. The HKJC has undertaken to contribute at least \$15 million each year during the five-year period from July 2008 to June 2013. We will closely monitor the financial situation of the Fund.

- (d) As mentioned in part (a) of the reply, the service contracts of the four centres will end on 31 December 2009. The Committee is studying the consultancy report prepared by The Hong Kong Polytechnic University, and will make recommendations to Bureau on the development of support and preventive measures for problem and pathological gamblers. On receipt of the recommendations of the Committee, Bureau will consider in a comprehensive manner the long-term provision of support services for problem and pathological gamblers and other affected parties, including the mode of funding, service operation, amount of funding, and so on, and report to the Legislative Council Panel on Home Affairs.

Visa Requirements for Visitors

8. **MR PAUL TSE** (in Chinese): *President, regarding the policy on issuing visas to visitors to Hong Kong, will the Government inform this Council:*

- (a) *whether it has, in the past three years, considered relaxing the visa requirements for citizens of fast-developing Southeast Asian countries (such as Vietnam) and simplifying the relevant procedure; if it has, of the details; if not, whether it will expeditiously consider adopting such measures; if it will not, the reasons for that;*
- (b) *which countries are being considered for relaxing the visa requirements for their citizens or simplifying the relevant procedure; the expected annual increase in the number of visitors to Hong Kong after the implementation of such measures; and*
- (c) *whether it has, in the past three years, conducted assessment on the benefits and other impact on the local tourism industry as well as the overall economy that will be brought about by the further relaxation of the visa requirements for visitors and simplification of the relevant procedure; if it has, of the assessment results; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): *President,*

- (a) Hong Kong maintains a liberal immigration regime. Persons from about 170 countries or territories may visit Hong Kong visa-free (for a stay ranging from seven to 180 days). The Government of the Hong Kong Special Administrative Region from time to time reviews the policy on visa requirements. Suitable adjustments will be made in the light of changes in circumstances. We will take into account factors such as reciprocity; bilateral economic and trade relations; immigration control and security considerations; the circumstances of individual country or territory; and so on, in the review.

Currently, visa is required for nationals of only four Southeast Asian countries (that is, Cambodia, Laos, Myanmar and Vietnam). Among these countries, the immigration arrangements for Vietnamese nationals have already been streamlined in recent years. With effect from January 2006, Vietnamese nationals holding APEC Business Travel Cards as pre-cleared by the APEC economies (including Hong Kong, China) can enjoy visa-free access to Hong Kong. Since March 2006, the Immigration Department (ImmD) has streamlined the procedures for vetting applications for visit visas of eligible Vietnamese nationals (for example, those joining group tours organized by specified agencies), hence applicants can obtain their visas within a short time. Moreover, the requirements for applications for multiple-journey visit visas of Vietnamese nationals have been relaxed since June 2007. We believe that the existing visa requirements for nationals of Southeast Asian countries have struck an appropriate balance between providing travel convenience, promoting economic and trade activities, and maintaining an effective immigration control.

- (b) We expect to sign a mutual visa-free access agreement (VAA) with Russia shortly. In 2008, the number of visitor arrivals from Russia was over 37 000, which represents a growth of about 13% over 2007. We believe that implementation of the mutual VAA will help promote Hong Kong in this source market and entice more Russian visitors. The actual increase will depend on other factors that may affect the performance of global tourism, such as economic environment; exchange rates; and so on. Moreover, we are exploring the concluding of such agreements with a few Central Asian and Eastern European countries.
- (c) Relaxation of visa requirements generally helps attract more visitors to Hong Kong, but the magnitude of such increase will depend on the external factors mentioned above. Over the past three years, other than Vietnam, ImmD has relaxed the immigration arrangements (for example, extension of visa-free visit period) for nationals of seven countries, including Russia and Saudi Arabia in mid-2007 and early 2008. According to the information provided

by the Tourism Commission (see Table), both increase and decrease in the numbers of visitor arrival from these countries were registered in 2008 as compared to 2007 upon implementation of the facilitation measures. These markets are still at an early stage of development and account for not more than 0.5% of Hong Kong's total visitor arrivals. In the long run, these markets will provide new impetus for the development of the local tourism industry. Immigration facilitation would also foster exchanges in areas such as trade and culture between Hong Kong and these countries.

Table

<i>2008</i>	<i>Visitor Arrivals</i>	<i>Comparing with 2007</i>
Vietnam	68 908	+19.7%
Russia	37 153	+13.1%
Jordon	12 238	+10.4%
Oman	1 217	+ 9.7%
Qatar	2 131	+ 0.1%
Bahrain	2 250	-10.0%
SaudiArabia	15 693	-19.3%
Kuwait	3 510	-19.6%

Source: Tourism Commission

Cats and Dogs Kept by AFCD

9. **MR FRED LI** (in Chinese): *President, I have recently received complaints from some members of the public, who planned to adopt cats and dogs kept by the animal management centres (AMCs) under the Agriculture, Fisheries and Conservation Department (AFCD), that while undergoing the relevant adoption procedure, AFCD had euthanized the animals concerned without prior notice. In this connection, will the Government inform this Council:*

- (a) *of the time normally taken by members of the public to complete the procedure for adopting the cats and dogs kept by the AMCs;*

- (b) *what reasons AFCD usually adopts in deciding to euthanize cats or dogs kept by the AMCs, and what procedure it follows in making such decisions; of the current mechanism for reviewing such decisions and monitoring the euthanasia procedure;*
- (c) *whether it will, before euthanizing the cats and dogs, inform those people who are undergoing the procedure for adopting the animals concerned; if it will, what channels are available for members of the public to raise objections against the decisions to euthanize the animals concerned; if not, the reasons for that; and*
- (d) *whether it will give up euthanasia as the major method to deal with abandoned or stray cats and dogs, and expeditiously switch to using the method of trapping, neutering and returning such animals to original colony; if it will, of the details; if not, the reasons for that?*

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

- (a) At present, the AFCD collaborates with several animal welfare organizations in providing animal re-homing service. People who are interested in adopting animals can make adoption arrangements through these animal welfare organizations, information of which have been uploaded onto the AFCD's website.

The AFCD will not arrange re-homing immediately, as it is necessary for the AFCD to ensure that a stray animal kept by the department will not be reclaimed by its owners after it has been caught or received. While attempting to contact the animal owners and during the waiting period, the AFCD will examine the animals, and in parallel, assess if the health condition and the temperament of the animals make them suitable for re-homing. Generally speaking, the AFCD will accept re-homing applications from animal welfare organizations on the fourth working day after the stray animals were caught or received. Animals selected by animal welfare organizations must be de-sexed, vaccinated and implanted with microchip if they are dogs, and in turn issued with

operation/vaccination certificates by veterinary surgeons. Afterwards, they may be collected from the AFCD's AMCs by the relevant animal welfare organizations for re-homing.

People who are interested in adopting animals may contact the animal welfare organizations which are in collaboration with the AFCD for re-homing arrangements, and the procedures needed are decided by these organizations.

- (b) As mentioned in part (a) of the reply, stray animals caught or received by the AFCD will normally be kept in the AFCD's AMCs for observation. During the observation period, veterinary surgeons on duty will closely monitor the animals' health and other conditions to ensure their suitability for re-homing. Only animals which are acutely sick, assessed to be unsuitable for re-homing due to health or temperament reasons, or could not be re-homed by animal welfare organizations will be euthanized. All euthanasia operations are conducted by AFCD veterinary officers.
- (c) If a member of the public has written to the relevant AMC to indicate his/her intention to adopt an animal which is to be euthanized, the AFCD will notify the relevant individual of the decision and reasons to euthanize in advance if time permits. People who object to euthanizing the animals they wish to adopt may express their views to the AFCD. The AFCD will examine in detail each and every case to ensure that only animals not suitable for re-homing are euthanized.
- (d) We believe that enhancing public awareness on well-treating animals is the most effective solution to the problem of abandoned and stray animals. In this connection, the AFCD has been stepping up education and bringing home the message of responsible pet ownership through different channels and at various levels, including Announcements of Public Interest on television and radio and posters on public transport to promote care for animals. In addition, the AFCD produces promotional leaflets, posters and souvenirs for free distribution to the public and organizes promotional activities to enhance publicity.

In 2007, the AFCD, in collaboration with the Society for the Prevention of Cruelty to Animals, consulted the 18 District Councils (DCs) on the "Trap-Neuter-Return" programme. DCs have differing views; half of the DCs consulted supported the implementation of the programme in their districts, while seven expressed objection and two made no indication. At present, the AFCD is actively discussing with animal welfare organizations regarding the feasibility of the programme and the legal liabilities concerned. Upon working out the implementation details, the AFCD will assist the relevant animal welfare organizations to put in place a trial programme as soon as possible after the relevant DC is consulted.

Requirement for Employers to Provide Free Medical Treatment to Foreign Domestic Helpers

10. **MS MIRIAM LAU** (in Chinese): *President, employers of foreign domestic helpers (FDHs) must sign a standard employment contract specified by the Immigration Department (ImmD) with their FDHs before ImmD issues employment visas to the FDHs concerned. Clause 9(a) of the standard employment contract stipulates that in the event that the FDH is ill or suffers personal injury during the period of employment, regardless of whether such illness or injury is caused by the employment, the employer shall provide free medical treatment to the FDH. In this connection, will the Government inform this Council:*

- (a) whether there is an upper limit on the amount of medical expenses to be borne by the employers under the aforesaid clause; if not, of the justifications for not setting an upper limit;*
- (b) what criminal and civil liabilities are to be borne by employers for failure to pay the medical expenses for their FDHs; and*
- (c) whether it has, through requiring the employers to sign a standard employment contract or other means, stipulated that employers of other categories of imported employees shall provide free medical treatment to the employees concerned; if so, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President,

- (a) According to clause 9(a) of the "Employment Contract (for a domestic helper recruited from abroad)" (the standard employment contract), in the event that a FDH is ill or suffers from personal injury during the period of employment, except for the period during which the FDH leaves Hong Kong of his/her own volition and for his/her own personal purposes, the employer shall provide free medical treatment to the FDH. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The FDH shall accept medical treatment by any registered medical practitioner as provided by the employer.

The standard employment contract does not set a specified amount for the said free medical treatment. It is an employer's decision, in meeting the needs and circumstances of the family, to employ FDH(s) to take care of household chores and provide other relevant household services. Thus, FDH employers have the responsibility to fully settle the costs incurred by their FDH(s) for using public medical services^{Note 1} as a result of sickness and injuries during employment (except for the period during which the FDH leaves Hong Kong of his/her own volition and for his/her own personal purposes), without necessitating the use of public money to pay for the outstanding costs.

To minimize unexpected costs arising from medical expenses incurred by their FDHs who are ill or suffer from personal injury, FDH employers are encouraged to take out suitable medical insurance to help defray the costs.

- (b) Currently, FDH employers who have failed to settle the medical costs incurred by their FDH(s) would not be subject to criminal liability. However, if an employer does not reimburse the relevant costs to his/her FDH, the FDH may lodge a civil claim against the

Note 1 According to the Hospital Authority, FDHs, who are holders of Hong Kong Identity Card issued under the Registration of Persons Ordinance (Cap. 177), are considered "Eligible Persons". When they use public medical services, they are only required to pay the same fees and charges as local residents.

employer for breach of contract, or may approach the Labour Department (LD) for assistance. The Labour Relations Division (LRD) of LD provides free consultation and conciliation services to FDHs and their employers to assist both parties to understand their respective employment entitlements and obligations. Where circumstances warrant, LRD would conduct conciliation for claims under the standard employment contract and/or the Employment Ordinance (Cap.). If settlement cannot be reached, the LD would, upon the request of the claimant, refer the case, as appropriate, depending on the amount of claim at stake, to the Minor Employment Claims Adjudication Board (for claims not exceeding \$8,000) or the Labour Tribunal (for claims exceeding \$8,000) for civil adjudication.

In addition, if an employer has breached the standard employment contract, including clause 9(a) concerning the provision of free medical treatment, he/she would normally be considered not eligible for employing an FDH for a period of time in future^{Note 2}.

- (c) Apart from FDHs, the Administration also requires employers of imported workers at technician level or below admitted through the Supplementary Labour Scheme (SLS) to sign a specified "Employment Contract (for an employee recruited from outside Hong Kong under the SLS)" (the standard employment contract for SLS) with their imported workers. Paragraph 16(a) of this standard employment contract for SLS stipulates that in the event that the employee is ill or suffers from personal injury during the period of employment, except for the period during which the employee leaves Hong Kong of his/her own volition and for his/her own personal purposes, the employer shall provide free medical treatment to the employee. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The employee shall accept medical treatment by any registered medical practitioner as provided by the employer.

Note 2 As specified in paragraph five of the "Guidebook for the Employment of Domestic Helpers from Abroad (ID969)" issued by the ImmD.

This same requirement on the employers for providing free medical treatment to workers imported under the SLS is based on the same policy consideration described in part (a) above, that is, if the employers have chosen to import workers, they have to ensure that no public money should be expended for the workers' medical treatments.

Development of Soccer in Hong Kong

11. **DR LAM TAI-FAI** (in Chinese): *President, regarding the development of soccer in Hong Kong, will the Government inform this Council:*

- (a) *whether it has explored the causes for the drop of Hong Kong men's football team in the world ranking of the Fédération Internationale de Football Association from being 119th in 2003 to 152nd this year, as well as for Hong Kong being overtaken by Asian countries such as Indonesia and Vietnam; if it has, of the details; if not, the reasons for that;*
- (b) *as the information of the Hong Kong Football Association (HKFA) shows that the average attendance per match was only 919 in respect of the 95 matches of the first division competitions (League and Cup) held at the Mong Kok Stadium in 2006-2007, and the Government is currently planning to spend over \$200 million on the facility improvement works for the Mong Kok Stadium, including the provision of about 6 500 seats, whether it has assessed the average attendance per match for the aforesaid first division football matches to be held at the Mong Kok Stadium upon completion of the improvement works, and if the various facilities of the new venue will be fully utilized; and*
- (c) *whether it has assessed if the current average ticket sales of each football match can cover the basic expenses of professional football teams; if the assessment result is in the negative, whether it will review the existing policy on the development of professional football; if it will not, of the reasons for that?*

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

- (a) In the international arena, football has long been a highly competitive sport and in recent years there has been a gap in the pace of football development between Hong Kong and neighbouring regions. Taking into account views put forward by Members on 4 June 2008 when carrying a motion on "Promoting the development of local football" and with a view to further developing local football, we have decided to commission a consultancy study to examine the comparative aspects of football development in Hong Kong and in neighbouring regions, so as to help map out the long-term positioning of local football. The HKFA plays a leading role in promoting the development in Hong Kong, and we hope that the HKFA will also review the current state of local football, and refine its development strategy and detailed implementation programme.
- (b) The planned works for the Mong Kok Stadium will improve the spectator stands and enhance levels of service. The attendance figures for first division matches (League and Cup) held at the Mong Kok Stadium in recent seasons show an upward trend in spectator numbers, from about 50 700 in 2005-2006 to 78 600 in 2006-2007, and over 100 700 in 2007-2008. Furthermore, the number of first division matches held at the Mong Kok Stadium in these three seasons has also increased, from 84 in 2005-2006 to 107 in 2006-2007 and 124 in 2007-2008. To meet the demand for organizing events and activities which are currently limited by the size of the venue, after taking into account suggestions from the HKFA and the District Council we propose to provide about 6 500 individual seats in the Mong Kok Stadium. We believe that upon completion of the improvement works, the Mong Kok Stadium will be a better venue for promoting the development of football, as well as for staging large-scale community events.
- (c) The Government provides funding annually to the HKFA for the promotion and development of football through the Sports

Subvention Scheme. In the past few years, the average annual subvention has been about \$7 million. The subvented programmes include the organization of and participation in international events, training for the National Squad, and the organization of football training programmes for the young people. The HKFA finances its local leagues itself, and the association is not required to report on the financial position of the league to the Government.

Enforcement of Statutory Smoking Prohibition at Amusement Game Centres and Internet Computer Services Centres

12. **DR PRISCILLA LEUNG** (in Chinese): *President, the statutory no smoking areas have been extended to cover amusement game centres and Internet computer services centres (commonly known as "Internet cafes") since January 1, 2007. In this connection, will the Government inform this Council:*

- (a) of the respective numbers of complaints about smoking at such premises received by the Tobacco Control Office (TCO) of the Department of Health last year, as well as the follow-up measures taken;*
- (b) of the respective numbers of inspections conducted at such premises by officers of TCO last year and the number of prosecutions instituted; and*
- (c) whether it has assessed if smoking at such premises is prevalent at present; if the assessment result is affirmative, whether it will adopt counter measures; if it will, of the details?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, after the amendments to the Smoking (Public Health) Ordinance (the Ordinance) were passed by the Legislative Council in 2006, the statutory no smoking areas have been expanded significantly to include all indoor public places and workplaces as well as many outdoor sitting-out areas since January 1, 2007. Internet cafes and amusement game centres are also indoor statutory no smoking areas.

In 2008, the TCO received a total of 15 321 complaints about smoking, with 266 and 1 749 cases about smoking in contravention of the Ordinance in Internet cafes and amusement game centres respectively. During the period, Tobacco Control Inspectors had conducted 270 inspections on Internet cafes, and prosecuted a total of 318 persons by way of summons. As for amusement game centres, 1 571 inspections were conducted and a total of 2 229 persons were prosecuted by way of summons.

In order to reduce illegal smoking in Internet cafes and amusement game centres, the TCO has been working closely with the Television and Entertainment Licensing Authority: apart from issuing letters to the licensees of all such establishments to remind them of the need to comply with the Ordinance, the two departments also carry out joint inspections from time to time for effective enforcement. Since the Ordinance came into effect, the management staff of Internet cafes and amusement game centres have been fairly cooperative. However, if there is a worsening trend of illegal smoking in such establishments, we will not rule out tightening up the relevant legislation having regard to the experience of other advanced economies.

Minimizing the harmful effects of tobacco on youths is an integral part of the Government's tobacco control policy. To ensure effectiveness, multi-pronged measures were taken including publicity and education; provision of smoking cessation services; imposition of tobacco duty; enactment of legislation to expand the statutory no smoking areas and inclusion of a provision in the anti-smoking legislation to prohibit the sale of tobacco products to persons under the age of 18.

With regard to youth education and publicity, the TCO has produced tailor-made guidelines and display boards for the implementation of tobacco control measures at schools as well as promotional leaflets targeting at youths. The Government also provides annual funding to non-government organizations such as the Hong Kong Council on Smoking and Health (COSH) to organize anti-smoking activities for children and adolescents.

COSH has been conducting "Health Talk" and "Education Theatre" as its main activities of tobacco control education programme for adolescents.

Students are taught the hazards of smoking and how to resist the temptation of smoking, as well as to support a smoke-free environment. COSH organized, from time to time, large scale education promotional programmes to spread the message of a smoke-free environment territory-wide, and to educate children on how to protect themselves from the harmful effects of passive smoking. Such programmes include the "Smoke Free Hong Kong Starts with Teens" from 2005 to 2006, the "Smoke-free Environments — Create & Enjoy!" Photo Collection Campaign in 2007 and the "Smoke-free Family" Campaign in 2008. Children and adolescents are the major targets of all these activities aimed at encouraging them to support a smoke-free environment and life-style.

Regarding the prevention of young people from buying tobacco products, Tobacco Control Inspectors of the TCO have, since October 27, 2006, been conferred the power to take law enforcement action for offences under the Ordinance (except Part III), including Section 15A(1), that is, no person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years. Any person who contravenes this provision commits an offence and is liable on summary conviction to a fine at level four (that is, \$25,000).

What is worth mentioning is that according to the Thematic Household Survey, conducted by the Census and Statistics Department between December 2007 and March 2008, the percentage of smokers in the 15-19 age group in Hong Kong has dropped from 3.5% in 2005 to 2.4% recently. This shows that the tobacco control measures aimed at young people have been largely effective.

However, we will not be complacent. Continuous and simultaneous efforts in education and law enforcement are essential to preventing our young people from smoking. The Government will continue to carry out relevant measures, in order to raise awareness among the young of the harmful effects of smoking and preventing them from picking up the habit of smoking.

Measures to Assist Working-poor Women

13. **MS EMILY LAU** (in Chinese): *President, according to the "Women and Men in Hong Kong — Key Statistics" published by the Census and Statistics*

Department, nearly 420 000 female employed persons had a monthly earning of less than \$5,000 in 2007. Some community groups consider that the problem of working women earning an income which can barely meet the basic expenses of their families (working-poor) is serious, raising concerns whether the support provided by the Government for working-poor women is adequate, and the situation will deteriorate under the impact of the financial tsunami. In this connection, will the Executive Authorities inform this Council:

- (a) of the respective percentages of the number of working-poor women among the female labour force and the overall labour force of Hong Kong in the past three years;*
- (b) whether it has studied the trend in the number of working-poor women in the past three years; if it has, of the details; if not, the reasons for that; and*
- (c) whether it had consulted the Women's Commission (WoC) in the past three years on formulating policies to alleviate the above problem; if it has, of the mechanism in place to implement the views of WoC; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President,

(a) and (b)

The concept of "working-poor" is open to different interpretations. According to indicators adopted by the former Commission on Poverty, "low-income employees" refers to employed persons aged 15-59 who work 35 hours or above per week and have monthly employment earnings less than half of the median employment earnings*. According to the General Household Survey of the Census and Statistics Department, the number of women among low-income employees, their respective percentages in total female labour force and overall labour force of Hong Kong in the past three years are presented in the following table.

<i>Year</i>	<i>Number of low-income female employees *</i>	<i>Share of low-income female employees in total female labour force *</i>	<i>Share of low-income female employees in overall labour force *</i>
2006	135 900	9.6%	4.0%
2007	128 300	8.8%	3.8%
2008 [^]	103 700	7.0%	3.0%

Notes:

* The figures excluded foreign domestic helpers.

[^] The figures are provisional figures.

The above table shows that the number of low-income female employees has been on a declining trend over the past three years, falling from 135 900 in 2006 to 103 700 in 2008. The shares of low-income female employees in the total female labour force and in the overall labour force have also declined from 9.6% in 2006 to 7.0% in 2008 and from 4.0% in 2006 to 3.0% in 2008 respectively. This phenomenon is probably due to the social economic growth in the past few years.

- (c) The WoC, as a central mechanism on women issues, has been playing a strategic role in assisting the Government in promoting the well-being and interests of women. The WoC has been making proactive efforts in encouraging the Government to take into account the perspectives and needs of both genders when formulating policies and programmes. The WoC has also reviewed from time to time the impact of different government policies and services on women and recommended improvement measures for the respective bureaux and departments to implement and follow up. The WoC has reviewed employment-related services provided by the Government, including employment services, vocational training, retraining for employees, as well as adult and continuing education. The WoC will continue to discuss these issues with bureaux and departments concerned. At the same time, the WoC has also made continuous efforts to empower women. It has, amongst others, launched the Capacity Building Mileage Programme since March 2004 to encourage lifelong learning and a positive attitude and mindset of women. The programme covers subjects such as

managing interpersonal relationships, financial management, health and other practical issues in daily life, which help enhance participants' confidence and ability in resolving problems in daily life and at work.

Regulation of Debt Collection Practices

14. **MR ALBERT CHAN** (in Chinese): *President, in reply to my question at the Council meeting on 28 November 2007, the Government said that it would continue to combat illegal practices employed by debt collection agencies (DCAs). Yet, I have learnt that recently the situation of debtors being harassed by DCAs in recovering debts is deteriorating, and it is also increasingly common for banks, finance companies, telecommunication service companies, beauty service companies and tutorial teachers to hire DCAs to collect money owed by their customers. In this connection, will the Government inform this Council:*

- (a) *of the number of cases about harassment by DCAs reported by the public to the Police since 1 January of last year;*
- (b) *whether it will, in view of the above situation, reconsider accepting the recommendations of the Law Reform Commission in 2002 on creating a criminal offence of harassment of debtors and others as well as establishing a statutory licensing system for monitoring DCAs; if it will, of the details; if not, the reasons for that; and*
- (c) *whether it will consider introducing new enforcement measures to curb the harassing practices of DCAs in recovering debts; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) In 2008, the police received a total of 1 920 debt collection-related crime reports and 14 259 harassment reports unrelated to crime. The overall figure was comparable to that in 2007.

- (b) The Law Reform Commission of Hong Kong published its report on "The Regulation of Debt Collection Practices" in 2002. The Administration made a detailed response to the Report in September 2005 after thorough consideration. We remain of the view that various effective legislative provisions are already in place to combat illegal debt collection practices of DCAs, and that there is no need to introduce new legal provisions in this regard. The law-enforcement agencies will continue to strictly enforce the law, and handle matters related to improper debt collection practices in co-operation with other government departments. At the same time, Constitutional and Mainland Affairs Bureau is following up on the recommendations of the Law Reform Commission's Report on Stalking. Stalking or harassment in relation to debt collection activities will be taken into account when considering the feasibility of introducing legislative proposals.
- (c) The police attach great importance to combating illegal debt collection activities, and have adopted various measures to enhance the effectiveness of enforcement actions.

The Force have set up a dedicated team at the central level to closely monitor the trend of crimes relating to improper debt collection in the territory, and to formulate preventive measures and operational strategies having regard to specific circumstances. At the district level, every police district will, having regard to the characteristic, trend and seriousness of the improper debt collection activities in their respective districts, deploy their resources and adjust their enforcement strategies flexibly so as to address the problem in a targeted manner by dealing with cases involving criminal elements effectively and making early preventive efforts to avoid cases unrelated to crime from deteriorating or developing into criminal activities.

The police have devised internal guidelines to assist frontline officers to enhance the handling of reports of improper debt collection practices. When dealing with such reports, police officers will maintain close contact with the informant and offer

appropriate assistance (for example, liaison with the management company or security company of the housing estate or residential building where the debtor resides; staying alert to possible illegal activities carried out by DCAs and preventing these agencies from carrying out such activities in the estate or residential building). Where the situation so warrants, they will warn the money lenders and DCAs concerned to remind them to collect debts only through legal means.

Where there is suspicion that a debt collection agency employed by a licensed money lender collects debts by improper means (including telephone harassment) or illegal acts, the Police investigation unit will inform the Police Licensing Office so that the Office will give appropriate consideration when handling the licence renewal application of the money lender concerned in future. Where a debt collection agency engaged by any bank or financial institution is found to be collecting debts by improper or illegal means, the Police will inform the financial regulatory authority concerned so that it can take appropriate follow up action.

Debt collection cases involving criminal offences (such as those involving criminal damage or intimidation) will be referred to the criminal investigation teams for investigation. Criminal prosecution will be instituted in accordance with the law depending on the circumstances. Non-crime reports assessed to be "high threat" cases will be referred to the criminal investigation teams for investigation. As regards "low threat" cases, although they do not involve criminal elements, the Police will continue to monitor them. Where there is suspicion that a case may develop into one involving a criminal element, the criminal investigation team will investigate the case.

In addition to enhancing their handling of cases involving improper debt collection practices, the police will also combat illegal debt collection activities proactively through publicity. The Police will continue to disseminate the message of combating improper debt collection practices through the media, and publicize successful

enforcement actions and prosecutions to achieve a deterrent effect. The police will also continue to liaise with property management companies to seek their assistance in preventing loanshark syndicates from carrying out promotional activities or displaying advertisements within the confines of their estates or residential buildings.

Implementation of Marking Scheme for Estate Management Enforcement in Public Housing Estates in Estates Under Tenants Purchase Scheme

15. **DR JOSEPH LEE** (in Chinese): *President, under the Marking Scheme for Estate Management Enforcement in Public Housing Estates (the Marking Scheme), points will be allotted to tenants of the Housing Authority (HA) if they have committed a misdeed in the public rental housing (PRH) estate in which they reside; and upon accumulation of 16 points or more within two years, HA may issue a Notice-to-Quit and terminate the tenancy. Regarding the implementation of the Marking Scheme in common parts of the estates under the Tenants Purchase Scheme (TPS), will the Government inform this Council:*

- (a) of the current number of PRH tenants in TPS estates; the number of TPS estates which has not implemented the Marking Scheme in its common parts, and the number of PRH tenants in such estates;*
- (b) given that at present the Marking Scheme is not implemented in the common parts of some TPS estates as the consent of the relevant Owners' Corporations (OC) has not been obtained, the behaviour of PRH tenants of these estates in the common parts concerned is not bound by the Marking Scheme, while the behaviour of PRH tenants of other estates is, whether the authorities will adopt measures to resolve this problem of inconsistency; if they will, of the details; if not, the reasons for that; and*
- (c) whether it has considered formulating measures so that the behaviour of all PRH tenants in the common parts of the TPS estates in which they reside are bound by the Marking Scheme; if so, of the details; if not, the reasons for that?*

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

- (a) In the 39 PRH estates currently included in the TPS, there are about 65 000 flats leased to PRH tenants while the remaining some 117 000 flats are self-owned. Since the OC shall manage the common areas of TPS estates after the sale of flats in TPS estates by virtue of the powers granted under the Building Management Ordinance (Chapter 344) and the Deed of Mutual Covenant, the Marking Scheme is not implemented in the common areas of any of the TPS estates. The HA will enforce the Marking Scheme in respect of misdeeds committed inside the PRH flats in these TPS estates (for example, accumulating a large quantity of refuse or throwing objects from height).
- (b) The behaviour of tenants in common areas of TPS estates, though not covered under the Marking Scheme, is still subject to the provisions of relevant legislation (against misdeeds such as littering, wax-boiling, smoking, spitting and illegal gambling). In addition, the staff of the Housing Department (HD) will continue to advise the OC on estate management matters and encourage the OC and its estate management agents to report on the misdeeds committed by PRH tenants in the common areas so that the relevant Government departments may take enforcement actions to achieve deterrent effect.
- (c) TPS estates need to be operated and managed according to the Deed of Mutual Covenant and the framework of the Building Management Ordinance. Nonetheless, as stated above, the staff of the HD will continue to communicate with the OC regarding estate management matters and enhance its efforts in explaining to the OC the management policies of the HA and the responsibilities of the OC in order to ensure the smooth operation of estate management.

Shortage of Classrooms After Implementation of New Senior Secondary Academic Structure

16. **MR CHEUNG MAN-KWONG** (in Chinese): *President, it is learnt that as the number of grades and classes will increase upon implementation of the*

new senior secondary (NSS) academic structure in the next school year, many schools are facing the problem of classroom shortage; they therefore have applied to the Education Bureau (EDB) for the provision of additional classrooms and special rooms. In this connection, will the Government inform this Council:

- (a) of the names of the schools, grouped by school type (including special school):*
 - (i) which had applied to EDB for the provision of additional classrooms in the past three school years, together with the details of the addition works (including the number of classrooms to be added and the projected completion date), as well as the number of schools whose applications are still pending approval and the relevant reasons;*
 - (ii) which have or will have shortage of classrooms in the current and the next five school years, and the number of classrooms in shortage each year;*
- (b) whether it will speed up the vetting of applications and shorten the construction time; if it will, of the details; if not, the reasons for that;*
- (c) of the existing measures to ensure that schools have sufficient classrooms to dovetail with the implementation of the NSS academic structure; and*
- (d) whether it has assessed the number of schools which will need to cope with the problem of classroom shortage by means of floating classes; if it has, of the names of such schools and the numbers of floating classes required in each of the next five years; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President, under the NSS academic structure, schools have to provide a broad and balanced curriculum for students and teaching space should no longer be restricted to traditional classrooms. Schools should use the available resources flexibly to create more

teaching space to support the implementation of the NSS curriculum and adopt flexible time-tabling to provide students with reasonable choices of subjects and diversified learning experiences.

My replies to the questions are as follows:

(a), (b) and (c)

To enable schools to acquire additional teaching space, we have provided the NSS Curriculum Migration Grant for aided schools to carry out alteration works with reference to their school-based circumstances and needs. Aided schools could also utilize the other deployable government funds such as the surplus of the Operating Expenses Block Grant or the Expanded Operating Expenses Block Grant to top up the related expenses. An additional subsidy of not more than \$300,000 will also be provided to each school with genuine needs, upon application, for alteration works. Besides, to assist schools in carrying out alteration works, EDB has commissioned the Electrical and Mechanical Services Department to provide technical advisory services and related guidelines to schools starting from the 2008-2009 school year. In fact, most schools requiring additional teaching space have been carrying out or have completed alteration works with their existing resources.

Annex 1 sets out seven schools that have applied to EDB for the provision of additional classrooms by means of in-situ redevelopment or use of vacant primary school premises. Their applications are under processing with regard to its infrastructural conditions and curriculum needs. Though the completion date of works or the availability of premises for occupancy is yet to be determined, our aim is that the completion dates, if applicable, should be before the full implementation of the NSS academic structure by 2011-2012 school year. In addition, there are applications from various schools in the annual major repairs/alterations exercise for room conversion and/or other types of alterations. Since these applications are also bundled with various other types of major repair works of individual schools, we are not

able to identify those solely related to alteration for additional teaching space for the implementation of the NSS academic structure.

As regards special schools, there are a total of 21 schools which would require conversion works for the implementation of the NSS academic structure. Please refer to Annex 2 for these 21 schools. EDB plans to provide about 26 additional classrooms and other teaching space to these schools through re-partitioning of existing rooms, or construction of new annexes or roof-top extensions. Among these special schools:

- (i) conversion works for 2 special schools have been completed;
- (ii) conversion works for 5 special schools are expected to be completed before September 2009; and
- (iii) for the remaining 14 schools which would require construction works of more extensive scale, EDB and Architectural Services Department have already visited the schools concerned and formulated preliminary conversion/design proposals for undertaking technical feasibility studies. We will strive to complete the works before full implementation of the NSS academic structure by 2011-2012 school year.

EDB is working closely with relevant government departments in taking forward the conversion works of the special schools concerned and would employ additional professional staff to deliver the works. EDB would also continuously assess the need of schools for additional teaching space and facilities for the implementation of the NSS academic structure to meet the changing educational needs, and depending on the circumstances, provide them with the required resources to carry out the required alteration/construction works or to deliver the works.

- (d) According to the existing policy, EDB should eliminate floating classes from S1 to S5 in public sector schools. However, for S6

and S7 classes, schools should make the best use of their teaching spaces available for arranging appropriate groupings of students for different electives/learning activities, with reference to the nature of the curriculum, including split-class teaching in special rooms.

Nevertheless, in the implementation of the NSS academic structure, floating classes at different levels may arise in individual schools in the double cohort year as a transitional arrangement. The sector has already been alerted of this arrangement during consultation and such has also been clearly stipulated in the policy document "New Academic Structure for Senior Secondary Education and Higher Education" published in 2005.

In addition to the implementation of various measures mentioned above, EDB has all along been supporting schools in class restructuring and providing schools with strategies on effective use of teaching space, including a computer-assisted time-tabling package to optimize room usage. As a matter of fact, if a school wants to increase its number of classes in order to change from asymmetrical to symmetrical but is under physical constraint, it can always adopt a cyclic symmetrical class structure without having to increase its number of classes.

We would continue to work closely with schools and provide necessary support to them having regard to individual circumstances.

Annex 1

List of seven aided secondary schools applying for provision of additional teaching space

<i>No.</i>	<i>District</i>	<i>Name of School</i>
1	ST	Baptist Lui Ming Choi Secondary School
2	ST	Buddhist Kok Kwong Secondary School
3	ST	Immaculate Heart of Mary College
4	ST	Kwok Tak Seng Catholic Secondary School
5	ST	Sha Tin Methodist College
6	TP	Carmel Pak U Secondary School
7	WTS	Chi Lin Buddhist Secondary School

Annex 2

List of 21 special schools requiring conversion works

<i>No</i>	<i>Name of School</i>	<i>Expected completion date</i>
1	Sam Shui Natives Association Lau Pun Cheung School	Completed
2	Po Leung Kuk Centenary School	Completed
3	Mary Rose School	Before Sept 2009
4	Hong Kong Red Cross John F Kennedy Centre	Before Sept 2009
5	Society of Boys' Centre — Hui Chung Sing Memorial School	Before Sept 2009
6	Hong Chi Pinehill No.3 School	Before Sept 2009
7	Haven of Hope Sunnyside School	Before Sept 2009
8	Hong Chi Morninghill School, Tsui Lam	2011-2012
9	HHCKLA Buddhist Po Kwong School	2011-2012
10	Po Leung Kuk Law's Foundation School	2011-2012
11	Tseung Kwan O Pui Chi School	2011-2012
12	HKSYC&IA Chan Nam Chong Memorial School	2011-2012
13	Hong Kong Red Cross Princess Alexandra School	2011-2012
14	Tung Wah Group of Hospitals Tsui Tsin Tong School	2011-2012
15	Shatin Public School	2011-2012
16	Hong Chi Winifred Mary Cheung Morninghope School	2011-2012
17	Society of Boys' Centre Chak Yan Centre School	2011-2012
18	Caritas Lok Yi School	2011-2012
19	Hong Chi Lions Morninghill School	2011-2012
20	The Salvation Army Shek Wu School	2011-2012
21	Chun Tok School	2011-2012

Community Work Organizers' Remuneration and Their Personal Safety at Work

17. **MR CHEUNG KWOK-CHE** (in Chinese): *President, some community work organizers (CWOs) who are employed by the Social Welfare Department (SWD) on non-civil service contract terms have relayed to me that they are underpaid and their personal safety at work is not safeguarded. Their duties include assisting SWD in implementing the Support for Self-reliance (SFS) Scheme. Specifically, they arrange for and supervise employable and able-bodied recipients of Comprehensive Social Security Assistance (CSSA) to*

perform mandatory community work. Yet, three CWOs need to supervise up to 40 participants and have to monitor their performance and discipline. Hence it is not uncommon for CWOs to have conflicts with unmotivated participants and even be assaulted. In this connection, will the Government inform this Council:

- (a) how SWD determined the remuneration level of CWOs, including the civil service ranks the remunerations of which it has made reference to;*
- (b) whether SWD regularly reviewed the duties of CWOs and what measures it took to ensure their personal safety, in the past five years; and*
- (c) whether at present it has plans to include the said posts in the civil service establishment; if not, of the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the SFS Scheme — a programme under the CSSA Scheme — aims to encourage and assist able-bodied unemployed CSSA recipients aged 15 to 59 to secure full-time paid employment and move towards self-reliance. Participating recipients will be arranged to perform community work up to a maximum of three days a week so as to help him/her develop a work habit, improve employability, widen social network, enhance self-esteem, pave the way for eventual gainful employment, and contribute to society in parallel to his job search process while receiving CSSA.

The SWD employs CWOs on non-civil service contract terms during different periods having regard to operational needs. Currently, the SWD has employed 99 CWOs to help implement the SFS Scheme. They are responsible for arranging and supervising unemployed CSSA recipients to perform community work.

My replies to the specific questions are as follows:

- (a) The CWOs currently employed by the SWD are required to possess an academic qualification equivalent to Form 5 standard and two

years' experience in maintaining regular and frequent contact with customers. Their monthly remunerations range from \$8,300 to \$9,725.

At present, there is no grade in the civil service comparable to the posts of CWOs. To determine their employment conditions and remunerations, the SWD will take account of various factors such as the pay trend of posts in the job market with similar entry requirements and qualifications. The SWD also reviews the remuneration of CWOs from time to time to ensure that they are set at a reasonable level.

- (b) Since the implementation of the SFS Scheme in 1999, the SWD has always been concerned about the occupational safety of CWOs. In addition to requiring CWOs to follow stringent internal working guidelines, the SWD would make assessment on the work sites of CWOs by making reference to the safety guidelines for outdoor work of the Occupational Safety and Health Council, and review from time to time issues relating to the safety of CWOs and participants of the SFS Scheme. The SWD also regularly deploys staff to inspect the sites of community work and keeps close contact with community work providers to ensure that all community work is conducted under a safe environment.

To maintain order in the sites of community work and prevent work site accidents or violence, the SWD has provided all CWOs working outdoor with proper communication devices, including a mobile phone and a walkie-talkie for every CWO. In addition, all CWOs have received training on the prevention and handling of violence at work.

As for the working arrangement, at present each community work team comprises, on average, three to four CWOs to lead about 30 able-bodied unemployed CSSA recipients. Such arrangement facilitates mutual support at work. To enhance communication among CWOs, SWD holds a weekly meeting with CWOs to provide them with the latest work-related information, as well as enable them to share their experience and understand the latest guidelines on work safety.

- (c) Since the SWD keeps reviewing and improving the measures that help able-bodied CSSA recipients to move from welfare to self-reliance, and as there is no grade in the civil service comparable to the posts of CWOs, it is therefore more appropriate to employ non-civil service contract staff to take up the work for the time being.

Monitoring of Flight Paths Taken by Departing Aircraft

18. **DR DAVID LI:** *President, the Civil Aviation Department (CAD) monitors aircraft noise and flight tracks by means of the Aircraft Noise and Flight Track Monitoring System (ANFTMS). When the wind is from the east or northeast, aircraft will depart from the Hong Kong International Airport towards the northeast until it reaches Ma Wan where, depending on flight destinations, it may turn south over West Lamma Channel, or proceed to the southeast. With regard to aircraft taking off towards the northeast, will the Government inform this Council:*

- (a) *of the number of incidents in which departing aircraft deviated from the set flight paths within the territory and took a short-cut flight path in each of the past five years;*
- (b) *of the names of the three airline companies with the highest percentages of flights which took a short-cut flight path in each of the past five years;*
- (c) *of the follow-up actions CAD takes on incidents of aircraft taking a short-cut flight path; whether CAD took any escalated action against repeat offenders in the past five years; if so, of the details; and*
- (d) *whether ANFTMS provides a full and accurate assessment of the impact of aircraft noise on residential areas within 3 000 m from either side of the aforesaid two flight paths; if so, of the details; if not, whether it has plans to improve the system?*

SECRETARY FOR TRANSPORT AND HOUSING: President,

- (a) The Government is mindful of the impact of aircraft operations on the local community, and has implemented a number of aircraft noise mitigating measures to alleviate the disturbance caused by these operations, especially during night time. One of the measures is to require aircraft to follow designated flight paths, including those quoted in the question, to avoid flights over populated areas as far as practicable.

To further enhance the noise mitigating effect, the CAD has, since January 1999, required aircraft taking off in the northeast direction between 11 pm and 7 am to turn south upon reaching the northeast corner of Lantau Island and use the southbound route via the West Lamma Channel (the West Lamma route). Subject to flight safety and air traffic operations not being affected, the requirement is to avoid flying over Tsing Yi, the Kowloon Peninsula and Hong Kong Island.

Since the implementation of the above measure, the CAD's ANFTMS, which records the flight track of every aircraft landing and taking off at the Hong Kong International Airport, has been monitoring aircraft performance in following the West Lamma route during the prescribed period of time. The numbers of incidents in the past five years in which departing aircraft deviated from this route and took a short-cut are set out in the following table:

<i>Year</i>	<i>Number of incidents of departing aircraft deviating from the West Lamma flight route and taking a short-cut</i>
2004	12
2005	20
2006	5
2007	9
2008	0

- (b) The names of the three airlines with the highest percentages of aircraft which deviated from the West Lamma route and took a short-cut in the past five years are set out in the following table:

<i>Year</i>	<i>Airlines</i>
2004	Lufthansa German Airlines Evergreen International Airlines Kalitta Air
2005	Alitalia All Nippon Airways Evergreen International Airlines
2006	Cargolux Airlines International Evergreen International Airlines Shanghai Airlines
2007	ACT Airlines INC. Garuda Indonesia Saudi Arabian Airlines
2008	Not applicable

- (c) The CAD has been closely monitoring the compliance by aircraft with the noise mitigating measures. When an aircraft is found to have deviated from the designated flight paths, the CAD will generally issue a letter to the airline concerned requiring it to investigate the incident and remind its pilots of the need to comply with the relevant aircraft noise mitigating measures. If an airline is found to have been involved in such incidents repeatedly, the CAD will require the airline to submit a detailed report, setting out the concrete measures taken by the airline to avoid recurrence of similar incidents.

From 2004 to 2008, four airlines were found to have been involved repeatedly in incidents of deviation from the West Lamma route and taking a short-cut. These were followed up by the CAD accordingly and significant improvements were seen within a short period of time.

- (d) The ANFTMS includes 16 noise monitoring terminals measuring the aircraft noise impact on all major residential areas in the vicinity of the landing and departure flight paths. The CAD regularly reviews the performance of the system, and is satisfied that the current coverage of the noise monitoring terminals is sufficient to produce a reliable assessment of the impact on all major residential developments in Hong Kong which are affected by aircraft noise, including those within 3 000 m on either side of the relevant flight

paths. The CAD will continue to review the situation and consider installing additional terminals where necessary to ensure the effectiveness of the ANFTMS.

Retrofitting Noise Barriers Along Tsing Yi Section of Airport Railway

19. **MR LEE WING-TAT** (in Chinese): *President, it has been learnt that the MTR Corporation Limited (MTRCL) decided in 2005 to retrofit noise barriers along the Tsing Yi section of the Airport Railway in order to address the noise problem caused by the enhancement of Airport Express services, and the project was scheduled for completion in June 2006. Yet, the project has still not been completed to date. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints received by the Environmental Protection Department (EPD) in the past three years about the noise generated by trains running along the said section; among such complaints, of the number of substantiated cases, and the follow-up actions taken by EPD and other authorities concerned;*
- (b) *whether EPD had regularly monitored the noise level of the said section in the past three years; if it had, whether there were cases of the noise level exceeding the maximum statutory limit; if so, of the details;*
- (c) *whether it knows the reasons for the above project not having been completed to date;*
- (d) *whether it has assessed if the above noise barriers are effective in reducing the noise nuisance to the residents in the vicinity; if it has, of the result; and*
- (e) *whether the Government will adopt other measures to reduce the noise nuisance of the said section caused to the residents in the vicinity; if it will, of the details?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) In the three years from 2006 to 2008, the EPD received a total of nine complaints about noise generated by trains running along the Tsing Yi section of the Airport Railway (the Tsing Yi section). EPD staff conducted site investigation on each occasion and contacted the complainants to get a full picture of the noise nuisance. The complainants of two of the cases agreed to EPD staff taking measurements at the flats concerned. The results showed that train noise did not exceed the statutory limit. The EPD has informed the MTRCL of the complaints.
- (b) Noise generated by running trains is subject to the Noise Control Ordinance. The Technical Memoranda issued under the Ordinance set out the noise restrictions in detail, including noise limits for sensitive receivers. The EPD measures train noise at affected locations (including those along the Tsing Yi section) in response to complaints from the public instead of conducting regular inspections. In the past three years, no incidents of noise level exceeding the statutory limit have been detected along the Tsing Yi section.
- (c) To cater for passengers' needs upon the opening of the AsiaWorld-Expo Station in 2005, it was necessary for the MTRCL to enhance the Airport Express service. Although train noise did not exceed the statutory limit, the MTRCL decided to retrofit noise abatement devices along the Airport Express/Tung Chung Line on top of routine repair and maintenance measures to mitigate any potential impact of train noise on the neighbourhood. Works of the project included retrofitting noise barriers, noise enclosures or noise absorption panels as appropriate on the viaducts along the Tsing Yi section. The project commenced in early 2006 and, based on the scale of the project at that time, was expected to complete in 18 months.

Once the project was underway, the MTRCL decided to optimize the design of the project for better effects. As a result, the scale of works at some parts of the section was upgraded, with noise barriers along both sides of the viaducts substituted by covered noise

enclosures of the fully enclosed type to enhance the noise abatement effect. The upgrade works are more or less finished, and the MTRCL expects to complete the entire project in the first half of 2009.

- (d) After commencing the project, the MTRCL assessed its effectiveness and has subsequently optimized the design of the project and upgraded the scale of works along some parts of the section as mentioned in (c) to enhance the noise insulation effect.
- (e) In addition to the project, the MTRCL implements a package of routine repair and maintenance measures to abate train noise. They include fitting trains with wheel dampers, polishing rails and wheels, applying lubricant to rails and wheels, and so on. The Government will continue to monitor train noise along the Tsing Yi section in response to complaints from the public.

Safety of School Transport Vehicles

20. **MR CHEUNG HOK-MING** (in Chinese): *President, existing legislation stipulates that, for the purpose of establishing the number of persons that may be carried in a vehicle, three children aged three years or above who do not exceed 1.3 metres in height shall be counted as two persons. It has been reported that some school transport vehicles (STVs) carrying primary and kindergarten pupils are often seriously overloaded. For example, some STVs which carry 31 pupils only have 15 seats for the pupils to sit. Moreover, traffic accidents involving STVs happen from time to time, arousing concern about the safety of STVs. In this connection, will the Government inform this Council:*

- (a) *of the number of cases in which prosecution was instituted by the Police against overloading of STVs in each of the past three years;*
- (b) *how the authorities monitor whether STVs are overloaded and take enforcement actions; and*
- (c) *what measures are in place to enhance the safety of STVs and whether it will stipulate that all seats of newly-registered STVs shall be installed with seat belts; if not, of the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, currently, two types of student service vehicles (SSVs), namely school buses and school private light buses, provide student transport services in Hong Kong. We have all along attached great importance to the safety of SSVs.

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

(a) and (b)

Sections 53 and 61 of the Road Traffic (Traffic Control) Regulations (Cap. 374G) stipulate that any person who without reasonable excuse contravenes the provisions on the number of persons that may be carried in a vehicle commits an offence, and is liable on first conviction to a fine of \$5,000 and imprisonment for three months, and to a fine of \$10,000 and imprisonment for six months on subsequent convictions. In addition, "overloading of passengers" is an offence punishable by a fixed penalty of \$450.

The police takes active enforcement actions against overloading by drivers of all types of vehicles, including SSVs. The police have also included overloading as a targeted offence in their daily enforcement actions to step up their efforts to combat the offence. In addition, the Transport Department (TD) writes to SSV operators before the end of summer holiday every year to remind them of the importance of safety, including the prohibition of overloading.

The statistics on prosecutions instituted by the police against overloading cover all types of vehicles. The respective numbers of such cases in the past three years are as follows:

Year 2006 1 486

Year 2007 1 304

Year 2008 1 256

Since the Police do not maintain a breakdown of the prosecutions by vehicle type, we are unable to provide the figures of prosecution cases involving SSVs.

- (c) To further enhance the safety of SSVs, the Commissioner for Transport has revised the conditions of the Passenger Service Licence issued to SSVs to require the provision of escorts on SSVs that serve kindergartens or primary school pupils. Furthermore, we have introduced legislation to require all SSVs registered on or after 1 May this year to install "safer seats" — strong, fire-resistant and closely spaced seats with high and energy-absorbing seat backs. The design of such seats has proven effective in protecting school children, as they can reduce the risk of students being thrown out of their seats and the extent of their injuries in vehicle collisions.

Apart from active enforcement, the police will continue to enhance the safety awareness among SSV drivers through education and publicity. For example, the police launch a territory-wide campaign to promote school transport safety in August and September every year. Regional Road Safety Teams give out promotional leaflets in various districts to remind SSV drivers, teachers and parents of student transport safety. The Police also give talks in schools to educate students on safety precautions when travelling on SSVs.

Regarding the proposed use of seat belts on SSVs, the practice varies among different countries. We will keep a close watch over the standards of seat belts on SSVs and related practices abroad.

The TD is pleased to offer advice to SSV owners who would like to purchase new vehicles installed with both safer seats and seat belts, or to retrofit seat belts on existing SSVs, in order to help them select the appropriate vehicles or install seat belts that are technically feasible and meet the standards. We will study the feasibility of mandatory installation of seat belts on SSVs, including implementation details such as the legal liability in the event of students not wearing seat belts on SSVs.

The TD will continue to disseminate the above message to the SSV trade at its regular meetings with the trade.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bill: First Reading.

ADAPTATION OF LAWS BILL 2009

CLERK (in Cantonese): Adaptation of Laws Bill 2009.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bill: Second Reading.

ADAPTATION OF LAWS BILL 2009

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I move that the Adaptation of Laws Bill 2009 (the Bill) be read the Second time.

There are three offices set up by the Central People's Government in the Hong Kong Special Administrative Region (SAR). These three offices are, namely, the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region, and the Hong Kong Garrison of the Chinese People's Liberation Army.

There are provisions in the Basic Law which specify that the offices set up by the Central People's Government in the SAR and their personnel must abide by the laws of the SAR. According to Article 22 para 3 of the Basic Law, "all

offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region." Article 14 para 4 of the Basic Law also stipulates that "in addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region."

That the offices set up by the Central People's Government in the SAR and their personnel must abide by the laws of the SAR is, therefore, very clear. In this regard, I would like to make clear the following two points:

First, according to section 66 of the Interpretation and General Clauses Ordinance (the Ordinance), a legislation does not bind the State unless it expressly says so or it appears by necessary implication that this was so intended. This principle is commonly adopted by some other common law jurisdictions, including the United Kingdom and New Zealand. Under the Basic Law, Hong Kong remains a common law jurisdiction and this principle continues to apply.

Second, the circumstances of each ordinance are different and the scope of applicability of an ordinance should reflect the policy intention. As a matter of fact, in Hong Kong, only some ordinances expressly provide for their application to the SAR Government.

Regarding the ordinances which expressly bind the SAR Government at present, the SAR Government has been studying and discussing 16 of them with the relevant authorities of the Central People's Government as to whether and how they can be made applicable to the offices set up by the Central People's Government in the SAR. Progress has been made. In accordance with the consensus attained, we are introducing the present Bill in the 2008-2009 Legislative Session to amend four ordinances, namely, the Legislative Council Commission Ordinance, the Plant Varieties Protection Ordinance, the Patents Ordinance and the Registered Designs Ordinance.

The Bill seeks to amend these four ordinances to provide that these four ordinances will, apart from the SAR Government, also apply to the three offices set up by the Central People's Government in the SAR.

Moreover, the Bill also seeks to include in the Ordinance a definition of "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region", which refers to the three offices mentioned at the beginning of my speech.

President, with these remarks, I would like to appeal to Members to support the Bill.

Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws Bill 2009 be read the Second time.

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

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Hong Kong Export Credit Insurance Corporation Ordinance.

I now call upon the Secretary for Commerce and Economic Development to speak and move her motion.

PROPOSED RESOLUTION UNDER THE HONG KONG EXPORT CREDIT INSURANCE CORPORATION ORDINANCE

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I move that the motion, as set out under my name on the Agenda, be passed.

The Hong Kong Export Credit Insurance Corporation (ECIC) was established in 1966 under the Hong Kong Export Credit Insurance Corporation Ordinance (Ordinance). It aims to promote the development of Hong Kong's

export trade through the provision of export credit insurance covers for Hong Kong exporters' sales on credit against non-payment risks on the part of their overseas buyers or customers arising from commercial and political events.

Section 18 of the Ordinance provides that the Government shall guarantee the payment of all moneys due by the ECIC. Section 23 stipulates that the contingent liability of the ECIC under contracts of insurance shall not at any time exceed a specified amount determined by the Legislative Council by resolution. Currently, the level of the ECIC's maximum contingent liability is \$15 billion.

To assist small and medium enterprises (SMEs) in sustaining their businesses and developing new markets in the midst of the current difficult economic environment, the ECIC has launched a series of enhancement measures since October 2008, which include:

- (a) The ECIC will be as accommodating and flexible as possible when handling SMEs' credit limit applications and will provide higher insurance covers within the bounds of prudent credit assessment and risk management practices;
- (b) The ECIC has reviewed the credit ratings of 15 emerging markets. It has upgraded six of them and raised their country limits accordingly. Where risks allow, the ECIC will provide higher credit limits and lower premium rates for exports to these markets to help local manufacturers develop new markets;
- (c) The ECIC will expedite the processing of credit limit applications. Regarding applications involving small amounts (that is, those of \$500,000 or below), the ECIC aims to complete the processing within two to three days upon receipt of adequate information. As for other applications, the ECIC aims to complete their processing within four days;
- (d) The ECIC will offer all exporters free advisory services on the credit standing of three of their overseas buyers and the risks involved in extending trade credits to these buyers. Additional services are available at below market prices; and
- (e) Starting from 1 January 2009, the ECIC has exempted the annual policy fee for all existing and new policyholders for one year.

The enhancement measures have been welcomed by the trade since their introduction. Moreover, the number of credit limit applications approved by the ECIC and the amount involved have both recorded growth in recent months. Specifically, in the fourth quarter of 2008, the ECIC approved 7 595 new credit limit applications involving \$8.4 billion in total, representing an increase of 57% and 56% respectively when compared with the same period of the preceding year. On the other hand, as at 31 December 2008, the contingent liability of the ECIC totalled \$14.53 billion, representing 96.8% of the maximum permitted. Taking into account the business growth of the ECIC in the coming few years and the need to strengthen its support for exporters in the midst of the current difficult economic environment, we consider that we should significantly increase the underwriting capacity of the ECIC on this occasion. We propose that the maximum contingent liability of the ECIC be raised by \$15 billion to \$30 billion.

I wish to emphasize that the contingent liability refers to the maximum amount for which the ECIC could be contractually liable to indemnify policyholders in respect of its insurance policies. The actual claims figures in the past were far below this cap and the ECIC has been able to achieve financial self-sufficiency. The current difficult economic environment and the increasing credit risks notwithstanding, the ECIC does not foresee any operating losses in the coming few years. Furthermore, considering the ECIC's robust balances of net assets and reserves, the Government does not expect at this stage that there will be any actual needs to provide financial assistance to the ECIC.

President, I beg to move.

The Secretary for Commerce and Economic Development moved the following motion:

"RESOLVED that the contingent liability of the Hong Kong Export Credit Insurance Corporation under contracts of insurance shall not at any time exceed the sum of \$30 billion."

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

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

MR WONG TING-KWONG (in Cantonese): President, at the beginning of the year of the Ox, Hong Kong people have to be as industrious as oxen, endure with dogged will and continue to face up to the blow dealt by the financial tsunami. For small and medium enterprises (SMEs) that account for 85% of Hong Kong enterprises, maintaining and promoting the prosperity of Hong Kong have been proven to be decisive. Therefore, we believe the SAR Government is concerned about the impacts of the financial tsunami on the trade. Having listened to the views of the business sector, it will introduce a series of measures for supporting SMEs, including enhancing the services of the Hong Kong Export Credit Insurance Corporation (ECIC).

First of all, I would like to declare interests; I am a member of the Advisory Board of the ECIC. The resolution today is about raising the maximum liability of the ECIC from the existing \$15 billion to \$30 billion so as to increase the underwriting capacity of the ECIC. As the Secretary for Commerce and Economic Development has said, the main reason is that, under the unfavourable economic circumstances at present, it is believed that the market demand for the services of the ECIC will increase in the next few years, so, the maximum contingent liability of the ECIC should be raised to strengthen support for the business sector.

As a Legislative Council Member representing the Import and Export Functional Constituency, I am certainly concerned about the plight of the sector. Figures provided by the Census and Statistics Department show that, in December 2008, significant drops of 11.4% and 16.2% were respectively recorded in the overall values of export and import. And, based upon various factors such as fluctuations in exchange rates, increases in operation costs and low consumer sentiments, there are substantial increases in the loss risks of exporters because of overseas buyers' refusal to pick up goods and default for various reasons. Recently, cases in which exporters sought help from me involved these instances, thus, export enterprises should pursue better risk management. I suggest every time that they should make reference to the services of the ECIC, which would help reduce the possible losses.

Concerning the services provided by the ECIC, if an exporter suffers losses as a result of a buyer's insolvency, payment default or repudiation, the ECIC will pay claims against such losses in accordance with the terms and conditions of the policy. Enquires can also be made to the ECIC about the situation of individual country or market and the information on credit risk rating. Additional services would also be provided below market prices, which include legal advice on the provisions of trading agreements. New support measures have recently been introduced, and as the Secretary has just touched upon these measures, I am not going to repeat what she has said. I emphasize that it is really worthwhile for enterprises to pay small amounts for suitable risk protection through these services.

However, I have to say that, now that the ECIC has enhanced its services, it is important to let more enterprises know and understand what its services are about and to suitably utilize them. In the cases seeking assistance that I have come across, most people are not entirely clear about the services of the ECIC. In this connection, I suggest the authorities should step up publicity in this regard and extensively introduce such services through different channels and by various means, so that enterprises would become aware of the details of the latest information, which would help reduce operating risks.

President, I support this resolution on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong. Thank you.

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

MR JEFFREY LAM (in Cantonese): President, I would first declare that I am Chairman of the Advisory Board of the Hong Kong Export Credit Insurance Corporation (ECIC).

Facing the financial crisis, the risks of exporters' sales on credit to overseas buyers have inevitably soared. In this regard, the ECIC has recently introduced a series of new measures. I am not going through them one by one, and Honourable colleagues may browse the webpage of the ECIC. These measures mainly aim to strengthen support for the exporters in Hong Kong. These new measures have the earnest support of me and my colleagues in the Advisory Board of the ECIC. We hope that these new measures can help local enterprises ride out the hard times. Furthermore, these measures can effectively enhance

assistance for local exporters at this difficult time in the continuous development of overseas markets, and continue to protect their investments and payments for goods.

To tie in with the relevant measures I just mentioned, I earnestly support the motion proposed by the Secretary and I hope that Honourable colleagues would support the motion. Thank you, President.

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

(No other Member indicated a wish to speak)

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I would like to thank Mr WONG Ting-kwong and Mr Jeffrey LEUNG for supporting this resolution. I am going to provide some information in response to the views expressed by Mr WONG Ting-kwong.

In fact, the Hong Kong Export Credit Insurance Corporation (ECIC) has organized several seminars and talks with the objective of sharing with the trade risk management experience and deepening their understanding of the latest situation in overseas markets, and finding out more about the exporters' needs.

Between October 2008 and January 2009, the ECIC has organized five talks for the trade, which were attended by 620 people. Besides, the ECIC has spoken at nine other talks, which were attended by more than 1 300 people. However, we still find it necessary to maintain close communications with the trade in respect of the services provided by the ECIC.

I so submit. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

I now call upon Mr TAM Yiu-chung to speak and move his motion.

PROPOSED RESOLUTION UNDER ARTICLE 75 OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

MR TAM YIU-CHUNG (in Cantonese): President, I move that the resolution proposed by me on amending the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be passed.

It is provided in section 9 of the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) that apart from standing committees, other committees of the Council, such as the House Committee, a Panel, a Bills Committee, a select committee or a subcommittee of any committee, may order any person to attend before it and to give evidence or to produce any paper, book, record or document in his possession or under his control if it is so authorized by a resolution of the Council. However, there is no mention in Rule 80 of the

Rules of Procedure (RoP 80) that a subcommittee of the Council is among these other non-standing committees which may exercise those powers if so authorized by the Council. The matter was studied by the Committee on Rules of Procedure (CRoP) recently.

CRoP considered that the present wording of RoP 80 would not affect the Council's power to authorize a committee not mentioned in the rule to exercise the powers conferred by section 9 of the Ordinance so long as the committee has been covered by the Ordinance. However, to address the discrepancy between the two, CRoP recommends that RoP 80 be amended.

The proposed amendments to the Rules of Procedure are set out in the resolution. The House Committee has also discussed and accepted the proposed amendments earlier on. In view of this, I call on Members to support this resolution.

Thank you, President.

Mr TAM Yiu-chung moved the following motion:

"RESOLVED that Rule 80 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended —

- (a) in paragraph (a), by adding "and" after the semicolon;
- (b) in paragraph (b), by repealing "select committee(s) or investigation committee(s)" and substituting "select committee, investigation committee or any other committee".

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

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TAM Yiu-chung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of these motions each may speak, including reply, up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments each may speak up to 10 minutes; and other Members each may speak up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

MR LEE CHEUK-YAN (in Cantonese): President, a point of order. A quorum is not present.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan has proposed that a quorum is not present. We will ring the bell now.

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

PRESIDENT (in Cantonese): First motion: Procrastinating public consultation on constitutional development.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Albert HO to speak and move his motion.

PROCRASTINATING PUBLIC CONSULTATION ON CONSTITUTIONAL DEVELOPMENT

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

I am going to move a motion today to condemn Chief Executive Donald TSANG for procrastinating public consultation on constitutional development and breaking faith with the people. I hope the Chief Executive will listen to what I am going to say here: I am condemning you, Chief Executive Donald TSANG, not because I wish to insult you, deal you a blow or bring you down. I am condemning you because I wish to give you a wake-up call, spur you on, and even render you support. I hope Chief Executive Donald TSANG can demonstrate his courage, dignity and sincerity in "getting his job done", as pledged by him when he stood for election.

President, I am saying all this not because I wish to see Donald TSANG lose all hopes because of the tremendous difficulties and setbacks encountered in carrying out constitutional reform, including the veto by this Council of his constitutional reform package in 2005. As the saying goes, loss of heart is the greatest tragedy. We still hope, and believe, that he is a man with a heart. We still recall vividly that Chief Executive Donald TSANG once said that he was drinking Hong Kong water and having Hong Kong blood in his veins. During his campaign for re-election in 2007, he proudly said that the issue of universal suffrage must be resolved once and for all during his term of office, and there was no need for any interim proposal. In other words, he was prepared to come up with an internationally-recognized proposal for universal suffrage.

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

In December 2007, the Standing Committee of the National People's Congress (NPCSC) decided again to rule out dual universal suffrage in 2012, and stated simultaneously that the Chief Executive and the entire Legislative Council could be returned by universal suffrage in 2017 and thereafter, that is, 2020 respectively. However, we understand and believe, as the Chief Executive is also aware, that the issue of universal suffrage has not been resolved thoroughly because of the decision made by the NPCSC as it is just a superficial timetable, and a structural plan for an ultimate proposal is still lacking. Outstanding issues include:

- (a) Are the nomination procedures for the Chief Executive Election in 2017 fair? Will there be an unreasonable threshold so that only candidates recognized by the Central Authorities can run in the Election while people not acceptable to the Central Authorities will be rejected?
- (b) Even if the Legislative Council is to be elected by universal suffrage in 2020, universal suffrage will likely become another issue of controversy. Officials of the Central Authorities have even indicated openly that functional constituencies can be regarded as a sort of universal suffrage. If the issue of universal suffrage can be interpreted in this manner, what will this so-called ultimate proposal be like?

If there is no consensus on these issues in the territory, this so-called timetable — a timetable for 2017 and 2020 — is actually false, or a mirage in the desert. With ongoing disputes without consensus, even if an ultimate proposal can really be put forth in 2017 or 2020, will political parties in the territory find it acceptable?

In last year's policy address, the Chief Executive made an unequivocal pledge that, considering the great controversy to be stirred up as a result of the issue of constitutional development, he was prepared to launch consultation during the first half of 2012. He also pointed out clearly that several years would be spent on having a consensus reached on universal suffrage arrangements for 2012. The Chief Executive was clearly aware of the need to

engage society in in-depth and comprehensive discussion. When he made his pledge to carry out consultation in the first half of this year, he was definitely aware that the task would be arduous and numerous challenges would be encountered.

Actually, when the Chief Executive spoke on the policy address in December, the financial tsunami and economic crisis had already emerged. They were definitely not something unexpected or unforeseeable. However, the Chief Executive suddenly indicated two or three weeks ago that the consultation had to be postponed, when his pledge of carrying out consultation in the first quarter of this year was still ringing in our ears. What is more incomprehensible and annoying is that he even cited economic reasons to procrastinate the consultation. How can he command the trust of the people? What could it be if it is not an act of breaking faith with the people?

Yesterday, the Secretary for Constitutional and Mainland Affairs, for the sake of addressing this condemnation motion today, hastily issued a so-called consultation timetable. According to the timetable, a three-month consultation will be launched in the fourth quarter of this year, and the revision of the Basic Law is expected to be completed in the fourth quarter of 2010 to pave way for enactment of legislation. Regarding such a controversial issue as constitutional reform, we hope society can engage in thorough discussion. So, how can the consultation be completed within a matter of three months? How can the time provided be adequate?

Hence, we simply cannot help asking these questions: Is the consultation sincere and genuine? Has the Chief Executive lost all hopes, or is he no longer interested in "getting his job done" and so, the consultation is merely launched as a routine with a view to using the approach of "cutting the Gordian Knot" to hastily resolve this thorny issue in a high-handed manner and making use of certain statistics or the Central Authorities' instructions to suppress the strong calls for democracy in society? Should the Chief Executive really act in this manner, he has definitely lost all his hopes. He is merely acting mechanically like a slave in fulfilling the wishes of the Central Authorities. Insofar as Hong Kong society is concerned, this might turn out to be an extremely serious political crisis, a crisis which is even more critical than the financial tsunami.

Members should understand that a consensus on constitutional reform reached among various political parties in Hong Kong is not absolutely out of the question. In 2000, the three major political parties in Hong Kong at that time, namely the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), the Liberal Party and the Democratic Party, unanimously agreed that the implementation of dual universal suffrage in 2007 and 2008 be set out in our political platforms. Unfortunately, this consensus was destroyed in 2004 by a decision made by the NPCSC. Under the pressure arising from the strong calls by Hong Kong people for dual universal suffrage, however, I believe various political parties are still aware of the need to seek and foster consensus.

I have recently noted some of the views expressed by the Vice-Chairman of the DAB, IP Kwok-him, to the media. He said in a newspaper (and I quote) that "elections are, after all, elections. The Central Authorities should demonstrate its breadth of mind in accepting people not to their liking". He added that "in 2020, the existing functional constituency election must be abolished".

Actually, President Jasper TSANG, that is, the President of the Legislative Council — he is not presiding the meeting now — has openly expressed similar views in private capacity, and he has even further quoted some views of newspapers, saying "it is difficult for a consensus to be reached in society if the discussion of an ultimate proposal for 2017 and 2020 is excluded from the 2012 constitutional reform proposal".

I believe consultation would be meaningful should the DAB adopt a more open attitude as mentioned above, because frank exchanges of views and dialogues could then be possible among various political parties during the consultation. I also hope that the Central Government can participate and exchange and integrate views with the various sectors of Hong Kong, thereby achieving a consensus between the Central Authorities and the territory. Of course, I hope colleagues from the DAB can demonstrate courage to uphold their own convictions and not to, as what they did in the past, repeatedly abandon their positions, abandon their calls for dual universal suffrage in 2007 and 2008, and abandon their calls for dual universal suffrage in 2012, upon the issuance of a new instruction by the Central Authorities.

Therefore, Deputy President, as I mentioned just now, with the greatest sincerity demonstrated by various parties, sectors and political parties, ample time, and the determination of the Chief Executive to play a proactive role and perform the desired function of an intermediary, I hope, and believe, that, coupled with the concerted efforts of everyone, Hong Kong can really thoroughly resolve this long-running issue of constitutional reform, thereby achieving good governance and harmonious society and long-term stability.

The purpose of this condemnation motion proposed by me today is to, I repeat, demonstrate my good intention — despite expressed in a voice of condemnation — to give the Chief Executive a wake-up call in the hope that he can pull himself together to put his words into actions and work hard for the implementation of universal suffrage for the pursuit of democracy in Hong Kong. As Hong Kong is now at a critical historical juncture, we must not lose this golden opportunity. Otherwise, the Chief Executive will fail to do justice to history and live up to the expectations of our posterity.

I so submit.

Mr Albert HO moved the following motion: (Translation)

"That this Council strongly condemns the Chief Executive Mr Donald TSANG Yam-kuen for failing to honour his pledge made in the Policy Address by procrastinating public consultation on constitutional development, hence breaking faith with the people."

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I believe that good governance and harmony, as mentioned by Mr Albert HO just now, is the common wish of the Government and all Members of this Council. However, as Members are aware, Hong Kong as a free and open society, we in this Chamber have always discussed crucial issues and sometimes even come into arguments. The focus of our arguments is

not only restricted to policy areas and concrete measures. Sometimes, we will also debate and argue on how and when a public consultation should be conducted.

The Chief Executive, at the Question and Answer Session in the Legislative Council on January 15, indicated that the public consultation on the election package for 2012 would be slightly deferred from the first half of this year to the fourth quarter of this year.

On that day, the Chief Executive explained to Members that he had come to such a decision because the crest of our economic difficulties would most probably occur in the first half of this year when economic issues and people's livelihood of Hong Kong would be our prime concerns. Thus, at this stage, Members may not be able to concentrate on the discussion of constitutional issues taken place three years later. The electoral methods for 2012 are a major issue, which should call for a rational and in-depth discussion by the community so as to forge a wide consensus. So, we do not think that it is the right time at this stage to launch the public consultation.

The severity of the financial tsunami is totally unpredictable at the earlier period although its onset was in the fourth quarter of last year. As we can see, the situation of Hong Kong in recent months has deteriorated. For example, Hong Kong's unemployment rate, which was 3.8% in the period from September to November last year, has risen to 4.1% in the period from October to December.

Hence, as members of a responsible government, we need to make judgment according to the priority and urgency of matters and come to a decision after judging the hour and sizing up the situation. We are fully aware that both Legislative Council Members and the general public will have some disappointment at the slight deferment of the public consultation. But we will actively deal with constitutional reform and will not give up the determination in formulating a new package for the Chief Executive and the Legislative Council elections in 2012.

Mr Albert HO has specifically mentioned the work schedule for the public consultation on the elections in 2012. But I would like to make some minor corrections. Just now Mr HO said that the Constitutional and Mainland Affairs

Bureau had hastily issued this work schedule. In fact, it is not. At the meeting of the Panel on Constitutional Affairs in January, we promised that the work schedule would be issued in February to facilitate the discussion of the matter at the Panel's meeting next week. So, it is our undertaking and the paper has been issued accordingly.

In his motion, Mr Albert HO proposed that the Chief Executive be condemned. I consider that Mr HO's motion has ignored the facts. The goal of the current term SAR Government that the two elections in 2012 will be dealt with properly during its term of office has not been changed. We will conduct an extensive public consultation on the electoral arrangements for 2012 and ensure that there is sufficient time for full discussion and forging a consensus in the community, in addition to the proper handling of the amendments to Annexes I and II of the Basic Law.

According to the current work plan, we will launch a public consultation in the fourth quarter of this year. After the completion of the consultation, we will collate the views received and submit our proposed amendments to Annexes I and II of the Basic Law to the Legislative Council. The amendments shall be made with the endorsement by a two-thirds majority of Legislative Council Members, the consent of the Chief Executive and they shall be reported to the Standing Committee of the National People's Congress (NPCSC) for approval. We hope that the whole process will be completed not later than the fourth quarter of 2010.

As there is around one year from the fourth quarter of 2009 to the fourth quarter of 2010, time is enough for dealing with public consultation, collation of views and dealing with the amendments to Annexes I and II of the Basic Law.

Deputy President, we are prepared to deal with the relevant amendments to the principal ordinances in the enactment of local legislation in early to mid-2011. These amendments will include amendments to the Chief Executive Election Ordinance and the Legislative Council Ordinance.

Subsequently, we will deal with the practical arrangements and amendments to the relevant subsidiary legislation in relation to the Chief Executive and the Legislative Council elections. After matters relating to the

enactment of local legislation in mid-2011 have been dealt with, follow-up actions will be taken so that the elections of the fourth Chief Executive and the next term Legislative Council to be held in March 2012 and September 2012 respectively can proceed as scheduled.

Deputy President, at the present stage, we will continue with our internal study and pay attention to public views on the two electoral methods for 2012 so as to prepare for the public consultation to be conducted later this year.

Mr Albert HO mentioned the Chief Executive's commitments during his election campaign and queried the fulfillment of his commitments. The Chief Executive did have fulfilled his commitments. In July 2007, the third term SAR Government, under the Chief Executive's leadership, after having taken office for six months, initiated a Green Paper public consultation and submitted a report to the Central Authorities. A timetable for universal suffrage was therefore obtained from the NPCSC so that we can elect the Chief Executive and all Legislative Council Members by universal suffrage in 2017 and 2020 respectively.

I would like to reiterate that the SAR Government has the responsibility and determination to properly deal with the two electoral methods for 2012. As Hong Kong is in a tough time, the Government, the Legislative Council, all sectors of society and the public should face up to the challenges in concerted efforts. We should adopt this attitude no matter whether we are dealing with social, economic and livelihood issues, or constitutional issues and democratic development. So, on hearing that Mr Albert HO's assertion that he would support the Chief Executive, we very much hope that we will have the opportunity to enlist his and his party's support in 2010 when the two electoral methods for 2012 are proposed. In this Council, Members of different political parties and independent Members can forge a broad consensus so as to bring the two electoral methods of Hong Kong to a mid-way point in 2012, thereby laying a broad and sound foundation for the elections of the Chief Executive and the Legislative Council by universal suffrage in 2017 and in 2020 respectively.

Thank you, Deputy President.

MR CHEUNG MAN-KWONG (in Cantonese): Deputy President, just now Secretary Stephen LAM said that the Chief Executive had fulfilled his constitutional responsibility. However, insofar as his position towards constitutional reform is concerned, Donald TSANG can be described as: telling lies one after another, failing to "fit the promised descriptions" and keep his word, and beating retreats again and again.

Telling lies does not necessarily mean saying something which is untrue; it may also refer to the act of talking wildly or making an overstatement in a stupid and hyper manner. On the eve of the Chief Executive election in 2007, Donald TSANG stated in a unequivocal manner, "If I should succeed in bidding for re-election, I would thoroughly resolve the issue of universal suffrage and come up with a universal suffrage proposal with a 'design, road map and timetable' to engage the territory in 'doing something big', and I would make all-out efforts and do my best till the end of my days."

However, with the tightening of its grip by "Grandpa" at the end of 2007 and the ruling out of the implementation of dual universal suffrage in 2012, the pledge of "doing his best till the end of his days" has now turned into "somewhere between life and death". Donald TSANG has merely followed the National People's Congress in saying that the Chief Executive may be returned by universal suffrage in 2017 and the Legislative Council formed by universal suffrage in 2020. However, he has no longer dared to say anything about the threshold for returning the Chief Executive by universal suffrage, the retention or otherwise of functional constituencies, and the authenticity or otherwise of universal suffrage. Neither has he dared to "do something big" nor "do his best till the end of his days".

After the Legislative Council election in 2008, Donald TSANG's position towards universal suffrage shrunk once again and he started to narrow the scope of his own lies by saying that the Government would focus only on dealing with the election in 2012. Issues pertaining to the return of the Chief Executive and the formation of the Legislative Council by universal suffrage in 2017 and 2020 respectively have already been consigned to limbo. Secretary Stephen LAM has even accomplished the daring and reckless task of absolving Donald TSANG from blame by arguing strongly that the Government should not exceed its authority in making a decision for the constitutional system eight to 10 years from now.

Despite the tightening of the scope of his lies about universal suffrage and the occurrence of the financial tsunami, Donald TSANG still gave an unequivocal pledge in the policy address unveiled in 2008 that the public would be consulted during the first half of 2009 on the methods for selecting the Chief Executive and forming the Legislative Council. However, in January 2009, three months after the delivery of the policy address, the consultation on constitutional reform was postponed under the pretext of combating the financial tsunami. Even when Donald TSANG resorted to sophistry in arguing that postponing the consultation was not tantamount to abolishing it, he should understand very well in his heart that his own credibility has disappeared completely.

Let us imagine this. In less than a matter of two years, the Chief Executive's attitude towards constitutional reform has changed from "doing something big" to "retreating from his words", from the ultimate proposal of dual universal suffrage to elections limited to 2012, and in the end, even the consultation has been postponed. Does the SAR still have credibility? Will it be possible for the pledge of universal suffrage to be honoured? As the saying goes, "the falling of one leaf heralds the autumn". These are the reasons for me to describe Donald TSANG as "telling lies one after another, failing to 'fit the promised descriptions' and keep his word, and beating retreats again and again".

Hong Kong people understand very well in their hearts that it is all because Hong Kong has been infected with the Central Authorities' phobia about politics that universal suffrage was consigned to limbo and, in the end, even the consultation was postponed. For the Central Authorities, which are scared of anniversaries, this year is the 60th anniversary of the founding of the People's Republic of China, as well as the 20th anniversary of the 1989 pro-democracy movement. The founding of our country is supposed to be our honour, but the pro-democracy movement has become the sorrows of our country. As the honour and sorrows of our country fall on the same year, massive celebrations have to be held alongside strict precautions. As usual, stability prevails over everything. Even journalists returning to China for coverage are subject to restrictions.

Therefore, Hong Kong must guard against the repercussions of calls for political reform and the impact of the financial tsunami, the heightening of grievances of Hong Kong people about the SAR's incompetence in governance,

the economy and the people's livelihood, and the knock-on effects of the opposition to the Central Authorities' interference in universal suffrage and the activities organized for mourning the June 4 incident, thereby leading to massive demonstrations by Hong Kong people on the streets on 4 June and 1 July, a repeat of the shockwaves triggered when 500 000 people took to the streets in 2003 calling for the stepping down of TUNG Chee-hwa, and variable of fears in this politically sensitive year. Therefore, it is better for any moves relating to constitutional reform made by the SAR, including the consultation pledged by Donald TSANG, to be postponed even at their budding stage and aborted even if it means eating one's words. Anyhow, it is better to behave badly than to "do something big" because going too far might lead to serious repercussions. This is something the SAR might not be able to take.

But how can fire be contained by paper? We can see the chaotic situation triggered by the economic recession, the roaring waves caused by the financial tsunami, the SAR's incompetence in governance, the seething discontent among the masses, the widespread occurrence of problems relating to the people's livelihood, and the remote prospects of democracy. Signs of failure, similar to the failure committed by TUNG Chee-hwa, have again been found in the SAR. Even LAU Wong-fat, the newly powerful, has picked an inauspicious divination stick. This seems to echo the fortune telling stick picked by Patrick HO, indicating "the presence of a ghost in the family, poor personal safety, inauspicious home, and failure in making a fortune". This is simply black humour that we find both funny and annoying. I wonder what feelings and self-reflections Donald TSANG, who has experienced ups and downs in popularity ratings, would have.

As the saying goes, the problem cannot be evaded by taking the wrong way. Postponing the consultation cannot put off the public's pursuit of universal suffrage. The real conflicts facing us now are attributed to the lack of democracy and inadequate check and balance, and the failure to monitor the selfish and greedy acts committed by consortia. The chaotic situations emerged after the outbreak of the financial crisis have been caused by the storm stirred up by the Lehman minibonds, the failed speculation by Citic Pacific in foreign exchange, the PCCW's unscrupulous act of money-grubbing through privatization, which have added to the intense anger that touches people's hearts. All these have come from the interest groups under the establishment and highlighted the injustice of the small circle. In the end, we will see

self-fulfillment of the prophecy of the phobia about "anniversaries". There will be no democracy but privileges (*The buzzer sounded*) this is truly the ghost inside Hong Kong.

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, speaking time is up. Does any other Member wish to speak?

MR RONNY TONG (in Cantonese): Deputy President, how strange it is that no one has raised their hands to indicate their wish to speak! However, I must say what I am supposed to say.

Deputy President, the word "condemn" cannot be used lightly. Just now, I looked up a dictionary on the Internet for the definition of the word "condemn" and found that not everyone can be condemned. Deputy President, it would be rather ridiculous to condemn a taxi driver in the street.

Deputy President, I think that "condemn" implies that a public figure is criticized for failing in fulfilling his responsibility. As pointed out by me earlier, we will not indiscriminately condemn any persons in the street, but we may condemn an official. Of course, voters can condemn Members of the Legislative Council because we have a public role and we are politically, socially, and even morally responsible under the social system.

In this motion today, I believe Mr Albert HO is proposing to condemn a person with an extremely important leading role in Hong Kong for dereliction of duty in fulfilling his responsibility.

Deputy President, I think that Mr Donald TSANG deserves condemnation in three aspects. First, integrity; second, respect for public opinion; and third, a lack of resolve or courage in performing his leadership role.

Deputy President, let me begin with the first aspect. When I was a small child, I was already taught in school that "a man who does not keep his word is either a crook or a thief". Integrity is a must for the man in the street, not to mention a political figure or a leader in society. Deputy President, a self-proclaimed politician should all the more not act in this manner.

Deputy President, of course, I am talking about integrity with reference to all sorts of pledges made by Mr Donald TSANG during his election campaign — he probably thought that he was merely making one or two causal remarks. So, why should the matter be taken so seriously? But the point is, given the forum in which such remarks were publicly made, many people might thus become hopeful and treat his remarks as the basis of his point of view on the day.

Deputy President, given that the Chief Executive was not returned by universal suffrage, I understand that we should not treat his political pledges as campaign pledges because he was elected by only a small circle of people. However, in a bid to secure the support of public opinion on that day, the remarks made by Mr Donald TSANG which sought to seek public approval or boost the spirit of the people are somewhat deceiving. The use of such a tactic by a public figure to seek support of public opinion does not warrant our approval. Deputy President, I consider this the first reason for Hong Kong people to have absolute right to condemn Mr Donald TSANG.

Deputy President, the second reason is that Chief Executive Donald TSANG has not only failed to keep his word, he has also shown no respect at all for public opinion. Deputy President, when he made the remark in which he compared public opinion to "passing clouds", I wonder if he was quoting from the wrong books or speaking from the bottom of his heart. Anyhow, Deputy President, we are aware that over the past decade or so, a variety of opinion polls had been conducted in the SAR — with 12 opinion polls conducted by the democratic camp alone — it is clearly indicated in these opinion polls that Hong Kong people hope to see democracy, real democracy but not sham democracy, and universal suffrage at the earliest date. This is a development that everyone would like to see, and this is a serious topic.

Deputy President, when the Chief Executive indicated in this Chamber the other day his decision to postpone the consultation, he used the expression "狗嘢"¹ to describe the related discussions. I do not know whether he really used the expression "狗嘢" or "鬥嘢"². But no matter what, Deputy President, the term he used was extremely vulgar. He has insulted not only this Chamber, but also all the people of Hong Kong. To all the Hong Kong people with the dreams of democracy, this is an act of great disrespect.

¹ "狗嘢" means talking nonsense in a vulgar manner.

² "鬥嘢" means competing with others in talking nonsense.

He has also shown disrespect by saying that there is no need to urgently or immediately consult the people because the economic environment has diverted our attention. I believe there are a large number of people in Hong Kong who think that democratic development must be continued regardless of the economic situation — we are not animals concerned only about sufficiency of food and clothing. We can definitely not forget our social value so long as we have enough to eat and wear — the Chief Executive has shown great disrespect to these people.

Third, the Chief Executive lacks the aspiration for leadership. He has always been adopting the attitude of "telling us to get it done and there is no way for a consensus to be reached among us". Has the Chief Executive attempted to present any proposal for discussion by this Council in the hope that a consensus can be reached? Has he ever expressed his views? Apart from boasting about "doing something big" and making such fascinating remarks as "thoroughly resolving issues of universal suffrage during his term", has he put forth any concrete suggestions or proposals, or made any efforts in closing the gap between the democratic and the pro-government camps?

What we want is not a referee, Deputy President, but a leader. If a person occupying the leader's seat cannot fulfil his responsibility as a leader again and again and years after years, does he deserve to be condemned? Deputy President, despite the harshness of the wordings used today, I think that (*The buzzer sounded*) he deserves to be condemned.

DEPUTY PRESIDENT (in Cantonese): Speaking time is up. Does any other Member wish to speak?

MR KAM NAI-WAI (in Cantonese): Deputy President, I have an impression that before he became the Chief Executive, Donald TSANG once paid a visit to a temple built in Shandong in honour of Zengzi, and he was even addressed as the 74th-generation grandson of Zengzi. While Chief Executive Donald TSANG certainly knows that Zengzi was a disciple of Confucius, he might not have heard a story about his ancestor's keeping promises, though many people should have

heard about it before, and thus he has forgotten the lecture given by his ancestor. Perhaps he has not heard about it before, or he has simply forgotten about it. Therefore, today, I am going to tell the Chief Executive a story.

The story goes like this: When Zengzi's wife was about to go out, her son cried and demanded to join her. Trying to coax her child, she said, "You must wait for me here and not go out. When I am back, I will kill a pig and prepare stewed pork for you. You just need to stay here." Believing in her, the child stayed at home.

When she returned home, she found that Zengzi was sharpening a knife and prepared to kill a pig in order to prepare stewed pork for their son, and so she hurriedly stopped Zengzi, "How could you take it so seriously? I coaxed him just because I did not want him to go out." Zengzi said to his wife seriously, "How can you cheat a child? Our words do count because our words and deeds could have an impact on children."

Will Chief Executive Donald TSANG, as a descendant of a sage, keep his promise? Will he ignore his own words? Not only has he put the universal suffrage proposal on the shelf, now he has even decided to postpone the consultation. Given that he has again and again broken faith with the people, how can the people believe in his governance in future?

As both the Government and the Chief Executive do not keep their promises, we will not pin high hopes on the Government in promoting democracy. What we can do is to promote democracy through the people's power and condemn the Chief Executive for lacking the basic integrity required of a political figure so that this could be recorded in history, thus a comparison can be drawn between him and his ancestor, Zengzi.

Actually, the Secretary said just now that he very much hoped that a consensus could be reached on the method of electing the Chief Executive and the Legislative Council. Mr Albert HO, our party chairman, also mentioned just now that Mr IP Kwok-him from the DAB made a remark earlier — I wonder if Mr IP will later he is not here at present. But I still hope Mr TAM Yiu-chung, chairman of the DAB, can respond — Mr IP Kwok-him mentioned that the Central Authorities should demonstrate the breadth of mind to accept the

Chief Executive elected by the people. He also mentioned that the mechanism for nominating the Chief Executive could be very open. And if it was acceptable to all, the mechanism threshold could be subject to further examination. He even proposed the abolition of functional constituencies (FCs).

I hope the DAB, being the largest political party in the Legislative Council, can make a specific response concerning its views. I have often heard our predecessors say that the DAB would keep its mouth shut whenever questions about politics, political systems were mentioned. I think that the DAB is duty-bound to explain to the public.

I also wish to say, as Members should actually know, that the DAB has once mentioned in its party programme its intention to review Hong Kong's constitutional development, fight for the return of the last-term Chief Executive by universal suffrage, and the return of all Legislative Council seats through a proportional representation system in 2007. Of course, this was the party programme of the DAB prior to 2004. Having regard to the position stated by the Central Authorities after 2004, the DAB has kept making U-turns again and again. I think I will stop here.

However, I would like to respond to the remarks made by Secretary LAM earlier. He mentioned that the unemployment rate had now risen to 4.1%, and he had to put off the consultation on constitutional reform as the unemployment rate was expected to remain high. I hope the Secretary can give a response later. What would he do should the unemployment rate reach 4.3% or 4.4% at the end of the year — though I certainly do not wish to see this happen? Will the consultation be postponed again and again? Will the consultation be made directly proportional to the unemployment rate, meaning that the higher the unemployment rate, the later the consultation will be conducted? Will this be the case?

Today, I see that many Honourable colleagues of the FCs have already left and they are not prepared to speak here. Actually, I hope the FCs — Mr Tommy CHEUNG, a FC Member, is looking at me. I have no idea whether he will speak later — I hope the Liberal Party can declare its position and state its views later. I hope a greater number of independent FC Members can proactively declare their positions to let voters know their views of the implementation of

universal suffrage in the future. What is more, I hope they can join us in condemning the Government and the Chief Executive for postponing the consultation on the constitutional development once again. Thank you, Deputy President.

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

DR PRISCILLA LEUNG (in Cantonese): Deputy President, Mr Albert HO's motion seeks to condemn the Chief Executive mainly on the grounds that the consultation will be procrastinated. Like Honourable Members, I am greatly disappointed by the Chief Executive's announcement of the postponement of the consultation. I believe all Members are waiting, with great excitement, for the unveiling of the consultation document.

Time is important, and so are the contents of the consultation document. I was once involved in the work of the Commission on Strategic Development. In particular, I had worked in a sub-committee related to governance and politics for two and a half years. I believe all the conceivable proposals have been referred to the Government, and the relevant documents should be in heaps. Therefore, it is now time for shortlisting and decision-making.

How should the decision be made? Actually, I appreciate that, given Hong Kong's current political reality, securing 40 supporting votes in this Council is not entirely easy, but not impossible. According to my understanding, the current Government is not confident in securing 40 votes in this Council. However, I think that the Government has to face the public after all. A timetable is very important because joint efforts must be made to achieve the goal of returning the Chief Executive by universal suffrage in 2017 and returning all seats in the Legislative Council by universal suffrage in 2020. I believe a consensus has been reached on this. Therefore, I very much hope that the consultation document to be put forth by the Government contains things with substance.

Personally, I am very disappointed by the Government's procrastination, too. But basically, I have reservations about the need to impeach the Government. I still hope that the Government is not really procrastinating at this

stage, but will commence consultation immediately, only that the consultation will not be conducted by way of the publishing of a consultation document. Actually, the consultation has been dragging on for years. As I stated just now, the consultation has dragged on for two and a half years. I think that the Government should really perform its role in this consultation exercise by lobbying various parties, mustering votes, giving play to its influence, and genuinely rolling out one or two proposals, and lobbying various political parties/groupings and parties with voting and vetoing powers. I very much hope that the procrastination of the consultation this time around can give the Government more time to put forth a proposal with substance at the end of the year. The Government must not allow a repeat of what happened in 2005 when, coupled with a sheer waste of energy and money, all parties involved — including political parties, the public and the Government — ended up achieving nothing.

The election of the Chief Executive by universal suffrage in 2017 and the return of all Legislative Council seats by universal suffrage in 2020 will just be around the corner. I believe we will face the arrival of 2012 in no time. Therefore, the proposal in the consultation document must be specific and feasible. Furthermore, the proposal should basically be presented to Honourable colleagues of various political parties/groupings for discussion after the waters have been tested.

As I still have a little time left, and while the Secretary and friends of the pan-democracy camp are here, I hope to promote to the Government and Honourable Members once again the "one plus 30" proposal formally put forth by the Commission on Strategic Development. According to the middle course put forth in the proposal, all functional constituency candidates are required to be returned by universal suffrage in 2016, so that all of them would experience universal suffrage together. If Members basically agree that this proposal of the middle course is possible for discussion, there might be a chance for all functional constituency seats to be abolished in 2020. Given that the Basic Law has provided for the "gradual and orderly" framework, I believe Members must face the reality. Therefore, as a middle course, we must be prepared to hold discussions on one or two proposals.

Personally, I am more than willing to, where circumstances permit, assist the Government in lobbying. In principle, however, I fully support the objective of forming the Legislative Council by universal suffrage in 2020. As stated by

me just now, I am very disappointed with the Government's decision to postpone the release of the consultation document. But I still hope the Government can take advantage of the delay to begin discussion with various political parties/groupings and integrate our views in the consultation document, so that the proposal can at least serve as a compromise. Actually, the Government can also refer to the proposals raised by us in the Commission on Strategic Development and incorporate them into the consultation document.

Although I point out in my speech today that I do not agree with an immediate condemnation of the Government, I also call on the Government not to procrastinate the consultation. Actually, Members should have already known whether the Government is in the process of discussing this issue with them and preparing the consultation document.

Thank you, Deputy President.

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

MRS REGINA IP (in Cantonese): As pointed out by a number of commentators and by me frequently in my newspaper column, the focus of many governance problems encountered by the SAR Government since the reunification has actually been influenced by the political system. Our political system can really be described as a rarity in the world. The uniqueness of our system is attributed to the two different methods for returning our Chief Executive and forming the Legislative Council. So far, no Chief Executive has managed to secure a stable ruling majority in the Legislative Council.

The Chief Executives of the two previous terms have even attempted to form a ruling coalition through the re-organization of the Executive Council. The results of their efforts, though not yet proved to be a total failure, have proved to be unremarkable. This explains why we can see from the latest re-engineering exercise that Chief Executive Donald TSANG abandoned his practice of appointing people capable of securing votes to the Executive Council. Instead, as if returning to the colonial era, he chose to appoint some elites in the business sector in the hope that these people could assist him in upgrading the quality of policy-making. Under such circumstances, the SAR Government has

experienced great hardship in governance. In fact, we can seldom find around the world the administrative head of a place, whether elected or appointed, who has no ties or his own political back-up in the parliamentary assembly. It has been three or four years since Chief Executive Donald TSANG's taking office. We are very pleased to see that his popularity rating has recently risen by a few percentage points, and I can say that it is quite stable now. However, his political achievement does reveal that, apart from maintaining a certain status quo, he has failed to accomplish much. The SAR Government is actually politically incapable of addressing many urgent and deep-rooted problems in society. Even health care financing and a number of issues (such as fair competition law, a minimum wage and economic structural reform) have to go through consultations again and again, not to mention the postponement of the constitutional review. Evidently, the system has made it impossible for the SAR Government to vigourously address many deep-rooted problems, and as a result, the Hong Kong society at large could only slip should it fail to move ahead.

Under such circumstances, I agree entirely with a number of Honourable colleagues who said that it was imperative for the constitutional review and consultation to be held expeditiously. However, is the postponement of the consultation so serious as to warrant a condemnation by this Council? I do not think so. Actually, the consultation will only be postponed for several months. Judging from the present situation, the consultation would not be conducted before the second quarter of this year at the earliest, albeit the Chief Executive's earlier pledge that a consultation would be held during the first half of this year, and he has now pledged that the consultation would be held before the end of this year, that is, not later than the fourth quarter of this year. This would mean that the consultation would be postponed for several months only. This is acceptable to me. Anyhow, I hope Secretary LAM will, after listening to our speeches here, give serious consideration to our views by conducting consultation in a very serious manner and breaking the current constitutional dilemma.

Actually, it is imperative for the elections of the Chief Executive and the whole Legislative Council to enhance the element of democracy. Insofar as the Chief Executive election is concerned, I think that the SAR Government should not worry too much. Should Hong Kong people be able to elect the Chief Executive by "one person, one vote" one day, in my view, the chance of electing a Chief Executive mistakenly or electing a person who is totally incompetent but

knows only to please the public with claptrap will be relatively low. We may, on the contrary, refer to the experience of the United States. Election can, on the one hand, change a person and, on the other, hone one's skills. For a person elected after baptized by the election, his political energy will be enhanced because of his empowering by the strong public opinion. How would our Chief Executive be afraid of being "hurled bananas" had he gained one or two million or even more votes? How would he be afraid of a Member of this Council who claimed that he had the support of 40 000, 50 000, 60 000 or 70 000 votes and thus thought that his popular mandate was higher than that of the Chief Executive and that the Chief Executive lacked legality? By the same token, it is also imperative to introduce democratization to the Legislative Council elections expeditiously. I have once pointed out in one of my articles that on the one hand, the democratization of the entire Legislative Council will help render the whole Council more accountable and on the other, there is a need to study certain systems to achieve balanced participation as well as checks and balances, so that the Legislative Council will not become purely populist, as in the case of some overseas legislatures, and the voices of various trades and industries and various strata can be heard by the Government. Therefore, I urge Secretary LAM to consider the "one person, two votes" proposal mentioned by me and a number of colleagues in the Commission on Strategic Development. This proposal is far simpler than the "one person, 30 votes" proposal. It would be too complicated for all the 30 functional constituency seats or the 40 functional constituency seats in future to be returned by universal suffrage in order to ensure balanced participation. The "one person, 31 votes" proposal is also too complicated. Under the "one person, two votes" proposal, one vote can be cast for district elections, while the other one can be cast for elections where Hong Kong, Kowloon and the New Territories are treated as a single constituency. I think this is a feasible proposal.

Lastly, I would like to say a few words about public opinion. Although I have not conducted any opinion polls, the Savantas Policy Institute, headed by me, and two young members of the Institute, who are also District Council members and I, have operated a total of seven regional offices on Hong Kong Island. We have also kept statistics on the large number of enquires and complaints from the public each month. The enquiry cases received by us include cases concerning the Government's postponement of the consultation on constitutional reform. I note that since October, only one member of the public

has talked about this topic. This member of the public is a South Horizon resident. He made a very interesting remark that he would object to the postponement of the consultation should he be interviewed in an opinion poll. However, if he were the Chief Executive, he would postpone the consultation on constitutional development in order to handle economic and livelihood issues of greater urgency first. I can present these monthly reports prepared by me to Secretary LAM and his colleagues for a look.

In view of these opinions collected by me, I will not support this motion. Thank you, Deputy President.

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

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, I support Mr Albert HO's motion. Most importantly, does it make such a great difference for the Chief Executive to postpone the consultation on constitutional development for, as pointed out by Mrs Regina IP just now, just a couple of months? Is there a genuine need for the consultation to be postponed? Furthermore, the Chief Executive explained that attention had to be focused on addressing the economic plights and improving the people's livelihood. As Members are aware, even the Chief Executive himself has actually admitted that the economic problems cannot be resolved shortly, and a long period of time will definitely be needed. When we cannot see the economic environment will definitely undergo a major change in a couple of months, does it mean that the Government will stop addressing bread-and-butter issues by then? I believe the Government will not act in this manner. The issues will be addressed no matter what. Therefore, this is not a very good excuse. In fact, it is not convincing at all. Having said that, the Government's stalling tactic is nothing new to the people. They have often seen the Government come up with all sorts of reasons in this regard and show reluctance in facing the reality. This is precisely the crux of the problem.

Deputy President, anyhow, today, I have to express regret about, and dissatisfaction with, the postponement of the consultation. However, it has been questioned whether the target of condemnation could be mistaken if the Chief

Executive is to be condemned over the postponement. Why am I making such a remark? I have recently learnt from something of an "insider" newspaper report that the procrastination of the consultation this time around is not the idea of the SAR Government, but the idea of the Central Government. Therefore, the words of the Central Authorities must be heeded. Actually, the SAR Government is extremely reluctant to act in this manner, only that there is nothing it can do. Given such a high-handed approach, the SAR Government must act accordingly. Therefore, from this point of view, it seems to be a terrible mistake if the Chief Executive is to be condemned. However, this is yet another issue if this is not the fact, but just a rumour. Why? Although the Chief Executive has not pointed out from the very start that the decision to postpone the consultation is attributed to a request made by the Central Authorities, the matter will get even worse if the Government only wishes to capitalize on the rumour to ask for our forgiveness and pass the buck to the Central Authorities. In other words, the problem will worsen should the Government seek to ease public grievances by adopting such a tactic. Therefore, regardless of the authenticity or otherwise of this view, the postponement is not a good thing, from both perspectives. In particular, for the public, this is definitely not a good thing, because it is definitely not positive for the Central Authorities to adopt a high-handed approach or the SAR Government to act voluntarily in this manner or even tell lies.

If a high-handed approach is adopted by the Central Authorities, where have "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", the principles all along advocated by us, gone? This would mean that they no longer exist. However, the matter will get even worse if the SAR Government is lying. It will be even worse for a government to mislead its citizens with lies. Hence, in this incident, I cannot see any substantial justifications to convince myself that there is a need for the consultation to be postponed.

Although it is suggested that the Government should be forgiven because it is merely acting out of good faith given that the territory is now really confronted with economic problems, and so there is no reason not to address livelihood issues first. However, Deputy President, there is no conflict at all. It is definitely not the case that the Government cannot resolve livelihood issues should the consultation on constitutional reform go ahead. It is evident from many past instances that the Government can walk on many legs and tackle a number of issues simultaneously. This is what the Government is supposed to do. It cannot be argued that a certain matter has to be shelved because it is more

difficult or likely to arouse controversy, and so it is better for some other issues which are easier to resolve or more closely affect the people to be tackled first. A government must do what it is required to do. Most importantly, this is not only a matter of need, it is also a matter of commitment. In his election platform, the Chief Executive made his commitment very clear, but now he has overturned his own commitment with such a simplistic and specious reason. I think there is a very serious problem with him. Furthermore, as the Chinese saying goes, "An ugly bride will sooner or later have to come face to face with her father-in-law." I think that the constitutional reform is an issue to be faced sooner or later. So, why should the Government employ so many stalling tactics, making people wonder whether the Government is sincere and determined in carrying out constitutional reform genuinely? This has raised a lot of doubts among us.

In mentioning the District Councils' appointment system earlier during the question time, Secretary Stephen LAM said that it was not appropriate for us to bring up the issue again as we had missed the chance in 2005. Secretary Stephen LAM, may I ask you this question: You were in favour of abolishing the appointment system in 2005, and so a proposal was put forth in the same year. Even if we had missed the chance, why did you say in your reply to a question today that this issue would not be considered in the near future? If it is something good, and you are in favour of it, then why do you give it up? By the same token, it is you who give up now. You could have brought it up for our discussion, but you have chosen to give up. All in all, from the beginning, I have not seen any determination and sincerity on the part of the SAR Government to carry out constitutional reform. It has only kept on stalling the matter. This is what we find most regrettable.

Mr Albert HO has proposed this motion today in the hope that the Government can make a timely turn and stop acting in this manner. The livelihood issues are a concern to all of us. The Budget, to be unveiled by the Financial Secretary soon, is precisely one of the means to resolve the people's livelihood problems. Such being the case, why can the consultation on constitutional reform not be carried out concurrently? This is something achievable, and there is no conflict at all. Why can this not be done? Therefore (*The buzzer sounded*) I oppose the Government's procrastination. I so submit.

DEPUTY PRESIDENT (in Cantonese): Speaking time is up. Does any other Member wish to speak?

MR CHEUNG KWOK-CHE (in Cantonese): Deputy President, the motion today has been put forward mainly because at the last Chief Executive's Question and Answer Session, the Chief Executive announced that consultation on constitutional reform must be deferred to the fourth quarter of this year due to the need for tackling the financial tsunami. Yesterday, the Bureau finally submitted the relevant information to the Legislative Council. He has admittedly undertaken to start consultation in the fourth quarter of this year, but since he has failed to honour the promise made in his latest policy address, how can we believe that he will honour his new undertaking? His latest policy address was announced only as recently as October last year. Paragraph 110 of this policy address reads, "The top priority for the Third Term Hong Kong Special Administrative Region Government is to determine the two electoral methods for 2012 with a view to further democratizing the election systems. In the first half of 2009, we will consult the public on the methods for electing the Chief Executive and for forming the Legislative Council in 2012." (End of quote) That was just a very short time ago. But now, several months later, the Chief Executive wants to defer consultation on the excuse of having to tackle the financial tsunami. When the first wave of the financial tsunami hit us in October last year, the Chief Executive still said that consultation would start in the first quarter of this year. Is this caused by the Chief Executive's lack of foresight? Or, can we say that the necessity of tackling the financial tsunami is just an excuse for deferring consultation?

Joseph YAM of the Hong Kong Monetary Authority once remarked that the second wave of the financial tsunami had yet to arrive. The Chief Executive now says that consultation on constitutional reform must be deferred until the fourth quarter. But if the economy still has not bottomed-out by that time, will it be necessary to defer consultation yet again? If delay follows delay, when can we eventually see the implementation of universal suffrage? The Chief Executive owes the people of Hong Kong an answer to each of these questions. The Chief Executive has talked so much about this issue, but he never keeps his words. It is small wonder that we all doubt his determination to bring forth the implementation of universal suffrage. Honestly speaking, the Chief Executive's excuse, the excuse that the financial tsunami must be tackled first, is very unreasonable. The Government is made up of three Secretaries of Departments, 12 Policy Bureaux and many civil servants, but he still tells the public that they can focus on just one issue at any one time. This is hardly acceptable. I am

very disappointed at the deferment of consultation on constitutional reform, because the Chief Executive's line of reasoning suggests that improving people's livelihood and democratic development should be treated differently in terms of priority. However, democratic development and people's livelihood should not be dealt with separately because they are closely related. When there is no democracy, there will be no justice, and the disadvantaged members of society will not receive any attention, thus leading to even more unjust policies.

Deputy President, according to the Government, consultation will be conducted in the fourth quarter of this year, and the enactment of local legislation will be dealt with before summer in 2011. This means that there will only be one year for consultation. But the electoral arrangements for 2012 will definitely arouse extensive discussions. The issue is highly controversial, so it will be necessary to hold discussions again and again. But there will just be one year. Is this enough? I think that this is too much of a rush. Since the Government is so unreasonable, we can only say that taking to the streets again on 1 July should be the only way in which we can make our voices heard. It is not necessary for us to wait until the fourth quarter to make our voices heard.

Today, many Members have discussed what should be covered in the consultation exercise on constitutional reform. I think the whole issue is very simple — it should be about the election of the Chief Executive and all the 60 Legislative Council Members by universal suffrage. This is our only aspiration.

I so submit.

MR TOMMY CHEUNG (in Cantonese): Deputy President, in October last year, when the Chief Executive announced his policy address, he did say that consultation on constitutional development in respect of electing the Chief Executive and forming the Legislative Council in 2012 would be launched in the first half of this year. But rather unexpectedly, at the Chief Executive's Question and Answer Session last month, he announced that he had decided to defer consultation until the fourth quarter of this year due to the need for focusing on dealing with the present economic difficulties. In other words, there will be a deferment of roughly half a year. Disappointment is inevitable, I must say, because the Government has been so capricious in its position on this important issue.

The Liberal Party is of the view that the need for focusing on tackling the financial tsunami does not necessarily necessitate the deferment of consultation on constitutional reform, and that in theory, there should be no mutually exclusive relationship here. However, it can understand the Chief Executive's intention of minimizing conflicts and concentrating on coping with the crisis. We very much hope that the Government of the Special Administrative Region (SAR) can walk the talk and tackle the financial tsunami satisfactorily, so as to turn the crisis into an opportunity.

President OBAMA of the United States categorically pointed out yesterday during his first prime-time press conference that the passage of the Economic Recovery and Reinvestment Plan was a matter of extreme urgency. As the unemployment problem had been worsening, this would, he said, dampen consumption desire, plunging more people into unemployment. He therefore said that the American government must take actions to stop this vicious cycle. He added that the credit crisis in the financial market was not yet over, so the American government must join hands with the banking industry to restore market confidence in the banking system. I think all these comments are equally applicable to Hong Kong.

Actually, in September last year, when the Liberal Party submitted its expectations concerning the policy address, it already foresaw that the financial tsunami would deal very heavy blows to small and medium enterprises (SMEs). It therefore requested the Government to provide them with stronger support. But the policy address simply made no mentioning of SMEs. It was only after the Liberal Party had advised them again and again that they eventually came round and hastened to launch some schemes on assisting SMEs. But all such efforts are simply not strong enough. For example, in the case of the Special Loan Guarantee Scheme backed up by \$100 billion from our reserves, the loan amounts approved so far have just been 2%. This is far from being able to meet the credit needs of SMEs. Successful applications are especially rare among catering businesses. And they must pay very high interests, at a rate of P+5. We must not forget that the catering industry also employs large numbers of people. By now, the low-season effects after the Chinese New Year have gradually emerged. If enterprises fail to obtain timely financing for liquidity purpose, spates of business closures will erupt, and the situation will get out of control. The Government must come up with more ways to make banks extend credit to SMEs.

The Liberal Party has also been urging the Government to reconsider the example of Taiwan and offer consumption vouchers to all permanent residents of Hong Kong, so as to boost the market and avoid a dwindling of consumption desire that may lead to massive unemployment. Since the distribution of consumption vouchers, the tourism industry and emporium and retail businesses of Taiwan have all boomed. As estimated by some media, the multiplier effect of consumption vouchers may be as high as 300%, far higher than the 100% or 150% originally expected by the authorities. We must realize that rescuing the market is just like saving lives. Once the opportunity is missed, we will be unable to save anyone, however much we want to do so. In case the local consumption market really shrinks rapidly in the low season following the Chinese New Year, the "rice bowls" of the 300 000 or so employees in the catering industry will be at risk. The Liberal Party therefore thinks that the SAR Government must implement decisive measures to boost the economy. And, the distribution of consumption vouchers is certainly the best option.

Deputy President, last month, the Task Force on Economic Challenges (Task Force) put forward seven employment measures, but all these measures are unable to

MR ALBERT HO (in Cantonese): Deputy President, Mr Tommy CHEUNG's views should not have been put forward in today's debate. They seem to be completely irrelevant to the motion topic under debate.

DEPUTY PRESIDENT (in Cantonese): Mr Tommy CHEUNG, I hope that what you have to say is not really irrelevant to the motion topic. Maybe, you can try to relate your points to the motion topic.

MR TOMMY CHEUNG (in Cantonese): Deputy President, as Members have already heard, what I have said in my speech is actually related to the Chief Executive's announcement that the deferment of consultation on constitutional reform is entirely for tackling the financial tsunami. I have been trying to tell the Government that if consultation is to be deferred, If this is to be defended, I must ask whether the Government has to really walk the talk. I am

trying to explain the economic situation noticed by the Liberal Party. Deputy President, I do not think that I have deviated from the motion topic.

DEPUTY PRESIDENT (in Cantonese): Please continue.

MR TOMMY CHEUNG (in Cantonese): Deputy President, last month, the Task Force put forward seven employment measures, but all these measures are unable to help all those recently laid-off middle-class people to secure employment again. They can just provide some temporary relief to the pain felt by those who have recently entered the employment market for the first time. What is more ironic is that some members of the Task Force responsible for working out all these measures are from companies which have taken the lead in repeatedly laying off large numbers of employees. The Task Force has thus been given an ill name — Task Force on Layoffs. Therefore, the Liberal Party must make an appeal to all those companies to which members of the Task Force belong and ask them to also sign the "no layoff charter" initiated by us, so as to impart a positive message to society and maintain confidence.

Government officials of Guangdong are now ready to open their door wide, proposing eight measures to enhance their financial co-operation with Hong Kong. The SAR Government should "strike while the iron is hot" and grasp the opportunity to step up its efforts of assisting local financial industries and professionals in identifying business prospects and opportunities in the Mainland.

Governments all over the world have started to offer tax cuts as a means of attracting inward investment. Singapore, for example, lowered the profits tax rate last month from 18% to 17% to attract investment, which is just 0.5% lower than the rate of 16.5% in Hong Kong. Britain and France are respectively planning to abolish tax on dividends and *taxe professionnelle*, with a view to retaining foreign investments and enterprises. Faced with the global trend of shrinking investments, the Government must further lower the profits tax rate, so as to attract inward investment and create employment opportunities.

During the Chinese New Year Reception of the Legislative Council, the Chief Executive remarked that at this moment, all energies must be focused on boosting the economy, and all else must be put aside for the time being. The Liberal Party agrees to his view. It even thinks that we must also consider the possibility of deferring the handling of other highly controversial issues or major policies likely to arouse disputes in society, so that the commercial and industrial sectors can do their utmost and concentrate on preserving enterprises and the "rice bowls" of employees.

Deputy President, the Government's deferment of consultation on constitutional reform in response to the latest situation is of course not desirable. But the Liberal Party does not think that the decision is undesirable to such an extent that it deserves "strong condemnation". That said, we must add that the Government must honour its undertaking and commence consultation on constitutional development in the fourth quarter. There must not be any further delay because time is really running short.

I so submit.

MR WONG YUK-MAN (in Cantonese): Deputy President, we have long since got used to the capriciousness and bad faith of the Special Administrative Region Government led by Mr Donald TSANG. This time around, the excuse it uses for deferring consultation on constitutional reform is the need for concentrating on dealing with the economic crisis arising from the financial tsunami. He is not even afraid of being ridiculed by others for advancing such an excuse. He is so brazen, and he "bullshits" people day in, day out.

Just now, I said to Secretary Stephen LAM, "Your boss said 'bullshit'." He did not believe me, so I played the MP3 recording to him. But he refused to listen. Later on, I am going to condemn Donald TSANG for procrastinating constitutional reform, and I will request the Deputy President to permit me to play the recording once again. Does the Chief Executive always "bullshit" people? If the Deputy President wants to make a ruling on me, I must request her to also make one on the Chief Executive.

Saying "bullshit" is not so serious when compared with bad faith and capriciousness. He is already in Beijing, and he will listen to Beijing's instruction, that is, the instruction of incessantly procrastinating constitutional reform, right? He may even backtrack on democratization of Hong Kong, right? This is evident to all. His Secretary for Constitutional and Mainland Affairs, however, keeps arguing with me, repeating the same old points. And, he even accuses me of saying nothing new. Well, since both sides cannot say anything new, we should reason things out, right? He accuses the democratic camp of raising its stake again and again. What stake can the democratic camp place? The democratic camp has actually been backtracking all the time. How can anyone say that it has kept raising its stake?

What is said in Annex I and Annex II to the Basic Law? How were these two Annexes distorted in the interpretation of the Basic Law by the National People's Congress on 26 April 2004? Is there any contravention of the principle of gradual and orderly progress, which is stated clearly in the Basic Law? There is certainly a point, right? This is a very simple point, just common sense.

The composition of the Legislative Council is to remain proportionately unchanged, according to the interpretation of the Basic Law in 2004. And, in 2007, there was a similar interpretation. However, if this is to be the case forever, bro, how can there be any progress at all? Annex I and Annex II clearly permits the people of Hong Kong to discuss the method for selecting the Chief Executive in 2007 and that for forming the Legislative Council in 2008. They also set out the steps to take in case there is a need for any amendments. In this connection, what is the purpose of introducing any amendments? Should amendments aim at regression? Amendments should of course aim to make progress, right?

What we have in mind is really wishful thinking. I suppose amendments should at least lead to a big step forward, right? At least, the number of directly elected seats should be increased, right? At least, the number of directly elected seats should be increased and that of functional constituencies decreased in the Legislative Council. This is how all Hong Kong people perceive the issue, bro.

According to the interpretation of the Basic Law on 26 April 2004, the proportion is to remain unchanged, right? And, there will be no universal

suffrage in 2007 and 2008. At the end of 2007, the time when the National People's Congress made its decision, the authorities realized that their arguments could no longer stand. But could they seek any interpretation of the Basic Law again? The National People's Congress therefore stepped in and made a decision. The effect of a decision of the National People's Congress is the same as that of the Basic Law, right? Therefore, the Basic Law was once again distorted, right? They have been helping the bully to oppress the weak. They cannot advance any sound justifications. They each earn a salary of some \$300,000. Their meals are paid by him, right? In fact, these are all paid by us, right? But if they are to retain their positions, they must continue to do "shoe-shining", lick his boots and serve as the lackeys of the lackey. If they do not do so, how can they retain their positions? Am I correct?

In 2004, the introduction of universal suffrage for the two major elections of Hong Kong in 2007 and 2008 was completely ruled out. There was even no increase in the number of directly elected seats, not to mention the implementation of dual universal suffrage. This is the most absurd thing about the interpretation of the Basic Law. Well, knowing that there would be no universal suffrage in 2007, everybody simply gave up all hopes and stopped the fight. The democratic camp thus called it a day and backtracked, hoping that there could be universal suffrage in 2012. The point is that the request for universal suffrage in 2007 and 2008 was the common platform of the pan-democratic camp in the Legislative Council Election in 2004. But then, this was not possible, so the pan-democratic camp backtracked to ask for universal suffrage in 2012. Still, there is no approval for introducing universal suffrage in 2012. As decided by the National People's Congress at the end of 2007, the allocation of seats is to remain proportionately unchanged, and the system of voting in groups will also stay. In 2012, there will be no direct elections, no universal suffrage for the two major elections. How can they say the stake is on the rise? The truth is that there has been continuous backtracking. Let us wait and see whether there is going to be any backtracking again this time around. Backtracking again, right?

The authorities have been on the offensive, and the pan-democratic camp has been retreating. Then, he is even so brazen as to accuse the pan-democratic camp of raising its stake again and again. I must ask Stephen LAM, "What stake can we place? What stake can we still place?" The Secretary has

repeatedly sought an interpretation of the Basic Law and asked for a decision from the National People's Congress, so as to turn down Hong Kong people's demand for universal suffrage for the two major elections in 2012. The authorities themselves did conduct many opinion polls on the demand for universal suffrage in 2007 and 2008, right? The introduction of universal suffrage in 2012 is the aspiration of most Hong Kong people, right? The authorities have again and again suppressed Hong Kong people's democratic aspiration. The Secretary has been helping the bully to oppress the weak. Donald TSANG has also been doing so. He is a lackey, and the Secretary is a lackey of the lackey. That is why we are so miserable. All these top officials are paid so generously, but does the Secretary have anything to do now? We are paying this "useless guy" several hundred thousand dollars to keep his living. Apart from speaking like a tape-recorder, does he have anything else to do? He only repeats the same thing every day

DEPUTY PRESIDENT (in Cantonese): Mr WONG Yuk-man, please face the President when speaking.

MR WONG YUK-MAN (in Cantonese): Deputy President, please ask him whether he has really done anything at all. He is so brazen, and he still occupies this position. I must tell him that anyone who is slightly more scrupulously and less brazen should have resigned. The Chief Executive's purpose of deferring consultation on constitutional reform is obvious to all.

Concerning Mr Albert HO's motion today, frankly speaking, people will just say a few words here as usual and then call it a day. The motion will definitely be negated because of the presence of functional constituency Members. Am I correct? It will certainly be voted down. The Liberal Party has come forward and announced its stance. Well, the Liberal Party is really something, I must say. Let me explain my words to the Secretary. At present, only three Members belonging to the Liberal Party remain here. They have all been returned by functional constituency elections, right? Donald TSANG simply regards them as a lifeless dog. For the first time, there is no Liberal Party member on the Executive Council — LAU Wong-fat must not be counted as one because he has withdrawn from the party, right? But the Liberal Party

still tries to defend the authorities. They are really "wonderful". I must say to Members that if Donald TSANG was slightly more scrupulous, he should really give the Liberal Party a hug and a kiss. Am I correct? They are such loyal friends!

We have been opposed to the authorities all the time. How can it be strange? Let us take a look at the Liberal Party now. It is still so humble, trying to help the bully oppress the weak. Economically, Hong Kong is now in possession of huge amounts of capital. The only problem is how the Government is going to make use of the money, right? However, the authorities have done nothing at all. And, they have even put forward such an excuse. If the authorities want to defer constitutional reform, then as mentioned by Mr Tommy CHEUNG, they might as well put forward some policies immediately to solve the problems faced by Hong Kong

DEPUTY PRESIDENT (in Cantonese): Mr WONG Yuk-man, your speaking time is up. Does any other Member wish to speak?

DR RAYMOND HO (in Cantonese): Deputy President, at the Chief Executive's Question and Answer Session last month, the Chief Executive disclosed that in order to enable the community to concentrate on tackling economic problems, he had decided to postpone the public consultation exercise on the methods for selecting the Chief Executive and forming the Legislative Council in 2012 from the first half of this year to the fourth quarter of this year.

(THE PRESIDENT resumed the Chair)

Naturally, I am disappointed at this decision because I have always maintained that public consultation on Hong Kong's future constitutional development should be launched as soon as possible, so that all walks of life in society can fully voice their views to facilitate the forging of a consensus. Inevitably, the Government's decision has led to speculations in various social

sectors. We do not know the actual considerations underlying the Government's decision. Precisely for this reason, various conspiracy theories have managed to find their own markets.

The negative economic impacts of this global financial tsunami have started to emerge in Hong Kong one by one. This crisis is unprecedented, both in terms of economic impacts and the extensive scope of affected places. Is the Government too conservative in its assessment of the overall situation at present? No one can possibly give a sure answer. However, since the Government does not have any confidence that it can properly handle the economic problems and the public consultation on constitutional reform simultaneously at this critical moment, we can only accept the reality despite our reluctance, in the hope that the Government can first deal with the current economic crisis and then immediately conduct a satisfactory consultation exercise on constitutional development. This is better than any underestimation of the situation by the Government. At least, we can avoid the possibility of Hong Kong being caught in the financial tsunami and constitutional disputes all at the same time.

Although the postponement of public consultation on constitutional development is not in line with my hope of launching the consultation exercise as early as possible, considering that there is still quite some time to go before 2012, so even if public consultation is postponed until the latter part of this year, there should be enough time for public discussions. As a matter of fact, the authorities concerned have already submitted to the Panel on Constitutional Affairs of this Council the latest timetable for public consultation and legislative procedures.

It is understandable that the public are disappointed at the Government's failure to conduct public consultation on constitutional development in the first half of this year as promised. However, in the midst of this global economic crisis in a hundred years, the Government's move is just meant to minimize social disputes and conflicts, so that we can all join hands to overcome the challenge. For this reason, we should actually accept this as a strategic adjustment made by the Government. But the success or otherwise hinges very largely on people's understanding and support. President, the Government should give the public a clear explanation, so as to minimize unnecessary speculations in society. President, I so submit.

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

MR FREDERICK FUNG (in Cantonese): President, the Government has once again let people down and failed to honour its promise to the people.

I no longer want to talk about the Chief Executive's remark of "doing something big" and seeking to tackle the issue of universal suffrage once and for all during his term of office. President, I believe you can also remember what is stated clearly in the policy address announced by the Chief Executive in October 2008. It reads, "In the first half of 2009, we will consult the public on the methods for electing the Chief Executive and for forming the Legislative Council in 2012. I hope that in the coming years, different sectors and political parties will be pragmatic and make good use of the time to forge a consensus for the electoral arrangements in 2012." (End of quote) Unfortunately, after a short span of only three months, the Chief Executive himself went back on what he said previously. In the Chief Executive's Question and Answer Session in mid-January, he said that as priority must be accorded to economic and livelihood issues, and in consideration of the possibility that economic difficulties might reach their height in the first half of this year, the Government must review and re-set the priority of major policy proposals originally scheduled to be put forward this year, adding that he had thus decided to postpone consultation on constitutional reform from the first half to the fourth quarter of this year.

As a matter of fact, a rather negative assessment of the crisis arising from the financial tsunami is already found in the policy address. It is pointed out that its destructive force is much stronger and more widespread than the Asian financial turmoil in 1997, and that the recovery will take longer and be more difficult. I hope that such an assessment has not been made lightly. And, it must also be pointed out that the assessment already depicts the worst that can be expected to happen as a result of the financial tsunami.

President, frankly speaking, the current situation in Hong Kong is not as bad as that during the Asian financial turmoil. This can be shown by the actual unemployment rate and various economic data. In the fourth quarter of 2008, the total turnover of the retail sector stood at \$25.3 billion, recording an increase of 0.8% year on year. The total revenue of food establishments even recorded a

year-on-year increase of 8.3%, standing at \$20.3 billion. Certainly, I will not underestimate the severity of the financial tsunami, and I also understand that Hong Kong may be hit by the second wave and even the third wave of the financial tsunami. I only want to point out that while predicting the worst-case scenario from the financial tsunami, the Chief Executive must still have the courage to set a timetable for conducting consultation on constitutional development. The actual shape of the economy is not as bad as predicted by the Government, but why does it still postpone the consultation exercise?

President, the authorities have tried to delay constitutional development on the excuse of economic difficulties, saying that we must reduce social disputes and conflicts in order to concentrate on dealing with the economic crisis. All these excuses are mere clichés which only show that they are trying to downplay the need for constitutional reform by singing the old tune of "concentrating on economic development". Once again, they argue that the issues of economic development and constitutional reform cannot be handled at the same time. They even describe these two issues as mutually exclusive, shelving constitutional reform altogether. What is the logic of this argument?

President, in political science, there is a concept about the change-resistant inertia of an "established" political regime. It is said that those in power all have the tendency of delaying reform as much as possible. I believe Member can still remember the "prerequisite theory" put forward by the Government and pro-establishment figures years ago, and how they argued that the development of democracy in Hong Kong could only be possible when certain conditions were fulfilled. Many unthinkable conditions were put forward, including the "priority of economic development", the "immaturity of political parties", the "immaturity of the population" (It is not known whether the advocates themselves are among such a population), "universal suffrage is no panacea" and "Hong Kong being a totally economic city should concentrate on economic development". In this connection, everyone knows that when compared with many democratic countries, Hong Kong is actually in a better position in terms of many objective conditions, including the stage of economic development, people's cognizance and ownership of private properties. Besides, we also have a sound legal system based on the rule of law, a solid economic foundation and a mature civil society. In all these respects, we are better than Europe and the United States in the 1950s and 1960s. What is more, as shown by many petitions and marches, especially

those in 2002 and 2003 which recorded a turnout of 500 000, the quality of Hong Kong people is very high. There are also press freedom and the free dissemination of information. All these are precisely the ideal conditions for the development of democracy.

President, I really do not want to get entangled in all the disputes about the "pre-requisite theory" once again. All the related arguments actually involve many comparisons in political science and even the analyses of statistical data and various phenomena. And, the conclusions are mostly drawn with the benefit of hindsight. But practical politics tell us that no country in the world will withhold the implementation of democracy until all the conditions are met. Another point is that it is hard to decide which of these conditions are relevant to the development of democracy, and there is also the problem connected with who can decide whether all the conditions are ripe.

All this aside, I believe that as long as the Government's procrastination and serious prejudice against democracy persist and pro-establishment figures refuse to relinquish the political free lunch they enjoy, the authorities will always put forward hundreds and thousands of excuses to resist and delay the implementation of universal suffrage, whether the shape of Hong Kong's economy is good or bad.

President, constitutional reform is actually a matter of extreme urgency. What Hong Kong people want are a fair, impartial and stable political environment and a Special Administrative Region Government that can lead all Hong Kong people in their efforts to cope with economic adversities. All along, a "bias towards business" attitude has dominated the overall development of Hong Kong, and the political system is basically monopolized by the Government, consortia and pro-establishment factions. As a result, the ordinary masses do not have any opportunities of political participation, not to mention any opportunities of sharing the fruit of economic development. But when problems and difficulties arise, they are invariably the hardest-hit. When it comes to the political system, all institutions, including functional constituencies and even statutory organizations and advisory bodies, are tailor-made for those with vested interest. Those with vested interest are selected as members of these bodies which decision is naturally a bias towards these people, thus leading to an

unfair distribution of social resources at the end. The lower strata has all the time been ostracized by main-stream society, resulting in social division and a huge gap between policy-makers and the common people.

President, as early as in the TUNG Chee-hwa era, we already came to realize all the problems that can arise from such long-standing political inequality and the anachronistic political system. More recently, there were the whole series of political crises that occurred starting from the appointment of Deputy Directors of Bureau in the middle of last year. Some examples were the haphazard fashion in which the foreign domestic helpers levy was waived, the proposed introduction of means-testing for "fruit grant" applicants against public opinions, the refusal to admit mistakes after the outbreak of the Lehman Brothers minibond incident and the slow response to the stranding of Hong Kong people in Thailand. I really want to ask the Chief Executive and the Secretaries concerned, especially Secretary LAM, "What can people still expect from such a government? How can you run Hong Kong properly? Are you still capable of delivering Hong Kong from the present difficulties and tackling all the imminent economic problems?" The Government must answer the questions on its legitimacy and its bias to those people with vested interest.

President, I hope the Government can tell us honestly whether it still believes that universal suffrage can be implemented in 2012, or whether universal suffrage can be eventually implemented in Hong Kong. It must not give us mere words. We hope, instead, it can take some actual steps.

MS CYD HO (in Cantonese): President, I rise to speak in support of Mr Albert HO's motion today on condemning Mr Donald TSANG for procrastinating about constitutional development.

When Mr TSANG campaigned for re-election as Chief Executive, he made the pledge that he would completely tackle the issue of constitutional reform in his term of office. In the 2007-2008 policy address, he also said that promoting democracy was a constitutional responsibility vested in the Chief Executive of the Hong Kong Special Administrative Region under the Basic Law, and that it was his responsibility to take Hong Kong towards universal suffrage. We did not succeed in achieving universal suffrage in 2007-2008, but seeing what was

written in the policy address, we still cherished the hope of implementing universal suffrage in 2012. We once thought that the Chief Executive would join hands with us to "do something big" and implement such a constitutional reform during his term of office. But then, shortly afterwards, the Government started to procrastinate, failing even to launch any public consultation. At the end of 2008, he even told us that owing to the need for tackling the financial tsunami, the public consultation exercise would be postponed until the end of 2009. Today, the public will certainly wonder whether that "something big" mentioned by the Chief Executive actually means making a fool of us, the seven million people in Hong Kong.

Here, I would like to discuss the question of timetable with the Secretary. Just now, the Secretary said that amendments to Annex I and Annex II to the Basic Law would be ready by the end of 2010, and the remaining time should be sufficient for scrutinizing the two pieces of legislation relating to constitutional reform, namely, the Chief Executive Election Ordinance and the Legislative Council Ordinance. Hearing this, I immediately wondered why the District Councils Ordinance had not been mentioned. Does this imply that there is already a conclusion so soon? It must be pointed out that even the constitutional reform package of 2005 also touched upon the role of District Council members. Consultation has been delayed again and again, and the consultation period is shortened to three months only. While deeming that time is insufficient, we even have reasons to suspect that this is going to be yet another farcical consultation exercise, which explains why the adequacy of time is simply not an issue.

President, no one can possibly foretell the outcome of any consultation exercise. Am I correct? Even if there is a general direction, it must still be asked, "What will be the changes to the nominating committee for the Chief Executive Election? Who will be the members? How are Legislative Council seats going to be allocated? Will there be any need for the re-delineation of constituencies and defining the identity of electors? Or, are we supposed to adopt the District Council package previously put forward? How are we going to choose District Council members to serve as members of the nominating committee?" Should they give us just seven months for scrutiny? Amendments to Annex I and Annex II to the Basic Law will only be passed as late as the end of 2010. Very soon, in November 2011, District Council Elections will be held. We will only have seven months for scrutinizing three

pieces of electoral legislation. Do they actually think that it will not be necessary to conduct any consultation on the relevant details, President? I am afraid that at the time, even if the Legislative Council once again "burns the midnight oil", convenes meetings round the clock and uses all the three conference rooms for inviting various deputations to voice their views, it may not be possible to complete the task in good time. Procrastination will result in the shortage of time. Haste will lead to omission.

President, even the Control of Obscene and Indecent Articles Ordinance takes four months for consultation, and this is just the first-round consultation. There will be the second-round consultation. But in the case of constitutional reform, an issue of great concern to so many Hong Kong people, the consultation period is just as short as three months. Not only this, the consultation exercise will not be launched until as late as the end of 2009.

Actually, to describe constitutional reform and tackling the financial tsunami as mutually exclusive is just the same as vilifying democracy. Such a description will impart a message to society that if we go ahead with constitutional reform, we will be unable to tackle the financial tsunami and promote economic development. We have been hearing this argument for some 30 years. But they are still saying so today. The Hong Kong Special Administrative Region (SAR) Government is made up of 150 000 civil servants plus 30 politically appointed senior officials. Do they mean that these people must be deployed all at the same time to tackle the financial tsunami? If it is indeed true that controversial issues should not be brought up because of the financial tsunami, then what is the reason for continuing with the consultation on the Control of Obscene and Indecent Articles Ordinance? What is the reason for pressing ahead with the consultation on health care financing?

President, I may cite a very simple example to illustrate my point. If we really need so many people to tackle the financial tsunami, then why should the Secretary still sit here today to discuss the issue of constitutional reform? Why is he not deployed to work alongside Secretary Rita LAU or the Secretary for Labour and Welfare to tackle the issue of employment? Therefore, President, such sophistry will not only vilify democracy but will also fool the people of Hong Kong.

We can observe from past opinion polls that all along, more than 60% of Hong Kong people hope to see the early implementation of universal suffrage. Our demand for universal suffrage has indeed been repeatedly denied by the National People's Congress in its interpretation of the Basic Law and by the SAR Government. But there are still four whole years to go before 2012, so we should have enough time to conduct proper consultation. Therefore, I hope that the Government can launch consultation as soon as possible in the second quarter of this year to allow interaction between public opinions and the SAR Government. Then, on the basis of the views collated in the first round, the second-round consultation can proceed. Following this, we can discuss Annex I and Annex II to the Basic Law in detail. When all this is over, there will still be enough time for scrutinizing the three pieces of electoral legislation.

President, the SAR Government and Chief Executive Donald TSANG are not the only ones to be condemned. Several political parties, such as the Democratic Alliance for the Betterment and Progress of Hong Kong and the Liberal Party must similarly be condemned. These political parties have been revising their platforms again and again. Every time when an election approaches, they will claim that they support the implementation of universal suffrage after the upcoming election. But when the election is over, they will forget all they have said. And they will revise their party programmes. The Chief Executive has now also learned such a trick. Therefore, I must call upon the people of Hong Kong to see the truth. Why do so many political parties and politicians fail to make good their promises? Are objective constraints the reason? Or, are their personal positions the cause? I believe Hong Kong people can see the truth clearly. Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): President, I rise to speak in opposition to the motion.

We should realize that constitutional reform for Hong Kong is an issue that involves the Central Authorities in the final analysis. I have repeatedly said that Hong Kong is not an independent nation, and it is just a Special Administrative Region (SAR) of China. The establishment of an SAR is no doubt an innovative concept and a new trial. But everybody still wants to maintain his or her own

position. May I ask all the Members here how many debates needed to be conducted before they are willing to change their political convictions or ideas? All Members, be they belong to the so-called pan-democratic camp or the pro-establishment camp, will simply repeat their own convictions and beliefs, and afterwards, they will cling to their respective positions all the same. We can only blame the SAR Government for failing to make those concerned, those who repeat their stances over and over again, realize what they are actually capable of doing.

The SAR Government should not mislead the public, should not mislead Hong Kong people. Rather, it should make Hong Kong people realize their own circumstances and positions. Do you want independence? Do you want to instigate an uprising? How can it be possible to give any justifications for such actions? We often say that Hong Kong belongs to us, and that Hong Kong is our home. But what is Hong Kong's relationship with China? We must understand this relationship. The SAR Government, the Secretary concerned and the Secretaries of Departments are duty-bound to tell the people of Hong Kong clearly what they are able to get. By remaining silent on this, the Government is actually misleading Hong Kong people. This is a matter of responsibility.

What I want to point out is that the Chief Executive must relinquish his knighthood. Why? Since he has accepted the appointment by the People's Republic of China as the Chief Executive of Hong Kong, as the one person representing all the seven million Hong Kong people, he must give up this title. The reason is that it is now after 1997. Although many Secretaries of Departments, many Directors of Bureaux, many government officials, and even many friends of his do not dare to advise him, I am sure that he can hear what I am saying now. He must give serious thoughts to this advice, because three to four years later, when his term of office expires (I of course hope that he can complete his term of office), it is absolutely possible that he will be offered appointment by the People's Republic of China as a Vice-Chairman of the Chinese People's Political Consultative Conference. This means that he will be a State leader then. I am sure that a person as clever as the Chief Executive will not lightly turn down the offer. That being the case, it is certainly necessary for him to consider the idea of giving up his knighthood and all the decorations and honours previously conferred on him by the British Government. Doing so can show that he is willing to serve as the leader of Hong Kong people in their attempts to build a new society and face new challenges.

I believe firmly that it will be a bit extreme for the Legislative Council to criticize or even condemn him. The reason is that any constitutional reform will invariably involve three sides. Did Members not already try to fight for the implementation of universal suffrage for the two major elections in 2007 and 2008? But it is already 2009 now. At the time, Members still dreamed about the implementation of universal suffrage in 2012. But the Central Government has made it very clear that we must wait until 2017 before there is universal suffrage for the election of the Chief Executive. Whether Members believe this, or whatever the nominating method may be, the time will soon arrive anyway.

Personally, I think it cannot be denied that the consultation exercise may be marked by farcical democratic representation. But whatever the outcome of consultation may be, and whether the consultation is of six months, three months or one year duration, will Members of this Council abide by it anyway? Is it not true that Members themselves will still cling to their election objectives and personal political positions? Therefore, it is not appropriate to put the blame on the consultation exercise. Consultation is not everything. It is just a step in the historical process. As Members, we must not put all the blame on "consultation". We must have confidence in ourselves.

Many Members say that they must consult their respective sectors. This is simply an irresponsible argument. It does not matter whether Members are returned by functional constituencies or by direct elections, whether their platforms are given to them by the people, and whether they have ever changed their platforms, they will all be fine as long as they have the courage to bear the responsibility. This is also the case with the current SAR Government. Our Chief Executive Donald TSANG is actually a very astute man. He should courageously assume all responsibility for all policies. This is also the case with Members. We must bear the responsibility. What I mean is that we must show our political beliefs and do what we deem fit. And, if the sectors concerned think that our styles and approaches are not appropriate, they will naturally not vote for us in the next election. This is the most important point.

Naturally, as political figures or participants (we are not qualified to call ourselves statesmen or even politicians), as participants, we must also realize the truth of this saying: He who can suit his actions to the time is wise. Many people in Hong Kong are wise in that sense because they can suit their actions to the time, and they are ready to do a "U-turn" at any time, both ways. Therefore,

what we demand from the Chief Executive is the courage One especially important issue in Hong Kong now is the Lehman Brothers minibond incident. If he cannot solve this problem, how can others have any confidence in Hong Kong as a financial centre? If he cannot solve the problem, and you are here creating, making If several dozen thousand people take to the streets on 1 July I do not think that this is something the Chief Executive and the government officials concerned wish to see.

Therefore, I personally think that the most pressing issue now is not consultation on constitutional reform. Instead, it should be how we can solve the Lehman Brothers minibond problem. The reason is that this really affects people's perception of Hong Kong as a financial centre and their sense of belonging. If people cannot live and work happily, and if they are instead given all sorts of trouble, these are the challenges the SAR Government has to face.

I personally think that the most important thing about consultation on constitutional reform is to abide by the ratio of 50:50 for functional constituency seats and directly elected seats in 2012 as already passed by the Standing Committee of the National People's Congress. The Government can only seek to tackle the issue on this basis. Therefore, any attempts to arouse too many disputes among the people are not warranted.

President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, the Confederation of Trade Unions supports Mr Albert HO's motion of condemnation. Mr Albert HO remarked just now that this motion of condemnation was intended to "back up" the Chief Executive in the hoping of urging him to do better. Actually, this motion of condemnation can also "back up" the Secretary, so that he will not be plunged into idleness. At present, he is simply ordered by the Chief Executive to remain idle and stop working. He is ordered to defer consultation on constitutional reform for half a year until the end of this year — precisely, it should be deferment for nine months until the fourth quarter of this year, not only six months. The Secretary will have no work to do for almost nine months, so how can he say to the people of Hong Kong that he should still receive full pay although he will have no work to do for nine months? Actually, he is trying to "back up" the Secretary. If this motion of condemnation is passed and the

Government then hastens to launch consultation, the Secretary will have work to do. Since the Secretary is practically ordered to remain idle, should he still have the face to defend such a practice?

President, the essence of this motion is the Chief Executive's "breaking faith with the people". The people are thus disappointed and outraged, feeling very sorry for Hong Kong. Even the Chief Executive is not a person of integrity, so the Government is not a government of integrity. Without integrity, how can they govern Hong Kong? This is not the first time. On the issue of constitutional reform, we have been "fooled" by Donald TSANG several times. The most notable example is the pledge he made to the people of Hong Kong during his election campaign, the pledge that he would "do something big", putting forward a final package to solve the problem of universal suffrage once and for all if he was to be elected the Chief Executive. He said that he would solve the problem of universal suffrage once and for all during his term of office. Has he? He has now made it clear that he will only deal with the electoral arrangements for 2012, rather than holding any discussions on the constitutional arrangements for 2017 and 2020 during his term of office. It is therefore obvious that there will be no discussions on the further development of democracy because the National People's Congress has already given an interpretation of the Basic Law in this regard. What we are doing now is to oppose the interpretation of the Basic Law by the National People's Congress, and we will continue to do so, in the hope that there can be some progress in democracy in 2012.

However, if the Chief Executive only deals with the arrangements for 2012, that is, if everything is to be done within the framework set after the interpretation of the Basic Law by the National People's Congress, there will be no further development of democracy. Nor will it be possible to tackle the issue of universal suffrage once and for all. Therefore, by making such a pledge in that particular year, he already "fooled" Hong Kong for one time. At that time, his integrity already went bankrupt. Then, he has recently deceived Hong Kong people once again on the issue of constitutional reform. He originally promised to conduct consultation in early 2009. But the consultation exercise has been deferred to the fourth quarter of 2009. This is also an instance of breaking faith with the people, having implications on his integrity. What is the greatest integrity problem with him? The problem lies with the justification he puts

forward. All of us know that his justification is simply no justification at all. The real reason must be something else. He explains that since we must all concentrate solely on tackling the financial tsunami, consultation on constitutional reform must be postponed.

Some have rightly asked the Government, "Will the financial tsunami be over by the fourth quarter of 2009? The situation may even be worse by that time. In that case, what is the Government going to do?" The Government has replied that consultation will be launched all the same. If it is really going to do so, then the justification it advances is indeed hardly tenable. Frankly speaking, if the Government's justification is really tenable, then, perhaps, it may not need to do anything at all in the next few years. The reason is that the financial tsunami is likely to last for quite some time. After the first wave, there may be the second wave. And, no one really knows when the third wave may hit us. When will the financial tsunami come to an end? No one knows. If the Government resorts to the need for concentrating on tackling the financial tsunami as a justification Honestly, President, the authorities have not formulated any effective measures to tackle the financial tsunami, but then, it has used it as an excuse in a bid to fool Hong Kong people.

Everyone in Hong Kong actually knows the real reason for the postponement. But the Government has tried to avoid mentioning it. The real reason is that this year is a very sensitive year, being the 20th anniversary of the 4 June Incident and the 60th anniversary of the founding of the People's Republic of China. And, between 1 October and 4 June, there is 1 July. In other words, the Government actually wants to avoid any possible trouble on the three important days of 4 June, 1 July and 1 October. It simply does not want to hold any discussions on constitutional reform before these three important days. It hopes to cool down the sentiments surrounding all political issues, so as to avoid trouble on these sensitive days. The fourth quarter is precisely the ideal time for launching consultation. Therefore, when the Government simply gives us such an idiotic justification rather than disclosing the real reason, I must say that it has insulted Hong Kong people's wisdom, treating all of them as imbeciles. The Government has broken faith with the people, and its integrity has gone bankrupt. But it has still sought to deceive Hong Kong people by resorting to such an idiotic excuse. How can we help condemning it? Actually, we are already very lenient by choosing to make a condemnation only.

President, second, Secretary LAM said just now that there would be a consultation period of three months. The formulation of a constitutional reform package is a very big and important task, so how can three months be sufficient for consultation? This can also show that the Government simply does not have any sincerity in conducting any consultation. The Government must have prepared a package, and it only wants to conduct a farcical consultation exercise as a matter of formality before putting it forward. All will just be farcical consultation. If the Government wants to listen seriously to people's opinions, how can three months be sufficient? This is simply impossible. Therefore, when it comes to this consultation exercise, all can observe that the three-month consultation exercise is bound to be farcical in nature — it might be longer than three months as originally planned by the Government, but since there has been incessant postponement, it must be shortened to three months due to a shortage of time.

President, the third major issue is about governance ability. The present excuse of the Government can actually show that its governance ability is very low. There is this word in English — multi-tasked. All governments are supposed to simultaneously deal with a myriad of problems and issues. But we now learn to our surprise that this Government is not capable of doing so. It is not "multi-tasking". It is indeed very foolish for the Government to use this as the excuse because it actually implies that the Government is incompetent, being able to deal with only one task at any one time. And, it may also be very dangerous to put forward such an excuse. Many other policy issues are also marked by controversies. For example, there is opposition to the setting of a minimum wage. In that case, we must stop all discussions on this issue. And, many people also oppose measures to tackle pollution. In that case, we must stop trying to tackle the problem. Society as a whole will The collapse of governance will ensue.

Therefore, President, it is simply a waste of time and efforts to hold this debate today. It will be better for the people to join the march on 1 July, to display "people's power" to the Government. Thank you, President.

MR IP KWOK-HIM (in Cantonese): President, while we are debating the public consultation on constitutional development in this Council, the majority of the

public are concerned about the ferocity of the second wave of the financial tsunami, and the impact of the financial tsunami on our economy and society. Many people are also worried about whether they can preserve their jobs and their wages.

The scope of influence and impact of this financial tsunami is unprecedented. To tackle the financial tsunami has become the top priority of all governments in the world in their governance agenda. The facts tell us that the negative impacts of the financial tsunami on Hong Kong have surfaced gradually. After the Spring Festival, there is non-stop bad news of layoffs and wage reduction. Large corporations such as the HSBC and the PCCW that are used to be regarded as "golden rice bowls" in the eyes of the public have recently set off a wave of layoffs and pay cuts. Thousands of employees may be affected. Even though some banks have not sacked any employees, they have raised their performance indicators in recent months. Those who cannot attain the target feel insecure. Other sectors are not optimistic either. Take the hotel industry as an example. There is a rumor that several five-star hotels are going to request their staff to take no-pay leave.

According to the latest figures, the number of negative-equity mortgages in residential property has increased sharply to 10 949 cases during the fourth quarter last year, a drastic increase of 330% compared with the third quarter last year. The latest unemployment rate for the period between October and December 2008 as announced by the Government on 19 January was 4.1%, an obvious increase of 0.3% compared with the previous quarter. Economic analysts and academics have expected a continuous worsening of unemployment rate which will reach 6% at its peak. Anxieties about unemployment and worries over wage reduction have gradually permeated the community. At this critical moment, the public expect that the first and foremost task of the Government is to deal with the impact of the financial tsunami on Hong Kong. I believe this is an undisputable fact.

Constitutional development is crucial to the overall development of Hong Kong and the DAB is very concerned about it. Regarding the implementation of universal suffrage in Hong Kong, the Standing Committee of the National People's Congress (NPCSC) has decided that the Chief Executive may be elected by universal suffrage in 2017 and that all Members of the Legislative Council may be elected by universal suffrage in 2020 if there are a consensus in the

community and two-thirds majority support in the Legislative Council. The Chief Executive returned on the basis of consensus and in accordance with the Basic Law should deserve respect by all sectors in the community.

Regarding the two electoral methods for 2012, pursuant to the basic framework set out by the Decision made by the NPCSC on 29 December 2007, the Chief Executive will not be returned by universal suffrage in 2012. As for the Legislative Council election in 2012, the equal proportion between Members returned by functional constituencies (FCs) and Members returned by geographical constituencies (GCs) through direct elections shall remain unchanged. I believe this is already a fact.

Therefore, in formulating the two electoral methods for 2012, we have to adhere to the stipulations of the NPCSC. Meanwhile, the DAB opines that there is no need to bundle up the electoral methods for 2012, as well as 2017 and beyond because there is plenty of time to study and deal with the electoral methods for 2017 and beyond. When discussing the two electoral methods for 2012, it is inevitable that the elections in 2017 and 2020 are touched upon. However, the two electoral methods for 2017 and 2020 cannot and should not be regarded as the precondition to the formulation of the two electoral methods for 2012. Some Members mentioned the position of the DAB towards FCs in their speeches just now.

In fact, on 7 January, I, on behalf of the DAB, made our position clear in this Chamber, and I quote, "The DAB considers that since various sectors in society still hold different views on how the FC elections should be dealt with, in-depth discussions and exploration by various sectors in society should continue, so as to reach a consensus that all Members should be returned by universal suffrage. However, this matter should not be bound by Article 25 of the convention, which is not applicable to Hong Kong." (End of quote) During the 2008 Legislative Council Election, the DAB repeatedly pointed out that regarding the electoral methods for FCs which had been in practice for more than two decades, the right to vote was not universal. This is an objective fact. This definitely cannot be an integral part of the future Legislative Council which is returned by universal suffrage. Thus, the FCs, which are formed according to their existing electoral methods, are not compatible with universal suffrage and should not continue to exist. But we should not rule out any FC seats which

carry elements of FCs but are returned by universal and equal election. We should not consider that they should not exist. The DAB does not hold such an opinion. Instead, a consensus in society is necessary.

President, the DAB considers that matters should be prioritized according to their importance and urgency. At present, the most important matter is for Hong Kong to unite as one to tackle the financial tsunami. If the economy is battered and the community is unstable, how can we take forward the constitutional development? On the premise of having enough time to complete the constitutional arrangement for 2012, the DAB agrees with the Government about the deferment of the consultation on constitutional development by a few more months so that the SAR Government can concentrate its energy and launch all strengths in the community to combat the financial tsunami. Hence, the DAB opposes Mr Albert HO's motion.

President, I so submit.

MR LEE WING-TAT (in Cantonese): President, the truth has finally been uncovered. I am very grateful to Mr IP Kwok-him, the DAB's vice-chairman, for expressing the DAB's views. I have listened very attentively to his speech. We can only say that some Hong Kong people, including Mr LIAN Yi-zheng, the chief editor of the Hong Kong Economic Journal, have had a fleeting moment of joy — but for only a little more than a week. Mr LIAN considers that the DAB's view on the issue of constitutional reform is now more open. As LAU Kong-wah has not delivered his speech, he can respond later should I misunderstand their position.

I heard Mr IP Kwok-him say that society was still divided over functional constituencies (FCs), and now, it was most important for a consensus to be reached before a proposal acceptable to all could be formulated. He proposes two elements for consideration. The first element is that the existing suffrage approach, which is not universal, cannot be continued with the introduction of universal suffrage in the future. However — most importantly, however — do all the elements of the existing arrangement of FCs have to be ruled out? Not necessarily. What is he actually talking about? He is actually talking about the nomination procedure.

I hope have you been misunderstood by me because the election involves only several steps: first, nomination; and second, voting. At present, the DAB merely accepts universal voting. However, there seems to be restrictions on nomination, though the restrictions have not been specified clearly. Would medical practitioners be nominated by medical practitioners in the future for choices to be made by all Hong Kong people? Or medical practitioners might not be nominated by medical practitioners. Instead, two persons could be nominated by an organization comprising medical practitioners or two persons nominated by the general chambers of commerce for the voters to choose from, but the two persons would be more or less the same. So, would the preference for universal suffrage be genuine? I am extremely disappointed about this because I have not exchanged any views with Mr IP.

I saw Mr IP Kwok-him on the television beaming with smiles and in contentment, as if he was embraced by the spring breeze — the expression "spring breeze" has become immensely popular recently — he said, as if he was embraced by the spring breeze, that the DAB had its own point of view on the policy. He stated that since the Chief Executive could be returned by universal suffrage, the Central Government would naturally accept the Chief Executive to be elected. Moreover, the abolition of FCs would mean that there would be no more candidates elected from FCs because universal suffrage would be implemented instead. Therefore, judging from Mr IP's remark, the DAB has simply had no principle of supporting universal suffrage, so to speak, insofar as the Legislative Council elections are concerned. As for the election of the Chief Executive, Mr IP has not mentioned anything about it. However, judging from this view, the DAB seems to accept a nomination process with a higher threshold, or even with a screening mechanism, for the public to make choices.

President, why am I making these two points of view? Because even the Secretary should be aware that these issues have been discussed many times by the Commission on Strategic Development, and yet the divergence in opinion can still not be narrowed. Even if the divergence has been narrowed, the impact is still very little, only that the most extreme views have been screened out. I remember Dr Priscilla LEUNG suggested at that time that the Government be allowed to examine the quality of candidates. After I gave her a dressing down in a newspaper, she made a clarification. I queried how she could have possibly said something like that as her suggestion was against the Basic Law. Now, she has stopped making such remarks.

The third point I would like to make concerns the President. President, I feel very happy — though you cannot take part in the debate today — why? President, the attitude adopted during your interviews by *Sing Tao Daily* and *South China Morning Post*, was very open. You were close to saying, given that universal suffrage was to be implemented, the results of universal suffrage must be accepted, regardless of whom would be elected and whether the persons elected were to the liking of the Central Government. You even said that there would be no more FCs when universal suffrage was to be fully implemented, and so everybody had to be prepared for the approach of this day in the world. What sort of point of view were you holding when you, as a member of the DAB, made these remarks in matching the remarks made by IP Kwok-him, the vice-chairman of the DAB? Is it because the Central Government is still inconclusive at present and so Mr IP and you adopt a relatively liberal and open attitude in expressing personal or private views to let the people know that President TSANG and vice-chairman IP are actually quite open when the Central Government has yet to make a decision? However, once "Grandpa" of the Central Authorities make a decision and tighten their grip, everyone will jump on the bandwagon. However, this is not necessarily the case. According to some critics, this is not the case. Whenever constitutional issues are discussed before a decision is made by the Central Authorities, all colleagues from the DAB will definitely adopt an open attitude first. However, they will backtrack once a decision is made.

President, nothing can really be done now. You cannot take part in the debate today. Nonetheless, you have accepted the interviews by *Sing Tao Daily* and *South China Morning Post* and expressed a lot of your views. I do have some doubts. Given that you cannot join the debate today, you might as well accept another interview — not necessarily by *Sing Tao Daily* or *South China Morning Post*, for you can accept an interview by *Apple Daily* or a television station — and state your views on this issue again by explaining that the DAB and you have already had a clear position on this issue that you will, regardless of the decision made by the Central Government in the future, uphold your views, choose what is good and hold fast to it, and tell the Central Government from the standpoint of the Hong Kong people that, given that universal suffrage will be implemented — said to be 2017 at the latest — this means that the Central Government has accepted that there will be a chance for a candidate accepted by it to win as well as a chance for a candidate not readily acceptable to it to be elected.

Actually, I share Mrs Regina IP's views this time around, despite the great divergence of views between her and me on other issues. First, the majority of Hong Kong people are actually supportive of the middle course. Most of the ballots, whether cast in accordance with the views of the people on the public gallery or the general public, or by judging the conditions of voting, will actually concentrate on, in my view, several relatively large and moderate political parties. It will be very unlikely for an extreme Chief Executive to be elected in the territory. Such being the case, what else will we be afraid of?

President, insofar as condemnation is concerned, the Secretary should know that I actually do not as the most serious gap among us in consensus given its ambiguous attitude towards this issue, does the DAB owe the people an explanation and should it fully reveal its views on this issue here openly and frankly? Therefore, President, I very much encourage you to accept another interview by a newspaper and give a fresh explanation in response to my queries as well as those of the public to make it clear if the position expressed by you represents your personal position and whether this position will change in the light of any change made by the Central Government. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, the widely told story of the so-called "bollock" debate has started to spread since the Chief Executive's announcement of deferring the public consultation on constitutional development in the Legislative Council Chamber. I have also discussed with you, President, whether or not the Chief Executive has mentioned "bollock" debate and this is based on objective facts. Just now, I played the tape but was stopped by you, President. Now I do not intend to play it again. Donald TSANG has indeed bollocked. I am not kidding. Why? He said that consultation on constitutional development should be deferred because we were facing an once-in-a-century crisis.

President, I would like to seek advice from you. China had been invaded by the Japanese for several times over the past century and the largest one was a

full-scale invasion to China. When MAO Zedong released the article entitled "Missions of the Chinese Communist Party during the anti-Japanese period" on 3 May 1937, the Japanese invasion of China had almost begun. Its invasion had almost lasted for six years since the 18 September incident. What did MAO say in the article?

According to MAO, what were the missions of the Chinese Communists during the anti-Japanese period? The subtitle of the ninth main point of the article is "Struggle for democracy and freedom". What was the Communist Party's response to the Japanese invasion? The answer is: China should immediately launch the following two democratic reforms: First, in respect of political system, the reactionary dictatorship of Kuomintang's single-party-single-class system should be changed into a democratic system of full cooperation among all parties and all classes. To begin with, changes should be made to the anti-democratic methods of electing and convening the National Assembly, to be followed by the implementation of democratic elections so as to assure that meetings of the National Assembly could be convened without any obstacle until the formulation of a truly democratic constitution, the convening of a truly democratic congress, the election of a truly democratic government to execute truly democratic policies.

Then, MAO also mentioned (when Japanese invasion was imminent) that "over the past few months of the year, a nationwide democratic movement should be instigated with the foremost objective of achieving democratization of the National Assembly and the constitution. The first aspect is the people's freedom of speech, freedom of association and assembly. In devoid of such freedoms, the democratic reform of the political system cannot be realized. Nor can the people be mobilized to enter the war against our enemies so as to get victory in defending the motherland and regaining occupied territory. Within the next few months, the nationwide democratic movement should achieve some accomplishment of this mission to the least extent so as to release political prisoners and do away with ban on political parties."

Then, he pointed out that "the important part of the anti-Japanese national united front programme is also the prerequisite for the establishment of a genuine and solid anti-Japanese national united front."

Bro, the war was imminent. The Communist Party was under attack by the Kuomintang coupled with the invasion of Japanese imperialism. What was the mission at this very moment? "To convene the National Assembly without restrictions on the nomination and to conduct 'one person, one vote' without screening." What did you say? What did your boss say here?

President, the national hatred — information on civic education is always broadcast presently — in 1937, President, the war was almost imminent, and the anniversary of the May 3rd Tragedy had also been held. Speaking of the May 3rd Tragedy, as we all know, the Japanese killed our people in Shandong, cutting off the entire face, mouth and nose of our emissary. On this memorable day, what should I say? I quest for democracy and freedom and I have been tolerant.

Apart from Hong Kong, let me talk about China because this debate involves a bit of opposing one-party dictatorship. Honourable Members, is somebody trying to tell me that the current financial tsunami is more serious than the incidents on 3 May 1937 and 7 July 1937? At this time, Beijing had been invaded. A few months later, the Nanjing Massacre occurred, followed by the August 13 incident. Even though war would break out, it was still necessary to implement democratic reform. From this, we can say that the Government is taking back its words if it refuses to undergo democratic reform.

Likewise, President, all measures under our current constitutional system are for saving the market not for rescuing the people. Those who are returned by functional constituencies to this Council will, of course, rescue themselves. So, Hong Kong people do not understand why a spate of incidents involving the Lehman Brothers, the CITIC Pacific, the PCCW and LEUNG Chin-man have occurred recently one after another. This is precisely because we do not have democracy, right? If we have democracy, investigations will be conducted and he would be held responsible and asked to step down. Just like the Secretary, if he is not doing a good job, he will step down. Now he will not be asked to step down, why should he? Now he takes the lead. After Donald TSANG had "bollocked" in a debate, he came here to join the "bollocking", right?

So, the rationale is very simple. The shirt I am wearing today is a gift for me, on which it reads: "We toppled a tyrant, we can do it again". I can tell all

Members — Alas, I really feel miserable holding my clothes in this way, which I wore when I saw TUNG Chee-hwa step down. He had to step down because he refused to implement universal suffrage. In addition, he implemented the accountability system which was neither fish nor fowl, in addition to enacting the legislation on Article 23 of the Basic Law. The Seven Year Itch — It is almost time for it and 1 July is approaching. If nothing is done so as to change the seven-year itch on 1 July 2010, Donald TSANG must step down in 2011.

I hope President will remind the officials that they should raise their level of eloquence in debate, avoiding tautology. President, we asked whether they had a constitutional duty to scrap the two Municipal Councils and whether they had a constitutional duty to increase the number of appointed seats. The answer was in the negative. Why did they do these according to their own will? Why? At present, the bogus universal suffrage depends on all these. Candidates are selected among the appointees to be the Chief Executive or to run the Legislative Council election. This is wrong. It was right in the era of MAO Zedong and it is wrong in the era of Donald TSANG. Stephen LAM is even more erroneous. They are both bollocking.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please sit down. Your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): As far as you know I said they were "bollocking".

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

MR ALBERT CHAN (in Cantonese): President, we have been discussing constitutional reform for many years. Speaking of the Chief Executive's utterance of "bollock", it is really creative. Did he say "bollock" or "bull talk"? We may try to listen to it. A friend has recently created some lyrics on the basis of the Chief Executive's speech in an artistic way. These are the original words of the Chief Executive Donald TSANG being put in different forms (*Mr*

Albert CHAN switched on a recording device and played the music) saying "bollock". It is just more than one minute. It is creative. We are clear that

PRESIDENT (in Cantonese): Please switch it off.

MR ALBERT CHAN (in Cantonese): unless facts have been distorted. President, the lyrics that follow are also similar and very creative. The Chief Executive is repeating the words "I've bollocked", "I bollocked". This is a culture of irony, which is very popular on the Internet and even being used as a mobile ringtone. I believe this will become the most popular following the mobile ringtone "DAB the shameless of all", and will enjoy the maximum download rate.

It is surprising that the words of the leader at the highest echelon of the Government uttered in the Legislative Council were distorted through the Information Services Department, with the intention of changing the remarks. This is an indication of his lack of confidence, which is really a world of difference from his high-spiritedness when he said that he would do something big with the people and create a new frontier when running the election. This is probably because he has been too close to "Eunuch LAM" for too long I should not call him "Eunuch LAM" because it seems that the Government likes to "pretend to be a dead dog" recently. So, he would have become a Secretary "pretending to be a dead dog".

The constitutional reform involves the basic rights of seven million Hong Kong people. It also involves the development of our next generation, particularly playing a very important part in Hong Kong's political development and training of talents. Constitutional reform is not a question of who will take the office of the Chief Executive or simply who will become the Chief Executive. Nor is it a question of which political party will be dominant. Rather, it is a question of the reorganization and design of the whole political structure.

My repeated criticisms in the past have been verified when Mr LAU Wong-fat requested an answer to the future of Hong Kong from a sacred oracle lot in the Che Kung Temple. The oracle is: "Demon servants from Hell in front of your very eyes are monsters of every description". In fact, as we pointed it out long time ago, there are too many wretched lackeys in both the Government and the ruling coalition. We still regard these wretched lackeys as humans or lackeys, but the Che Kung regards them as monsters, which are even worse than lackeys. In other words, they can hardly be labelled as lackeys because they are monsters. Such a stance is even stronger than the political position of the League of Social Democrats. In my opinion, a Che Kung Party, which will be more radical than the League of Social Democrats, should be set up in Hong Kong. The Che Kung Party's party programme is the elimination of all monsters and demons, which is more radical than our goal of driving these wretched lackeys away.

Constitutional reform is a very important part of the future development of our society as a whole. Now the Government says that constitutional reform is put aside because of the financial turmoil. In the United States, however, the presidential election activities were held for 12 months in which the financial turmoil, the financial tsunami hit. Did we see that this country had collapsed? After the election, people of the whole nation are in high spirit and high morale. They are unlike the high-ranking officials of Hong Kong who "pretend to be dead dogs".

President, let us not talk about the United States which is so far away. Macao has enacted the legislation on Article 23 of the Basic Law during the financial tsunami. Did the authorities of Macao say that the legislation on Article 23 of the Basic Law should be shelved because of too much bickering during the financial tsunami? Let us take a look at the present governance of Hong Kong and the poor performance of the three Secretaries of Departments and 12 Directors of Bureaux. If some of the three Secretaries of Departments and 12 Directors of Bureaux say that they are incompetent, without the resolution to deal with problems, then they should take the blame, resign and step down. Our kaifong should not get implicated. Since they are not capable of handling such issues, incapable of assuming the political responsibility and lacking the political resolution to deal with the problem, they should get lost quickly! Get lost immediately!

So, President, the Hong Kong Government's popularity is declining precisely because of these wretched lackeys, the demons and monsters, which have made chaos in society. An official earning an annual salary of more than \$4 million dares to say that he is not capable of dealing with the constitutional reform matters, adding that he needs more time to deal with other issues. Such an official should get lost immediately! On the one hand, he said that he had no time to deal with the issue, but on the other hand, he had gone somewhere to hold a meeting. Afterwards, he went to the Mainland for sightseeing and drinking with senior officials there. As he said that he had to deal with Hong Kong affairs, he should stay here to deal with them instead of going to the Mainland for merry making — drinking and seeking pleasure there.

So, President, if the governance team does not make improvement to such a governance model, the result will be something described at the end of the oracle obtained by Mr LAU Wong-fat: It will bring scourge upon itself like Qin Huang and dig its own grave. They are not only digging their own grave, but also harming the well-being of the seven million Hong Kong people and devastating the cornerstone of Hong Kong. Hence, they should get lost!

DR LAM TAI-FAI (in Cantonese): President, I would also like to say a few words after hearing Mr CHAN's speech. The Chief Executive, when delivering the policy address on 15 October last year, unequivocally said that a public consultation on the electoral methods of the Chief Executive and the Legislative Council in 2012 would be held in the first half of this year.

However, after a matter of three months, on 15 January this year, the Chief Executive, at the Question and Answer Session in the Legislative Council, announced his change of decision that the public consultation would be deferred until the fourth quarter of this year.

It is understandable that many people, especially those who have high hopes on our constitutional development, feel disappointed at the Government's change of original intention by deferring the consultation in such a short period of time. In fact, I feel disappointed too.

According to the Chief Executive, the Government has made such a decision mainly because they have to focus their attention and rally the public together in addressing this once-in-a-century global financial crisis. As the crest of economic difficulties is likely to occur in the first half of this year, the community is mainly concerned about economic and livelihood issues, we may not be able to focus our attention on the discussion of constitutional issues to be occurred three years later. Thus, the Government considers that it is not the ideal time to consult the public at this stage.

I very much agree with the Chief Executive that Hong Kong economy is in a dire situation at present. In fact, the European countries, the United States, emerging markets and China are all suffering from the impact of the financial crisis and all countries in the world, subject to a chain effect, fall down like dominoes. No one can predict when the global economy will bottom out and no one can tell when it can rebound.

In Hong Kong, news of business closures and layoffs come one after another. The deteriorating unemployment problem coupled with the possible hit of the second wave of financial tsunami, the way forward is indeed crisis-ridden.

Despite the Government's repeated assurance that it would support enterprises and preserve employment and its awareness that the first half of the year is the critical moment for bailing out the small and medium enterprises (SMEs), actual policy support is far from adequate. The credit guarantee schemes introduced by the Government have completely failed to achieve the expected target.

In fact, at present, there are still a lot of SMEs which are unable to get bank loans to meet their urgent needs, thus hovering on the brink of closure. If the Government has really deferred the public consultation in a genuine hope to focus its attention on tackling the economic crisis, it should review afresh and optimize these support policies in a decisive manner.

Take the two credit guarantee schemes as an example. The Government should abolish the personal guarantee requirement and increase its guarantee percentage, or even consider providing loans to enterprises directly by itself. Meanwhile, government fees and charges should be suspended, reduced or

waived, if possible. The best option is certainly urging the Central Government to expand the Individual Visit Scheme so as to stimulate the economy of Hong Kong.

President, we should act speedily rather than hastily because "speed" can enhance efficiency while "haste" will lead to chaos and troubles. In comparison with boosting our economy, I accept that there is no need to conduct the public consultation on constitutional development in haste. If the Government does not prescribe a heavy dose to support SMEs and stimulate consumption speedily, it will be to no avail even though the public consultation on constitutional development is deferred until the fourth quarter.

In fact, the people have pinned high hope on the Government to bail out the economy. According to an online survey by the University of Hong Kong's website announced on 31 December, 67% of the respondents consider that economic issue ranks first among all pressing issues need to be dealt with by the Government in 2009, representing a substantial increase of 31 percentage points compared with the previous year. Meanwhile, 7% of the respondents consider that employment problem ranks first and only 2% consider that the most pressing issue is the constitutional issue, representing a significant drop of 9% compared with the previous survey.

So, despite my disappointment at the deferment of the consultation on the 2012 elections, I also understand the importance of focusing its energy on dealing with economic issues by the Government. As the majority of the public hope that the Government's top priority is to improve the economy, I think deferring public consultation is not tantamount to breaking faith with the people. It is disappointing, yet it does not deserve to be strongly condemned.

Concerning the wordings of the motion today, if a slight amendment can be made so that "strongly condemns" can be changed to "expresses deep disappointment" and "procrastinating" can be changed to "deferring", I would consider supporting the motion.

Finally, I would like to express again my earnest hope that the Government will really make the best use of these six to nine months by focusing its attention on the economy. Otherwise, if the economy sees no improvement and the unemployment rate soars, it will really break faith with the people then.

However, I have noted that it has been almost a month since the Chief Executive's announcement of deferring the consultation in mid-January. Yet we do not see any new economic measures or optimized policies introduced by the Government, nor the decline in the unemployment rate. I would like to tell Secretary LAM that the public will not accept a further deferment of the consultation on the pretext that the Government has to deal with the economic problems. I hope Secretary LAM can discuss the issue with other officials, especially those responsible for economic, commerce and industrial issues expeditiously after this meeting in order to grasp the time to boost the economy, and introduce effective measures to support businesses and preserve employment, lest it will be condemned by the public.

President, I do not support today's motion.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, today I am most grateful to Members who have expressed their views for their concerns on constitutional development. Members' views today will certainly be useful to our preparatory work for the public consultation to be conducted in the fourth quarter of this year.

I would like to respond to Members' views by dividing them into five to six aspects. First of all, a number of Members have in particular questioned again whether or not we would have sufficient time to deal with the consultation we need to do in the next two or three years, especially the amendments to Annexes I and II of the Basic Law and the enactment of local legislation, if this public consultation is to be launched in the fourth quarter of 2009. I can assure Members that there is enough time.

When dealing with the packages for 2007 and 2008, we released the Fourth Report in December 2004, which is a consultation paper. And then in October 2005, at the start of the fourth quarter again, we released the Fifth Report in

which we put forward the proposals on amending Annexes I and II of the Basic Law for the Chief Executive and the Legislative Council elections in 2007 and 2008 respectively. At that time, we had enough time to deal with the whole set of work. Now we will launch the public consultation in the fourth quarter of 2009. We can assure you that there is sufficient time if amendments to Annexes I and II of the Basic Law are dealt with before the fourth quarter of 2010 or no later than the fourth quarter of 2010.

Ms Cyd HO has asked specifically about how the amendments to the District Councils Ordinance would be dealt with if we only dealt with the amendments to the Chief Executive Election Ordinance and the Legislative Council Ordinance in the first half of 2011. I would like to point it out clearly to Ms HO and other Members that the composition of District Councils (DCs) is not bound by Annexes I and II of the Basic Law. Of course, under the two different arrangements in relation to the Chief Executive Election Committee in Annex I and the composition of the Legislative Council in Annex II of the Basic Law, DC members of the 18 districts in Hong Kong can, to some extent, participate in the two electoral methods. But their participation is not affected by the DC elections or their own composition. What we have to do is to stipulate the mode of participation by DC members in these two elections in the Chief Executive Election Ordinance and the Legislative Council Ordinance and this will be appropriate and feasible. In the coming days, we will deal with the reviews of and legislative arrangements for the elections of the Chief Executive, the Legislative Council and the DCs in parallel.

Secondly, Mr LEUNG Yiu-chung, Mr LEE Cheuk-yan and several other Members queried whether the Hong Kong SAR Government could handle only one issue at a time. It is certainly not. In Hong Kong, a modern and highly developed society, we have to deal with various political, economic, social and livelihood issues together every day, otherwise the Legislative Council would not have to convene so many meetings. However, as the Government of the SAR, we need to size up the situation and adjust our policy agenda according to the latest situation in Hong Kong. So, in the face of such severe economic hardship, the Chief Executive has decided that the SAR Government's first and foremost responsibility and task is to stabilize the financial sector, support enterprises and preserve employment.

I would like to respond to Mr Tommy CHEUNG. In this aspect, we have indeed launched new initiatives over the last period. Regarding assistance to small and medium enterprises, for instance, the SAR Government has rolled out a new scheme on loan guarantee for them.

Secondly, in respect of promoting infrastructure and various services, we have tied in with enterprises, chambers of commerce and trade unions to create new employment opportunities in Hong Kong and usher in favourable circumstances, thus enabling all people, be they young or old, to secure employment.

Thirdly, Members have also asked whether the Constitutional and Mainland Affairs Bureau has to deal with any new tasks in respect of other issues apart from dealing with the constitutional issues. Indeed we have. Next week, we will hold the first Guangdong-Hong Kong-Macao meeting in Hong Kong so as to explore together how to implement the work for the Outline of the Plan for the Reform and Development of the Pearl River Delta (the Outline). This is only one of the examples. In the long run, however, the implementation of the Outline is important to Hong Kong's economic development and our service industries' participation in the pilot schemes of Guangdong Province and the Pearl River Delta before entering into other mainland provinces and cities. Also, Hong Kong's synchronization with our counterparts in the Mainland in various sectors including shipping, logistics industry and infrastructure in the future is also very important to how we will implement the Outline.

President, the third aspect I wish to respond to is that a number of Members, including Mr KAM Nai-wai, Mr CHEUNG Kwok-che and so on have particularly pointed out a question. That is, the public consultation on the electoral methods for 2012 is deferred to the fourth quarter because of the adverse impact on our economy by the financial tsunami. But what will we do if the employment situation remains unsatisfactory or has further deteriorated in the fourth quarter? On 15 January, the Chief Executive indicated very clearly to the media representatives following his meeting with Members that even if the economic situation in the fourth quarter remained unfavourable, we would still launch the public consultation on the constitutional development for 2012, because it was necessary to carry out the work in this aspect as far as time was concerned.

Fourthly, I would like to give a short response to the issue of functional constituencies. Mr LEE Wing-tat and Mr IP Kwok-him have expressed their views on this topic. The SAR Government has repeatedly made its position clear. The British Government, before the handover in 1997, that is in 1976, added a reservation to the applicability of the International Covenant on Civil and Political Rights (ICCPR) to the effect that Article 25 (B) would not be applied to Hong Kong. According to the notification given by the Central Government to the United Nations Secretary General before the handover in 1997, the provisions of the ICCPR originally applicable to Hong Kong will continue to apply, meaning that the reservation remains in force. Therefore, the implementation of universal suffrage in Hong Kong is in accordance with the Basic Law and the arrangement of universal suffrage also originates from the Basic Law. We can implement elections of the Chief Executive and the Legislative Council by universal suffrage in 2017 and 2020 respectively according to the NPCSC's decision in December 2007. When universal suffrage is implemented, regardless of whether it is the election of the Chief Executive or the formation of the Legislative Council, we should adhere to the principle of universality and equality. As to how universal suffrage is implemented step by step, this is the fifth topic or the fifth issue.

Now, according to the NPCSC's decision in 2007, we will promote Hong Kong's constitutional development in three stages in the next 11 to 12 years. The first stage is from 2009 to 2012, in which we will deal with the public consultation on the two electoral methods for 2012, the amendments to the Annexes of the Basic Law and the enactment of local legislation. The SAR Government's overall objective is to bring Hong Kong's democratic development to a mid-way point by these two electoral methods. Having worked out the electoral methods for 2012, we can lay the foundation for universal suffrage in 2017 and 2020. The second step is that in 2012 to 2017, the fourth Chief Executive and the fifth term Legislative Council will deal with the issue of how to implement the election of Chief Executive by universal suffrage in 2017, and, of course, the electoral method of the sixth term Legislative Council in 2016. The third step is that the Chief Executive returned by universal suffrage in 2017 and the Legislative Council formed in 2016 will deal with the issue of how to bring in universal suffrage for the election of Legislative Council Members in 2020.

I therefore would like to respond to Mrs Regina IP that I very much agree that the Chief Executive returned by universal suffrage in 2017 will have full

credibility and public mandate. As an empowered leader, the Chief Executive has the conditions, status and qualification to point the way forward and lead the Hong Kong society to deal with this most crucial and most controversial issue, that is, how the Legislative Council should be returned by universal suffrage. Hence, we consider that the current term Government and the current term Legislative Council are not capable of making all the constitutional decisions for the next 11 or 12 years. It is not possible and not appropriate.

The sixth issue I would like to respond to is whether or not we will have genuine universal suffrage, or something "half-baked", in accordance with the NPCSC's decision, as Mr Albert HO has specifically asked. I can give an affirmative answer to Mr Albert HO: This will certainly be a genuine universal suffrage in line with the principle of universality and equality. In the next 11 years or 12 years, if Members can win a seat again in the next Legislative Council election, you will have a part to play in making the decision. At this moment, we hope we can discuss and make a decision on the composition of the Election Committee for electing the Chief Executive in 2012. We also hope that if a consensus can be reached, the composition of the Election Committee in 2012 can successfully turn into the nominating committee for electing the Chief Executive by universal suffrage in 2017. So, from 2012 to 2017, we need to make a critical decision, and that is, to work out the nomination process in accordance with Article 45 of the Basic Law. In accordance with Annex I of the Basic Law, Members are entitled to and have a responsibility to vote in respect of the composition of the nominating committee and the nomination process. And the endorsement of a two-thirds majority of Members of this Council is necessary for implementing the election of the Chief Executive by universal suffrage. As Members have such constitutional powers and responsibilities, you will be the best guarantee that the electoral method for the Chief Executive by universal suffrage in Hong Kong will naturally be universal and equal.

Finally, as some Members have mentioned how strong the SAR Government's determination in dealing with our constitutional development, I would like to respond to it. While Mr CHEUNG Man-kwong and Mr Frederick FUNG have asked a question about this, Mr WONG Yuk-man has also raised an argument in this regard. Today, I wish to talk about determination rather than the "asking price". In Hong Kong, it is neither simple nor easy to address the constitutional development issue. In 2005, despite almost two years' efforts, we were unable to secure the endorsement of a two-thirds majority of Members on the package for 2007 and 2008 elections because of a few votes short. But the

SAR Government has not given up. The Chief Executive, in running for his office in 2007, has made a clear commitment that he would deal with the issue of universal suffrage in the third term SAR Government. And we have been able to secure a timetable for universal suffrage within six months after taking office. The fruit of our efforts is beyond any accomplishment which could be achieved by any term of Government in the history of Hong Kong. President, we would definitely not underestimate the challenges ahead, be it the forging of sufficient consensus in 2012 to promote the progress of democracy in Hong Kong or the implementation of universal suffrage in the years to come. However, I can categorically tell Members here that the principal officials and civil servants of the SAR Government will never give up, because many of them have participated in formulating Hong Kong's future constitutional arrangements over the last quarter of a century. In early 1980s, we participated in the preparatory work of dealing with the Sino-British Joint Declaration. Before 1997, we participated in the arrangement and preparation for the smooth transition of Hong Kong. After 1997, we worked hand in hand to deal with the onslaught of the Asian financial turmoil and SARS. Today, we also combat this international financial tsunami together. However, regardless of how the times have changed and no matter how difficult the challenges are, we will continue to place the right focus. We know that to reach the ultimate aim of universal suffrage laid down in the Basic Law, we should continue to promote democracy in Hong Kong in a gradual and orderly manner and according to the actual situation in Hong Kong. We hope that this arrangement can be implemented because we have faith in Hong Kong. We will insist to do our utmost in making a good arrangement no matter how many pros and cons there are inside and outside this Council, no matter how diverse the views are and how difficult it is to command the support of a two-thirds majority of Members. So, the position indicated by the Chief Executive in mid-January is the position of a responsible leader.

President, I hope Members in this Chamber will understand and continue to give us support and oppose today's motion. President, I so submit.

PRESIDENT (in Cantonese): Mr Albert HO, you may now reply and you have three minutes one second. This debate will come to a close after Mr Albert HO has replied.

MR ALBERT HO (in Cantonese): President, I have listened to about 20 Members' speeches and found that even Members not from the democratic camp are also dissatisfied with the Government's decision to defer the consultation although they do not support my motion. They even consider that the Government's arguments are not justified. As Dr Raymond HO said, "What are the reasons?" He added, "It is impossible to know the true considerations."

President, if the Government has adopted such an attitude, that is, to defer a crucial consultation without justifiable reasons and break its promise, why does it not deserve to be condemned? Mrs Regina IP said that the consultation was deferred for just several months. Why has the consultation been deferred for several months? If it is of no consequence, why does the Government break its faith with the people? Coupled with the Chief Executive's attitude towards the consultation, does he still have any sincerity to conduct a genuine consultation? If he misleads the public by some bogus excuses and underestimates Hong Kong people's ability — the ability to address the financial crisis while participating in addressing the constitutional reform simultaneously — if he underestimates Hong Kong people by adopting such an attitude, why does he not deserve our condemnation?

On answering Members' questions, Secretary LAM reiterated that there was sufficient time. But does having sufficient time mean that the fourth quarter of this year is the suitable time? He said that the Chief Executive had undertaken to do it. But is it suitable to do it when the situation is even worse? Should the matter be handled in such a way? Can he guarantee that the financial crisis will be over in the fourth quarter so that we can focus our attention on the constitutional reform? Otherwise, if the situation is getting worse and, according to his logic, the consultation is conducted when the time is not suitable, can he be answerable to Hong Kong people? So, these are not acceptable replies.

He also mentioned the functional constituencies. He emphasized time and again that the relevant international covenant was not applicable to Hong Kong because of a reservation. But he has forgotten the Chief Executive's remark that the ultimate package to be introduced in the future should be in line with the international norm. Then, what is the international norm? That is, the International Covenant on Civil and Political Rights signed up by the international community. If the Government dares not point this out, how can it be a government with courage and commitment?

Lastly, Mr IP Kwok-him's reiteration of DAB's position has made me very disappointed. I recall what he said two weeks ago. It is really romantic because what he said is something a decent person should have said. But today he has spoken like a "human recording device" and his speech is a reworking of his previous arguments as if he is a recording device. So, I am really disappointed.

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

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert Ho rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the motion.

Dr Raymond HO and Prof Patrick LAU abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr WONG Kwok-kin and Mrs Regina IP voted against the motion.

Dr Priscilla LEUNG abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, four were in favour of the motion, 17 against it and two abstained; while among the Members returned by geographical

constituencies through direct elections, 26 were present, 16 were in favour of the motion, eight against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Second motion: Relaxing the eligibility criteria for legal aid.

Members who wish to speak on the motion debate will please press the "request to speak" button.

I now call upon Dr Priscilla LEUNG to speak and move her motion.

RELAXING THE ELIGIBILITY CRITERIA FOR LEGAL AID

DR PRISCILLA LEUNG (in Cantonese): President, I now move the motion as attached to the Agenda. The original motion today is proposed in the hope that the Government can conduct a comprehensive review of the existing legal aid system and relax the asset limit for legal aid applicants and extend the scope of the existing legal aid services. In addition, permanent residents of Hong Kong who come across legal problems on the Mainland should also benefit under the system.

President, the reason why I propose this motion today is mainly because over the past 20 years, I was left with a deep impression that despite Hong Kong's reputation of being a society with a rule of law, for many people from the sandwich class, judiciary justice is a thing too distant for them. This is a deep impression on me especially when I am handling legal disputes concerning Hong Kong and the Mainland.

People from the middle class have always had to bear the responsibility of paying taxes in the policies devised by the Hong Kong Government in the past. They have never the right to enjoy welfare benefits. During the onset of this financial crisis, many of them have become the newly unemployed, owners of negative equity properties or among the ranks of the bankrupt. Some people say that the middle class is the most pathetic of all, for they are hard pressed in

between. Why is that so? We may take a look at the so-called middle-class people or middle-class families. They are often the Sandwich class who are most crucial in lending a support to the Hong Kong economy and contribute most to the stability of our society. Our middle-class friends have to serve the richest in the topmost strata of our society while also take care of the grassroots at the bottom. Most people from the middle class are the breadwinners of their families and they are also the ones who work the economic miracle of Hong Kong. I think they will certainly agree that social harmony is of utmost importance. Therefore, a part of the resources in society should be set aside to support the grassroots, the CSSA recipients, the elderly and other disadvantaged groups. But I must express what these middle-class people think on their behalf. While they are to bear social responsibilities, they would also hope to be sympathized. Under the present circumstances, the middle-class people are not the so-called "five nothings" or the "ten nothings", but they are the "all nothings".

Actually, the middle-class people do not have any harsh demands on the Government. Usually, they will only ask for help when they can find no solution to their problems. For example, those victims of the Lehman Brothers products and the small shareholders of the PCCW who have come to the spotlight recently. Most of the victims of these two incidents are miserable people from the middle class. It is most pathetic that they have lost all their fortune or lifetime savings. All these people from the sandwich class are in need of legal assistance. It is unfortunate that at a time when they are most in need of help, they realize to their dismay that they are not eligible for application. They are thus cut off from legal aid. Many middle-class people say to me that judiciary justice in Hong Kong seems to be something that can only be enjoyed by the richest or the poorest. As seen from past records, the rich people can pay expensive fees charged by lawyers and they can hire the best lawyers. They can make use of the judicial procedures and win a lawsuit. And for the poorest, including illegal immigrants, foreign domestic helpers or those grassroots who live in the public rental housing units, when they apply for legal aid, they will find it easier than those from the sandwich class. For these taxpayers or people from the sandwich class who have worked hard all their lives, when they come across something unjust, it seems that they are deprived of any chance of getting any kind of legal assistance. Would judiciary justice be a great mockery to these taxpayers from the sandwich class?

In the past, I assisted many people involved in cases of injustice concerning the laws of Hong Kong and the Mainland. This is because the clients were unable to apply for legal aid. They had to pay for the costs of litigation themselves. Some of them had to sell their property to pay for the litigation costs. And for some people, their families broke up as a result. In these litigation cases, the other party might use public money to pay for the expenses, but these people from the sandwich class had to use their own money. There is a case which I have followed up for a very long time and that is about a Mr SHUM who is hailed as the king of minibuses. Last year, the *Oriental Daily* devoted one whole page to report on his miserable life. For the last 38 years, because of his unceasing pursuit of legal justice, he almost had a nervous breakdown. But he has been cut off from legal aid.

Another case which impresses me a lot is about a Hong Kong person who was made a victim of some commercial dispute, probably commercial fraudulence, in Mongolia. In the end, he was sentenced to an indefinite term of imprisonment. He wrote to me from Mongolia, saying that he used to be a good businessman, but he had lost all his money and he did not know what to do. He could not get any legal aid. Since the case happened on the Mainland, he could not apply for legal aid. All he could do was to wait for the end of all things to come. Hence, a suitable amount of legal aid is an emergency help to many people from the sandwich class.

This victim is a permanent resident of Hong Kong. He has been paying Hong Kong taxes for a long time. When he is unable to get any help and when he is deprived of freedom for life, he should be given some help in being eligible for legal aid in Hong Kong.

Actually, most of such cases asking for help are about legal problems. Very often, it would not be appropriate for the Beijing Office of the Hong Kong Government to offer its assistance. What the client needs most is to get legal assistance. So the third suggestion I make will not affect the operation of "one country, two systems" in any way, but will instead, provide a chance to normalize this "one country, two systems" relationship.

The first suggestion I make is about conducting a comprehensive review of the existing legal aid system. Actually, for many years in the past, the topic was

discussed in this Council on numerous occasions. Different Members also asked that a comprehensive review be conducted of the existing legal aid system. The Government has in fact promised to introduce a new proposal at the beginning of this year, which will in the first place examine the existing legal aid system to see what problems have occurred. Under the existing legal aid system in Hong Kong, there are two main categories, namely, the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme. Now in the Ordinary Legal Aid Scheme, the limit of disposable financial resources, that is to say, the disposable income deducted by rent, rates and living expenses, is set at \$165,700. And for the Supplementary Legal Aid Scheme, it is for application made by people with disposable assets ranging from between \$165,700 to \$460,000. However, the scope of the Scheme is very limited, which is only available for cases involving personal injury or death as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$60,000.

I do not know why legal aid is offered to people taking legal proceedings against medical doctors, dentists and lawyers, but not to people accusing the banks of negligence. Perhaps only the Government could give an answer to that. It could be that these professions are usually taken up by the middle-class people and so it is easier to bully them.

According to two opinion polls I conducted last July and this February respectively, in which a few hundred people with a monthly income of more than \$11,000 were interviewed, it was found that 66% of these middle-class respondents thought that litigation charges in Hong Kong were too expensive and they could not afford litigation costs; 66% of the middle-class respondents thought that the asset ceiling of \$165,700 was too low; 70% of these respondents agreed that for litigation cases involving permanent residents of Hong Kong on the Mainland, they should be given legal aid service provided that the clients face enormous difficulties. A similar survey done last year also found that 85% of the respondents thought that the asset limit for legal aid should be relaxed. Seventy-seven percent of them thought that legal aid could be extended to cover cases involving Hong Kong citizens on the Mainland. A point in common in these two surveys is that the respondents all think that the asset limit of \$165,700 is impractical. It is a sign of blatant neglect of the existence of the middle class which is the lynchpin of our society; of their need of a certain "emergency exit".

Some people from the middle class say to me that they are outraged when they learn of this figure. They are of the view that although they may not find it imperative to apply for legal aid, as a matter of principle or posture, the setting of such a low limit is no consideration whatsoever that they do exist. I am sure that this requirement is by itself enough to infuriate many taxpayers from the sandwich class.

Despite the claim made by the Government that as many as 70% of the families in Hong Kong will benefit, I really do not know how this figure is arrived at. We can see just the number of people, including the spouses, in Hong Kong that have family disposable assets of not more than this mere sum of \$165,700 to know the truth.

Also, there are many loopholes with respect to this system. An example is that suppose a person has a residential property worth \$30 million for his own use, but the money at his disposal is not more than \$165,700, he is still eligible for application. On the contrary, someone who does not own any property, but if his disposable assets are worth \$300,000, then he may be barred from applying for legal aid. Would people not think it ridiculous when such a glaring loophole exists?

I have read the reply made by the Government to the Panel on Administration of Justice and Legal Services and found that the only reason that the Government is reluctant to expand the legal aid network is simply because of money. The Financial Secretary John TSANG has always stressed that money must be spent properly. This is something I totally agree. Therefore, I wish to point out to the Financial Secretary that it is absolutely proper to spend some money on the middle-class people. Just imagine, it would be very difficult to please them under normal circumstances, for they do not want any help. But now these people from the sandwich class who normally do not need any help are asking the Government to show some care for them. I think the political wisdom in this issue is plain enough. I suggest that the Financial Secretary should hand out a candy to this group of middle-class people. This I think is a well-intentioned advice from me.

I hope very much that legal aid can be provided to the middle class and that these people can really be given judiciary justice. A person from the middle

class said earlier to me when staging a protest that this should not be seen as a "candy" but a right. What they are doing now is not begging alms from the Legislative Council or the Government. They have been taxpayers in Hong Kong for so many years and now when they face difficulties, they think they have the right to make this demand and this is something they should fight for.

I propose today that the Government should increase the resources allocated to legal aid substantially. With respect to the Ordinary Legal Aid Scheme, consideration should be made to revise the asset ceiling to somewhere between \$500,000 and \$1 million; and for the Supplementary Legal Aid Scheme, such a ceiling should even be raised to \$1 million to \$2 million.

Besides, relaxing the eligibility criteria for legal aid does not necessarily mean that support will be given to applicants in litigation. I wish to stress that expanding the scope of legal aid should be from litigation to the provision of quality legal advice. This will enable the clients to have some basic and quality legal advice regardless of whether they wish to instigate legal action. They will know clearly what their position is in respect to law and this will prevent them from being trapped in a quagmire and even having a nervous breakdown due to their misunderstanding of the law.

There is a saying that when people are at the end of their tethers, it may suddenly dawn on them that every cloud has a silver lining. The university where I teach is situated near Yau Yat Chuen and I am most glad to find a way out for these people from the sandwich class who may be at the crossroads of life and where they cannot see any silver lining behind the threatening clouds. Would the Government like to act smart and do something to win the hearts of these people who despite their importance are also the most miserable class in Hong Kong? I implore Members to support my motion.

I so submit. Thank you, President.

Dr Priscilla LEUNG moved the following motion: (Translation)

"That, as the high litigation fees in Hong Kong are beyond the means of the middle class in general, in particular cases for which appeals may be lodged to the Court of Final Appeal where the litigation fees incurred are often astronomical, it is not uncommon that middle-class people go

bankrupt because of their involvement in legal proceedings, hence the provision of appropriate legal aid services to such middle-class people is very important; however, under section 5 of the existing Legal Aid Ordinance (Cap. 91), the asset limit for legal aid applicants is \$165,700, which is far below the actual need, rendering the majority of the middle class being excluded from the protection net of legal aid; if involved in litigation, the middle-class people are neither able to pay the high lawyer fees on their own nor eligible to apply for legal aid, they are therefore deprived of judiciary justice; on the other hand, the existing legal aid services only cover litigation cases in Hong Kong, and over the past two decades, a large number of Hong Kong permanent residents have been working and living in the Mainland, and it is very likely that they may get involved in legal proceedings in their daily lives, business operation or work, but they have nowhere to turn to for any legal assistance; in this connection, this Council urges the Government to:

- (a) conduct a comprehensive review on the existing legal aid system;
- (b) relax the asset limit for legal aid applicants (including that for the Supplementary Legal Aid Scheme) to a reasonable level so that more people in need are eligible to apply for legal aid; and
- (c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Priscilla LEUNG be passed.

PRESIDENT (in Cantonese): A total of three Members have indicated that they will move amendments to this motion. We will hold a joint debate on this motion and the three amendments.

I will first call upon Dr Margaret NG to speak, to be followed by Mr Albert HO and Prof Patrick LAU, but no amendments shall be moved at this stage.

DR MARGARET NG (in Cantonese): President, a full review of the legal aid regime in a bid to keep abreast of the genuine needs of the modern society has been a demand that the Panel on Administration of Justice and Legal Services of this Council has proposed throughout these many years. However, it is unfortunate that response from the authorities has all along been lukewarm. This has caused much anxiety and disappointment. The most fundamental principle of the rule of law is every person is equal before the law and there will never be a case where any one is barred from defending his lawful rights for want of means. Suppose we have a perfect code of laws in place, but most of the people do not have the means to take their claims to a court of law, then this code of laws is only empty talks and the rule of law will be the greatest mockery of all.

Dr Priscilla LEUNG focuses on the middle class today and this is simply to highlight that people who do not have the means to file a lawsuit are definitely not limited to the grassroots. Legal proceedings are sophisticated and professional and they may be beyond the understanding of the ordinary people. If legal representation is resorted to and should the lawsuit be unable to finish within two or three days, then the costs are likely to be more than what the ordinary people can afford. In a sensational criminal case last year in which a large number of defendants were involved, as many as more than 100 days of trial were spent in the District Court. These defendants are by no means poor, but who can afford to pay the costs of a 100-day trial? The position of the Administration is that the existing legal aid regime is sufficient in that not only no upper limit is set with respect to the items on legal costs, the asset ceiling for applying legal aid is also such that nearly a half of the families in Hong Kong would meet such an eligibility requirement. I am now talking about the Ordinary Legal Aid Scheme. This view is in fact totally at variance with the view of the people in Hong Kong. Moreover, it is not sensible at all. The right question to ask is: How many people among those who are to face litigation can get legal aid?

In June last year, the Department of Justice released a study report on a survey on the demand and supply for legal services. Last Thursday I organized a seminar in which a well-known scholar Professor Dame Hazel GENN and Mr Ian WINGFIELD, the Solicitor General, presented and analysed the findings of the study. This seminar is most rich in its contents and the authorities should pay attention to the conclusions reached. Professor GENN pointed out in the seminar that according to the survey:

- 19% of the families in Hong Kong encountered great difficulties over the past 12 months that could be solved by legal means, and as many as 32% come across such difficulties over the past five years; that is to say, legal problems are by no means rare, which are, instead, very common. Every family may come across such problems. Professor GENN pointed out that such a situation is akin to the situation in Britain and many places in the world in which she has conducted studies. The question is: How are these families going to address these difficulties? What kind of help can they get?
- The survey report shows that among the cases involving great difficulties where actions must be taken, only 1% has ever applied for legal aid.
- Most families think that they have nowhere to turn to and they lack an amount of knowledge of legal services. They think that since they are unable to pay for lawyer's fees, taking legal action is useless. This is the truth and so what the authorities are saying is simply out of touch with reality.

The amount of resources which the Hong Kong SAR has put in legal aid is actually far less than other comparable regions. According to information provided by the Research and Library Services Division of the Legislative Council Secretariat, the annual expenditure in Hong Kong on legal aid for the year 2007-2008 was \$428 million, or a per capita expenditure of \$61. In Britain, the per capita expenditure in the same period translated into \$430. In Ontario, Canada, the per capita expenditure for the year 2005-2006 translated into \$173. So we must not deceive ourselves and the people that our expenditure on legal aid is more generous than other places. How are we to say that Hong Kong is more generous than other places? How can we give a satisfactory explanation that we do attach great importance to the rule of law? Should the authorities not feel a bit ashamed on that?

Recently, this Council has agreed to the reform on civil litigation procedures, but the focus of attention from the authorities seems to fall only on promoting and marketing mediation service, saying that this mediation service is good and affordable. But the practical experience in Britain over more than 10

years in the past has shown clearly that reform in civil litigation procedures does not have the practical effect of reducing litigation costs or simplifying procedures, and as for mediation service, its effect is limited and it can only be effective when certain conditions are met. So if this is used as an excuse, the result will only be procrastination and the problem will only deteriorate.

This Council has heard the views from the public and deputations on many occasions. A strong consensus is reached where it is considered that there should be a full-scale reform of the legal aid regime, in particular in the following aspects and these also happen to be the contents of my amendment:

First, raising the financial eligibility limit, especially with respect to the Supplementary Legal Aid Scheme so that the sandwich class can really be assisted. The reason for that is plain enough. Everyone supports it except the Administration. This is also the recommendation made by the Law Reform Commission (LRC) in its Consultation Paper on Conditional Fees. The LRC thinks that speaking from the present circumstances, the provision of a conditional fees charging scheme alone will not lead to any practical effect.

President, as I have said many times, not only the limit should be raised as proposed by Dr Priscilla LEUNG, the across-the-board approach should also be abolished. That is to say, the approach that those below this limit can get legal aid but those above it cannot get any legal aid at all is not sensible because certain legal proceedings are much more expensive than other legal proceedings.

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

Second, criminal legal aid should be built on a sounder foundation. With respect to a review of the mechanism for the determination of fees payable to lawyers in criminal legal aid cases, it has been discussed in this Council for many years but to no avail. But a huge problem has been exposed and that is, the fees payable to lawyers for High Court proceedings which are about \$430 per hour at present, are obviously not the basis for charging formal professional legal service. They can only be regarded as a fringe contribution to society made by lawyers after they have finished their day-to-day work. This frame of mind may be used

some 20 years ago, but nowadays as most of criminal prosecution cases are legal aid cases, the authorities can no longer adopt this frame of mind. People from the legal profession may accept lower fees for legal aid cases as part of their contribution made to society but the amount of this element should be determined by certain principles. This will ensure that the public will get the service that they should get.

Third and of extra importance is that a professional and comprehensive advisory service on legal aid should be set up. Legal aid is not confined to litigation alone and prompt legal advice given can serve to prevent expensive litigation. I have pointed out many times that the existing voluntary consultation, be it the free legal consultation service given by Duty Lawyers to the public in the offices of the Home Affairs Department or free legal advice service given by various voluntary organizations or Member's offices, only remain in an off-duty or after-work kind of nature, its effect and function are very limited. The authorities should not put up this kind of service to evade its greater responsibility. It must really try to do something to achieve a practical effect. How can an annual funding of \$5.6 million be regarded as serious commitment? The money saved in legal advisory service will only lead to greater expenses in litigation. I hope when the Secretary is to respond later, he can do some math on that.

Deputy President, owing to time constraints, I can only say briefly that I support the amendment of Mr Albert HO. As for Prof Patrick LAU's proposal to delete the part in the motion on extending the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents, I do have great reservations. The reason is with frequent contacts between the two places, and the fact that litigation on the Mainland would often affect legal proceedings in Hong Kong, if we turn our eyes away from this problem, the result will be that it will only deteriorate. We will listen carefully to the speech made by Prof Patrick LAU later on and other Members from the Civic Party will respond.

Deputy President, I so submit.

MR ALBERT HO (in Cantonese): Deputy President, the legal aid system that we have originates from the Legal Aid Ordinance enacted in 1967. With respect to this legal aid system set up more than 40 years ago, if Members refer to the records of this Council, they will find out that throughout these years, demand is often made not just in this Council but by many groups outside this Council, to urge the Government to undertake a full-scale review of the legal aid system.

Forty years later and in today, there are still a lot of places in our legal aid system that are far from being perfect. Moreover, there are also many places that are seriously inadequate and they fail to meet the demands of society. The amendment we propose on establishing an independent body for assessing and approving applications for legal aid is in fact not a new suggestion but a demand made all along by this Council and many groups that are concerned about human rights and the rule of law.

Let us look at the records, as early as in 1993, the United Democrats of Hong Kong — it can be said to be the predecessor of the Democratic Party — proposed a motion in the former Legislative Council and I quote: "That to uphold the right to equality before the law, this Council urges the Government to set up an independent statutory authority to be responsible for the administration of Legal Aid, so as to ensure its independence; enhance the perception of fairness and increase its accountability to the public." The motion was passed by the former Legislative Council on that day. Subsequently, the topic was discussed in this Council on numerous occasions and it was passed. But what the Government has done is only to set up an authority on legal aid which can only play the role of a watchdog. But the Legal Aid Department (LAD) is still a government department. This is obviously a far cry from the demand made in the motions passed in this Council throughout these many years.

Legal aid is a powerful instrument in the pursuit of justice in society. It ensures that the spirit of the rule of law, that is, equality before the law, is perpetuated. It also ensures that the poorest of the poor can enjoy the right to the protection of law and they will not be deprived of essential legal services by lack of means.

I wish to particularly point out that with greater familiarity with the procedures of a judicial review among the citizens and their knowing that a lot of rights can only be obtained after striving for them by all sorts of means including through the judicial proceedings, the number of judicial review cases over the past few years has increased sharply.

Members know that applications for legal aid is vetted and approved by a government department and such applications include cases that may involve litigation with the Government as well. Of course, the greatest problem is with the perception among the public. In particular, in those cases where judicial review is involved, or legal action is instigated against the Government or where certain criminal cases when someone is prosecuted by the Government and he has to defend his case, if some decisions made by the LAD cause dissatisfaction in these people, they will easily think that there is bias in that department.

Such doubts will indeed affect the rule of law. This is because we know that the rule of law does not only ensure that those principles and rights of individuals that I have just talked about are respected and protected, but it is also where our confidence in the system lies. This is of course, not as simple as a matter of confidence. As seen in the many cases we have handled, we can certainly find that the approach taken by the LAD is unsatisfactory. We do not think that the LAD is biased purely because of some structural reasons, but if those of us who are practitioners in law also think that the LAD does not handle cases in a satisfactory manner and when structural problems are added in, I would believe it is inevitable that many members of the public will question the impartiality of the LAD.

We therefore reiterate here that the LAD should be fully independent from the Government and it should be made a truly independent department tasked with the handling of legal aid applications. I would think that this proposal is in line with the practice in many advanced countries of the world.

In about two or three years ago, not only did the Government not make the LAD independent, but it also transferred it under the Home Affairs Bureau. We think this is a retrogression. So I strongly urge the Government again to undertake a review at once of the issue of the independence of legal aid and no delay must be made.

In recent years, as I have said earlier, or rather during these 8 to 10 years past, with the increasing awareness of law in our society, there appeared many actions taken which challenged inequality in the systems and social policies. Often judicial proceedings are used in the pursuit of justice. Very often, these cases have not received much public attention. Such cases included some where issues of social values or where public interest is at stake, like environmental protection issues. Members may recall the recent attempt to preserve the Queen's Pier, or cases involving the conservation of antiquities and monuments, or those about the freedom of speech such as when the student newspaper *CU Student Newspaper* published by The Chinese University of Hong Kong Student Association was ruled by the Obscene Articles Tribunal to be obscene. They were unhappy about the ruling and so there was a need to pose a challenge in law.

(THE PRESIDENT resumed the Chair)

Such cases hinge not just on the Bill of Rights but many issues of public interest, and even constitutional issues. About constitutional issues, there is a possibility that in future some Members may be unhappy about some important rulings that your Honour has made and those rulings may affect some of the important constitutional rights of Members, such as the right to propose a motion or amend a bill, or even the right to speak. Such issues could happen — actually it is not only possible that these issues may be taken to the Court for a ruling, but in some cases, it is perfectly necessary to do so.

So we from the Democratic Party think that whenever it comes to such cases, such as litigation where significant public interest is at stake or constitutional matters are involved, there should be support in the form of legal aid. This will ensure that court procedures can be used to uphold some principles or rights of vital importance.

Of course, in the eyes of the Government, such kind of litigation would only pose a challenge and even cause an impediment to its governance. But we think that this is a vital power exercised in any civic society and it can produce crucial and positive effects on imposing checks and balances on and monitoring

the Government. This is also an essential tool to achieve social justice. Therefore, we think that the scope of legal aid should be extended to include such cases involving vital public interest or constitutional matters.

Some people may worry that extending the scope of legal aid may lead to a large number of unnecessary litigation cases, resulting in chaos when a large number of people commence legal action because they do not have to bear the costs. I wish to reiterate that when the LAD is to vet the applications of these cases, it will first conduct merits tests of these cases in just the same way when it is to approve cases related to the Bill of Rights. Only when the LAD is satisfied that a case has a reasonable chance to win that approval is given to the application for legal aid. Even if approval is given, the party to legal proceedings will still have to contribute to the costs, this is because the law states clearly that legal aid clients are to pay for the costs according to different rates of contributions. So we think that the worries mentioned earlier are unnecessary. *(The buzzer sounded)*

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PROF PATRICK LAU (in Cantonese): President, the first sentence of the original motion has the words "the high litigation fees in Hong Kong" and they pinpoint at the very beginning the problem of expensive litigation fees in Hong Kong. Now the asset limit for legal aid is \$165,700 and when compared to the level of \$155,800 a decade ago, the level almost remains unchanged. It has been on the low side all the time. However, the per capita GDP in 1997 was some \$166,000 whereas it has become some \$233,000 now. The rate of increase is close to 40%. And the median personal income has surged from some \$5,100 in 1991 to \$10,500 now, which is more than double the previous amount.

As a matter of fact, the asset limit for legal aid has only undergone very slight adjustments throughout these years. No serious review was undertaken by the authorities during the past 10 years. This limit has lagged behind the vast changes that have taken place in society and it is far less than the amount required by practical needs. This deprives people from the middle class of a chance to fair trial because their assets exceed this limit. So the reason why I propose this amendment is to focus the problem on this serious disparity between this asset limit and practical levels in the hope of obtaining as soon as possible a reasonable protection of the rights of the middle-class people in law.

President, I agree that the existing legal aid system should be put under a comprehensive review. Such a review would include the eligibility for application and asset limit, as well as a feasible study into extending the geographical areas in which cases for application of legal aid are permitted. However, I would think that at the present stage, our attention should first focus on solving the difficulties faced by the middle class within Hong Kong. We should help solve their pressing needs first. This is because in the wake of the financial tsunami, there may be an increase in cases where litigation is necessary. Many of such cases involve the middle-class people. So I think we should concentrate our efforts on helping the middle-class people so that they can come under the protection of legal aid as soon as possible. We should not try to make a simple problem complicated and create problems at another level as this might on the contrary affect the rights and interests of the middle class.

The amendment I propose today is the result of discussion held in our group, the Professional Forum. Dr Priscilla LEUNG has also agreed that the issue on litigation cases on the Mainland as found in the motion may serve to complicate matters. I understand that some other Members also have reservations for this part. This is why I propose this amendment to delete the part about litigation on the Mainland while preserving the part on a comprehensive review of the existing legal aid system. I hope that this amendment which shows our attempt to forge a consensus can be passed instead of resulting in a possibility of the motion and the amendments all being voted down. We urge the Government to make a response as soon as possible and it should not again ignore the urgency of the review of legal aid.

If the asset limit for application of legal aid can be raised, and this applies not just the proposal made by the Democratic Party to raise it to somewhere between \$500,000 and \$1 million, or other proposals, what I think to be most important is to meet the principles of fairness and equity which the Civic Party or Ms Emily LAU and other Members are always talking about. What should be achieved is equality before the law. There must not be the weird situation of the middle class being deprived of justice when the rich people can take legal action and the poor people can also see that justice be done with assistance from the Government.

Both I myself and many Members are from the middle class. When a person like me is to fight for the rights and interest of the middle class, I am in a position to best understand the actual needs of the middle class. This is especially true because many professionals such as architects, engineers, accountants, teachers, and even lawyers, they all belong to the ranks of the middle class. What we hope to strive for is justice and to have more people from the middle class able to come under the protection of legal aid. This will ensure that everyone is given the chance to fair trial. This will prevent the situation of only the richest can have the luxury to law and that they may even bully the middle-class people who do not have the money to pay for exorbitant litigation costs. Yesterday in a meeting of the Panel on Education held in this Chamber, I heard that many university teachers were barred from engaging in a reasonable lawsuit with their universities for precisely the reason that they could not get any assistance in this regard.

So President, I hope very much that all Honourable colleagues, including Dr Margaret NG who said earlier that she wanted to listen carefully to what I had to say on this issue, will all support my amendment which aims at first solving the problem of an exceedingly low asset limit and getting more middle-class people come under the protection of legal aid, while at the same time conducting a comprehensive review, which includes a study on the feasibility of extending the geographical areas to which legal aid is available. This is to iron out the differences and remove the problems in a gradual manner and prevent some technical problems from causing delay to the achievement of our goal which is to raise the asset limit for legal aid.

I so submit. Thank you, President.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I would like to thank Dr Priscilla LEUNG for proposing this motion today. The objective of the legal aid policy is to ensure that any person who has reasonable grounds for taking or defending a legal action in a Hong Kong court is not prevented from doing so by lack of means.

To qualify for legal aid in civil cases, an applicant must pass both the means test and merits test. Since the resources for the provision of legal aid

services come from the public coffer, we must ensure that the limited resources are used on applicants who need priority assistance. Therefore, the Legal Aid Department (LAD) will conduct a means test when vetting legal aid applications, which is aimed at identifying recipients who should be assisted with public money.

The Home Affairs Bureau and the LAD will conduct regular reviews on legal aid services to ensure the provision of assistance to the needy. The regular reviews include: (a) reviewing annually the upper financial eligibility limits of legal aid applicants to ensure that inflation is taken into account; (b) taking into account the variations in legal costs when reviewing the upper financial eligibility limits of legal aid applicants every two years; and (c) reviewing every five years the criteria for assessing the upper financial eligibility limits of legal aid applicants and how the Supplementary Legal Aid Scheme could be improved.

The mechanism for reviewing the criteria for assessing the upper financial eligibility limits of the legal aid applicants is well-tested and we will consult stakeholders on the relevant reviews.

On the resources that the Government has injected into legal aid services, I would like to say that the Government has injected around \$750 million into the LAD in the year 2008-2009.

In response to Prof Patrick LAU's amendment, I have noticed that it is proposed in Dr Priscilla LEUNG's motion to extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong residents who are in the Mainland. I would like to thank Prof Patrick LAU for proposing an amendment to delete this proposal.

The legal aid scheme is a link to the whole legal system of Hong Kong. It only covers legal proceedings in the Hong Kong courts, but is not applicable to legal proceedings outside Hong Kong. The SAR Government will not extend the legal aid scheme to the Mainland. However, the Government has always devoted itself to providing assistance to Hong Kong residents in the Mainland. The Offices of the SAR Government in the Mainland will provide support to Hong Kong people in the Mainland having regard to the different nature of cases.

For instance, concerning cases in which persons are arrested or detained, immigration service staff will find out more about the facts of the cases from those who sought assistance (usually the family members of the Hong Kong people concerned), explain to them the relevant mainland laws, legislation and the various stages of criminal proceedings, and remind them to consider appointing mainland lawyers as legal representatives, and when necessary, provide to them the contact information of the local lawyers' associations. Upon the request of those who sought assistance, the staff concerned would convey and reflect their views and requests to the relevant mainland departments.

If the cases concerned involve complaints against mainland administrative, enforcement and judicial bodies, the SAR Government will assist in reflecting to the relevant mainland bodies the complainants' appeals. Nevertheless, basing upon the "one country, two systems" principle, the relevant complaint cases must be handled by the relevant mainland bodies under mainland laws and systems.

If the matters concerned are private contract disputes or still in the course of judicial proceedings, the SAR Government will not intervene. The SAR Government will take into account the specific circumstances and try its best to provide the Hong Kong people concerned with the relevant information such as the channels for complaints and appeals in the Mainland, as well as the contact information of the local lawyers' associations.

Extending the scope of legal aid services to jurisdictions outside Hong Kong (such as the Mainland) will involve the merits tests of local litigation cases, which will give rise to a lot of problems in actual practice. As far as we know, all European Union Member States including Britain, Ireland and other common law jurisdictions such as Australia, Canada and Singapore have not extended legal aid services to litigation matters of nationals outside their territories. Thus, I sincerely urge Honourable Members to support Prof Patrick LAU's amendment.

In response to Mr Albert HO's amendment, I would like to make the following points. Mr Albert HO's amendment proposes establishing an independent body for assessing and approving applications for legal aid. The proposal is a significant change indeed.

At present, there is a statutory mechanism under which applicants may appeal against the Director of Legal Aid's refusal to grant legal aid. There are safeguards for legal aid services in law and actual practice to ensure that the Director of Legal Aid will exercise his statutory authority and functions in fair and impartial, transparent and responsible manners.

The Legal Aid Services Council (LASC) is now considering and reviewing the proposed establishment of an independent legal aid authority, and it is going to submit a report for the Government's consideration. I believe that when the LASC considers the relevant issues, of course it will comprehensively analyse the merits and demerits of the current system and proposal. Upon receipt of the LASC's recommendations, the Government will undoubtedly consider its advice carefully. I also trust that Honourable Members would take the opinions of the LASC into full account when they consider the matter.

As regards making amendments to the law to enable the Director of Legal Aid to waive the asset limit for application of legal aid in respect of litigation cases involving constitutional issues or significant public interest, for cases involving the violation of the Hong Kong Bill of Rights Ordinance or the provisions of the International Covenant on Civil and Political Rights applicable to Hong Kong at present, even if the financial resources of the applicant exceed the limit of financial resources under the Ordinary Legal Aid Scheme, the Director of Legal Aid can still exercise his discretion under section 5AA of the Legal Aid Ordinance (Cap. 91) and grant the applicant legal aid.

As to whether the Director of Legal Aid's authority to waive the upper limit of means tests should be further enhanced, the objective of the Government's legal aid policy must be taken into consideration. In other words, it must be ensured that any person who has reasonable grounds for taking a legal action in a Hong Kong court is not prevented from doing so by lack of means.

If enhancing the authority of the Director of Legal Aid so that he may waive the asset limit for application of legal aid implies that the Government purely adopts the criteria of the classes of the cases of the parties concerned and uses public money to assist persons who have the means to take private legal actions, since the spirit of legal aid is to provide legal aid to persons of limited means and we must establish an appropriate order of priority for the utilization of limited resources, we cannot concur with Mr HO's proposal.

Concerning Dr Margaret NG's amendment, I would like to give my response as follows. About extending the scope of legal aid assistance, in Hong Kong, legal aid is applicable to criminal proceedings as well as civil proceedings covering major livelihood aspects, which include domestic and matrimonial disputes, personal injury claims, labour disputes, rent disputes, contract disputes, immigration matters, professional negligence claims and Coroners' inquests.

Since legal aid expenses come from public money, we must set a priority for granting assistance for legal actions so that the resources would be used to help those in greatest need. The Government would continue to discuss the scope of legal aid services with the Panel on Administration of Justice and Legal Services of the Legislative Council.

On the implementation of the recommendations in the Report on Conditional Fees of the Law Reform Commission (LRC), the Government is now considering the recommendations in the LRC's Report on Conditional Fees and it will report its views on the Report to the Panel on Administration of Justice and Legal Services of the Legislative Council.

The Report has touched upon the Supplementary Legal Aid Scheme (the Scheme) of the LAD. The scope of application of the Scheme is determined in such a way as to ensure that a robust balance will be accumulated in the Supplementary Legal Aid Fund. The Fund consists of the damages awarded to the aided persons. These aided persons' lives have been affected to a large extent or they have suffered great harm under many circumstances due to the negligence of the others. For the Scheme to be self-financing, its scope of application must be focused on claims involving reasonable amounts that have a high success rate and a great chance of claims recovery. To achieve the self-financing target, we must prudently consider the proposal to extend the Scheme or establish an alternative scheme. Taking the opportunity of a five-year review on the legal aid scheme and on the premise of not crippling or impairing the financial robustness of the Scheme, we are going to consider whether there is still room for extension of the Scheme.

Dr Margaret NG's amendment has also referred to reviewing the existing free legal advice service and setting up community legal service centres.

Currently, the free legal advice services under the Duty Lawyer Scheme provide preliminary legal advice to members of the public. There is no means test and all the lawyers giving legal advice to members of the public free of charge are qualified lawyers. There are more than 900 lawyers participating in this scheme. In 2008, the Duty Lawyer Service assisted around 6 600 persons at the nine Legal Advice Centres operating in the evenings, and the largest number of cases involve matrimonial cases, and business and property disputes.

In mid-year, the Government would discuss at a meeting of the Panel on Administration of Justice and Legal Services of the Legislative Council the supply and demand of legal and related services, and it will then discuss with Honourable Members the provision of free legal advice services (including the number of Legal Advice Centres).

As regards formulating principles for determining legal fees for criminal legal aid and establishing a more professional criminal legal aid system, the Government and the two legal professional bodies have already reached a consensus about the new fee structure for legal aid in criminal cases. The Law Society of Hong Kong (Law Society) has no objections to the proposed new structure but it has asked for a review of the fees and defining the basis for the determination of the fees.

The Government has suggested to the Law Society that, including legal fees for criminal legal aid in the new fee structure will increase the relevant fees by over 70%. Depending on the types of courts and individual cases, adopting the new fee structure and new legal fees will increase lawyers' fees by 1.2 to four times while an additional injection of \$90 million has to be made. In other words, the legal fees for criminal legal aid each year will almost be doubled to around \$185 million.

We know that the Hong Kong Bar Association expects the Government to legislate on the new fee structure as soon as possible. Even though our proposed fees may not comply fully with the requirements of the Law Society, we still hope that the Law Society would agree to amend the law so that the new structure and legal fees would be implemented as quickly as possible for the advantages of barristers and solicitors.

In the meantime, the Government is ready to go on exploring with the Law Society the basis of lawyers' fees and the relevant matters.

President, the remarks I have just made highlighted the principles of our legal aid policy. After listening to the views expressed by Honourable Members on the subject, I will respond further to the motion.

I so submit.

MR RONNY TONG (in Cantonese): President, an important aspect of the rule of law is that everyone can be given protection in law. It follows that if there is anyone who cannot get such a protection in law because of financial reasons, this is actually a damning indictment to the rule of law in the community concerned. What we should consider at the same time is that if people in that community cannot get legal aid from other places, the community is obliged to offer help to them. President, this would of course have to depend on where these people live and what the amount of resources involved is. If we are talking about our own country and the amount of resources involved at least in Hong Kong, if this amount is tiny, I am sure the SAR Government is obliged to look into this matter.

President, in my career as a lawyer which stretches more than 30 years, I have seen many people who because of the lack of money did not dare to take legal action or eventually decided to withdraw from a lawsuit. It is precisely because of this reason that when I was the chairman of the Bar Association, I set up a voluntary legal service under the Bar Association. Now this service has been in operation for almost 10 years. The number of cases received and handled each year is around 200 to 300. All of them are provided with service free of charge from members of the Bar Association. Of course, this number is no match for that under the Ordinary Legal Aid Scheme of the Legal Aid Department, which is around 10 000 cases each year. However, when compared with the Supplementary Legal Aid Scheme which only approves a few dozen cases each year, we are much better. Or perhaps we may make a comparison like this, generally speaking, the cases which the Bar Association receive are those that for various reasons, not given any assistance by the Legal Aid Department. This applies to applicants under the Supplementary Legal Aid Scheme. Compared with aided persons under the Supplementary Legal Aid

Scheme, those received assistance from the Bar Association are larger in number by many times. This shows that there does exist a demand for legal services in the public.

President, there are many people from the middle class who are badly in need of legal services. They may not be able to get such services. Our Member's offices often get inquiries from these middle-class people. This shows that the financial eligibility limit imposed by the Legal Aid Department is out of touch with the social reality and the financial situation of the middle class. President, now the financial eligibility limit for the Ordinary Legal Aid Scheme is set at \$165,700, and for a two-person family with a flat worth \$1 million and a monthly income of more than \$20,000, this limit is easily exceeded. Of course, the party to a litigation may choose to apply for the Supplementary Legal Aid Scheme, but the types of cases covered by that Scheme are subject to very complicated restrictions and so not every party to a litigation can benefit from it. President, when faced with such cases, we will refer the clients to the voluntary legal service offered by the Bar Association. Having said that, there are still some cases in which the clients will finally give up their right to instigate legal action under this judicial system for the pursuit of justice. They may also give up their right to be provided with legal services and instead put up a defence on their own without any representation.

President, the Law Reform Commission has pointed out in its report released in 2007 that the number of unrepresented litigants has been increasing and this has led to a serious problem in court trial nowadays. A survey conducted seven years ago even pointed out that more than 60% of the unrepresented litigants were not able to afford lawyer's fees. We can imagine that when these litigants do not have any professional legal support, their chances of getting protection under the law will certainly be affected. On the other hand, since these litigants are not familiar with the law, they are unable to enjoy those rights under the law which they are entitled to in an effective manner, this results in lengthy and cumbersome legal proceedings. This will also pose an obstacle to other people who seek protection under law, making them wait for many years. So President, the issue we are talking about is very broad in nature and we must face up to the coverage rate of legal aid and the types of cases covered. This is the key to the protection of the basic legal rights of the people. Such recommendations actually warrant the examination and consideration of the SAR Government once again.

First of all, while considering the factor of financial stability, the financial eligibility limit for legal aid under the Supplementary Legal Aid Scheme should be raised and the types of cases it covers should be increased. The Supplementary Legal Aid Scheme is self-financing in nature and additional financial commitment from the Government is needed Sorry, additional financial commitment from the Government is not needed. On the contrary, we may increase the rate of contributions made by the litigants in a bid to make the Supplementary Legal Aid Scheme more financially stable. In fact, it has been many years since talks of revamping the Scheme are made, but the response from the Government is still characterized by the same bureaucratic tone and no new arguments are put forward.

Second, we should start studying the setting up of an independent legal fund on conditional fees. President, if such a plan is run by individual lawyers, it is likely that a conflict of interest may arise. This is a problem which has been discussed in the legal sector for many years and that is, should we model on the American system and launch a plan on conditional fees? However, if this plan is to be implemented by the Legal Aid Department, President, I am sure such worries will disappear. It is because the Legal Aid Department is completely independent and it does not run a business. So it would meet public expectations if this service is provided by the Legal Aid Department. I hope very much that the SAR Government will not procrastinate on this issue any more, for it has been considered for a very long time. I think now it is the time to put it into practice.

President, with the pounding impact of the financial tsunami, the problem of inequality in law produced by differences in financial means may aggravate. The SAR Government should not overlook the importance of a reform in the legal aid system and the approach taken must be from the point of view of the users of legal aid service. I hope the people of Hong Kong can enjoy the protection given to them in law in an effective manner and in compliance with the spirit of the rule of law. Thank you, President.

MR CHEUNG MAN-KWONG (in Cantonese): President, it is no recent occurrence that the Government overlooks the rights and interests of the middle class. People from the middle class take up half of the taxpayer population and

the tax they pay accounts for 40% of the tax collected. Hence they are a main source of the salaries tax collected by the Government. But they are unable to get a reasonable amount of government services and social welfare, such as public services, housing and social security that require the applicant to pass a means test. With respect to legal aid which is the topic of this motion debate, the asset limit for the Ordinary Legal Aid Scheme is only \$165,500 something and the middle-class people are once again made ineligible.

The middle-class people are forced to pay for private legal services which are expensive. In the education sector which I represent, most of the teachers belong to the middle class. They pay the most tax while enjoy the least welfare. They are thus full of grievances. For many years in the past, I spoke in this Council to urge the Government to relax the restrictions on legal aid so that the middle-class people would not be prevented by the harsh economic conditions at present from an equal access to legal aid. Hence it is possible to materialize the spirit of equality that everyone is equal before the law.

The essence of legal justice is that no one is barred from exercising his lawful rights because of a lack of means. Now the middle class does not have any sound legal support. When it comes to taking legal action or becoming a defendant in a lawsuit, as long as their asset limit exceeds that required by the Government or if they are unable to pay for the costs of private legal services, the only option open to them is to appear before the Court unrepresented. This kind of defence put up without any professional skills will reduce or undermine their chances of winning the case. At the worst scenario, they may worry that they will be unable to pay for the lawyer's fees and so they may give up the right to take the case to Court. If they are the defendants, they may just plead guilty and so save the need for lengthy legal proceedings and the huge amount of expenses incurred.

President, what I have said just now are not empty talks. I can cite a case which happened many years ago. There was a headmistress of a primary school who was dismissed unfairly by the school sponsoring body. After consulting legal advice, we thought that she had a good chance of winning the case. But she was worried that she was unable to pay for the legal expenses and she decided to resign on her own accord. Just imagine, this is the story about an ordinary member of the middle class. Even she was a headmistress with an income of

some tens of thousand dollars a month, she had to bear a great financial burden for her family and she had to pay for numerous items of household expenses. When the other party to litigation is an organization with intimidating financial strength, even if she had a good chance of winning the case and even if she had the grounds, she might not dare to stake all her assets or even borrow to hire a private lawyer for a lawsuit that had risks. If that headmistress did not have the Hong Kong Professional Teachers Union paid her legal expenses at that time, she would never want to seek justice from the Court at all.

Recently, this Council held some hearings. In the past I also got some complaints from university teaching staff. They tried to take legal action in a bid to challenge the university and pursue social justice. But when these teaching staff tried to challenge the university in law, they found that they were in a David and Goliath situation. There was such a great disparity between them and the university. They were alone and did not have any legal aid, whereas the university had public money and it could get the help from numerous legal advisors, even to the extent of using public funds from the taxpayers without subject itself to any restrictions. On the contrary, these people from the middle class who paid a large amount of tax each year were not able to challenge the university by means of legal aid. Why can the university act in such a domineering manner and does not have to fear anything while the teaching staff have to make so many painstaking and exasperating efforts in their attempt to uphold justice? Why is it that when intellectuals want to defend academic freedom, the price they pay is that they are forced to come to the end of their tethers and stretch themselves to the breaking point?

President, I am even more concerned about cases where significant public interest is at stake. A recent example is a case handled by an inquiry panel with statutory powers appointed by the Chief Executive. The case has aroused much public attention. The parties in the case are the former President of the Hong Kong Institute of Education (HKIE) Professor Paul MORRIS and the former Vice President of the HKIE Bernard LUK. They alleged that some top officials intervened with the autonomy of their institution and also meddled in academic freedom. Not only did they have to pay from their own pockets but they had also to raise money in public. This is because the lawyer's fees for themselves alone were as much as \$9 million. Despite the fact that MORRIS and LUK were from the topmost management of their institution, since they were

challenging the top government officials, they did not get any legal support from their own institution. Of course, there was no way they could get legal aid as well. In the end, how were they going to make a defence before the panel of inquiry? It was only because of the strong public indignation at that time that an attempt was made to raise funds for them to pay for the lawyer's fees and share part of their expenses. On the contrary, those top government officials who were their opponents in the litigation did not have to pay even a single cent, even if at the end, the conclusion reached by the inquiry panel was that the allegation was substantiated and even someone had to resign on account of the blunders committed. These top government officials still got legal support from the public organizations or from public funds. This is a legal dispute that is so unfair. I therefore think that for cases where significant public interest is at stake and for cases where an inquiry panel appointed by the Chief Executive is involved, there should be a possibility of considering the grant of legal aid.

I therefore support a full-scale review of the legal aid system, the setting up of an independent body for assessing and approving applications for legal aid, and the relaxing of the asset limit for legal aid applicants so that more people from the middle-class will be eligible for legal aid. Besides, the Democratic Party and this Council have got many requests for legal assistance from Hong Kong citizens on the Mainland. Many individuals and owners of small and medium enterprises are put into jail on the Mainland after involving in some lawsuits and some are even blackmailed. Although many letters are sent by this Council or by me on behalf of this Council to lodge a complaint, the only response is silence. We do not even know what the counterpart units are. Our letters are never answered. Based on the one country principle, we should support the proposal to extend the scope of legal aid services to cover legal disputes on the Mainland involving Hong Kong citizens, thereby protecting the legal rights which they are entitled to enjoy.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): Some groups pointed out recently that under the effects of the financial tsunami, there was a drastic surge in the number of middle-class people who went to ask help from the food banks. This event makes us realize that people from the middle class are not what we have been

thinking, that they do not need any help from the Government. An obvious example is legal aid. Now many people from the middle class are grumbling, they say that it is very expensive to file a lawsuit in Hong Kong. But as they may have some savings, they cannot pass the means test of the Legal Aid Department and so they are denied legal aid. In the end, they may not dare to take the case to Court and give up the attempt to state their case.

However, what the SAR Government tells us is another version of the story. The officials say that the Legal Aid Department now offers two kinds of legal aid schemes, one is called the Ordinary Legal Aid Scheme and the other is called the Supplementary Legal Aid Scheme. And these two schemes are able to cover as many as 70% of the families in Hong Kong and provide legal aid service to them. So there should not be any case in Hong Kong where people do not have the money to file a lawsuit. Also, these officials say that Hong Kong is the only place in the world which has a legal aid scheme especially designed for the middle class and this is called the Supplementary Legal Aid Scheme. These officials try to tell us that the SAR Government has never neglected the needs of the middle class in filing lawsuits. Instead, when compared with the other places, the middle class in Hong Kong is enjoying more protection in law.

With respect to the legal aid system in Hong Kong, it is surprising to find that there are two vastly different views and impressions from the Government and the people. Why do such polarizing differences appear? To know the truth, we have to undertake a comprehensive review of the existing legal aid system before we can get an accurate answer.

It is unfortunate that apart from the interdepartmental working group set up by the Government at the beginning of 1997 — Actually that working group was not formed by the SAR Government but by the Government under the British rule and that working group undertook a comprehensive review of the legal aid policy with respect to the financial eligibility criteria of the applicants, the scope of legal aid and its implementation and so on — there has never been any comprehensive review ever since. After that working group had completed its review, in December 1997 — by that time the SAR Government had already come into being — a consultation paper entitled Legal Aid Policy Review 1997 was published. And the relevant recommendations on revision were finally put into practice in July 2000.

During these 12 years since then, the community has urged the Government on numerous occasions to undertake a review of the legal aid system, in particular about how the scope of the Supplementary Legal Aid Scheme can be expanded. The Home Affairs Bureau has also indicated on many occasions that it remains open on that. Since this is the case, the DAB hopes very much that the Government can put this open attitude into action and undertake a review of the legal aid system.

The original motion proposed by Dr Priscilla LEUNG and the amendments proposed respectively by Dr Margaret NG and Mr Albert HO all call for an extension of the scope of legal aid services to cover litigation cases on the Mainland. The DAB has reservations for that idea. Suppose legal aid services are applicable to cases on the Mainland, then how about cases overseas? Should legal aid be made available to them as well? I would think that if legal aid is applicable to the Mainland, then it should be applicable to all cases involving permanent residents in Hong Kong residing overseas. In such circumstances, if such litigation cases are found all over the world, the SAR Government will have to bear a heavy financial burden indeed. In view of that, we have great reservations for the idea and so the DAB will not support it.

As for the amendment proposed by Prof Patrick LAU, it seeks to delete that proposal and in so doing ensure that the existing legal aid system is stable. Therefore, the DAB supports this amendment proposed by Prof Patrick LAU.

I so submit.

MR LEE CHEUK-YAN (in Cantonese): First of all, I would like to respond to Mr IP Kwok-him as it seems that he does not have any concept of the State at all. If we provide subsidies to Hong Kong people who are involved in legal proceedings in the Mainland, we do so within one country. However, I would never have imagined that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) even opposes to providing Hong Kong residents involved in legal proceedings in the Mainland with the protection of the legal aid services in Hong Kong. We are neither talking about foreign countries nor distant places and places all over the world; we are now clearly confining the

scope to cases in the Mainland, which is within the same country we are in. This is a very clear restriction and I think this proposal should definitely be supported.

The Complaints Division of the Legislative Council Secretariat also received many complaints about cases in which the Government, being unable to offer them any help at all, only advised Hong Kong businessmen who were in distress in the Mainland to engage lawyers. However, what about the resources involved? If we can help by providing the resources for them to engage lawyers, we can then help give the poorer people of Hong Kong a way out when they are involved in disputes in the Mainland. I find it very strange that even Mr IP Kwok-him, the Member representing the DAB does not support this proposal. Therefore, I oppose Prof Patrick LAU's amendment precisely because he tramples on this stance adopted by Dr Priscilla LEUNG.

President, besides, I also find it very strange that the Secretary made it clear right at the beginning, and in quite an appealing way as well, that the objective of legal aid was to ensure that no one with reasonable grounds for instituting or defending legal proceedings was prevented from access to justice because of a lack of means. This is the objective of legal aid clearly stated by the Secretary right at the beginning. We do not oppose this objective at all and we agree that it is very correct. However, the problem is why the Secretary has not resolved the huge discrepancy or incongruity between this objective and reality. If the objective of the Hong Kong Special Administrative Region (SAR) Government was really in line with the policy objective mentioned by the Secretary just now, there would not have been cases in which the subjects were denied access to justice because of their lack of means.

I find this very strange: How can people with assets of a value just exceeding \$160,000 not require assistance? Just imagine how high the legal costs of a lawsuit could be when the subject has to pay the legal costs incurred both by himself and by the other party. The Hong Kong Confederation of Trade Unions often has to handle appeal cases lodged with the Labour Tribunal. In these cases, no legal cost is incurred because no legal representative is allowed at the Labour Tribunal. However, if the appeal is taken all the way up to the High Court, and then to the Supreme Court and the Court of Final Appeal, how many

lawsuits would be involved? In each lawsuit, besides paying the legal costs incurred by himself, the subject may also have to pay those incurred by the other party because the unsuccessful party has to pay the costs of the winning party as well. Many workers were deterred from filing an appeal after I had explained this to them because they thought that if they were unable to obtain legal aid, they would simply be unable to have access to justice. However, how difficult is it for them to apply for legal aid? President, the asset limit is \$160,000. Dr Priscilla LEUNG said that the middle class was targeted. I do not disagree with helping the middle class but workers actually belong to the lower class. Even the lower class is ineligible, not to mention the middle class.

For a family, not an individual, it is not much to have more than \$160,000 nowadays. For families in which both the husband and the wife are engaged in a job and the children have all grown up, it is simply impossible for their asset to be less than \$160,000 if the asset of each family member is included in the calculation. These people basically belong to the lower class. When even members of the lower class of Hong Kong are ineligible, the middle class will be ineligible either. As a result, the scope covered by this government assistance is thus very narrow.

President, I think if the Secretary and the SAR Government had seriously implemented the objective, the asset limit would not have been set at such an excessively low level. It has to be substantially lifted. Actually, the asset limit of \$400,000 under the Supplementary Legal Aid Scheme is more reasonable. Although many people may not be eligible for application, at least the requirement on the asset limit of \$400,000 can be met more easily. It would be easier for the aided person to bear more costs when he has succeeded in his case, because he would think that it would not be a problem to bear some costs when he has won the case. At least, he would have the peace of mind to institute the legal proceedings because he would be able to receive legal aid. If the Secretary requires the aided person to bear more costs after he has won the case, having regard to the use of public funds, we can try to work out an approach and discuss these issues. However, when such a threshold is set right at the beginning, that is, when the asset threshold is so low, it would indeed be difficult for the applicant to succeed in the application. In that case, no one would be able to gain access to justice and receive help in the end.

Therefore, in this regard, I think at least the Government should conduct a review expeditiously. I do not wish to maintain the approach of conducting a review every five years, which is actually meaningless and can only allow for piece-meal changes to the details. For example, as far as I can remember, the 35th percentile is adopted in the existing approach, that is, the income and then the 35th percentile of ordinary what does the 35th percentile mean? It means that the different amounts of expenditure of Hong Kong people are ranked from 0 to 100, and the expenditure pattern of those falling on the 35th line is taken as the expenditure pattern of all the people, and the gross income is worked out by subtracting the expenditure from the income. Then this gross income is multiplied by 12, and stocks and assets are also included. If such a calculation method is adopted, and there are again disputes on whether the threshold should be set at the 35th or the 50th percentile, it is actually meaningless. As we all know, a lawsuit can often incur a cost of a few million dollars, and people with an asset of only one to two hundred thousand dollars will be deterred from filing a lawsuit.

President, I would like to stress one last point, which I have raised to the Legal Aid Department for more than a decade, that is, to waive the means test for people lodging a petition for the winding up of a company with the Protection of Wages on Insolvency Fund (PWIF). It is because the aim is to help workers recover arrears of wages, yet they still have to go through the means test. I have come across many cases of arrears of wages in which the subjects were unable to petition for the winding-up of the relevant companies because they could not pass the means test, and they were thus unable to obtain payments from the PWIF and recover their wages in arrears. Even such a simple issue has dragged on for more than a decade. To date, the Government is still reluctant to provide a waiver to allow workers to recover their wages in arrears. For the Government, this does not have any financial implication because the costs involved in bankruptcy or winding-up cases can ultimately be recovered in full from the assets of the insolvent company. Therefore, the Government has to make "zero payment".

President, I hope that improvement can be made in this regard. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, we keep hearing people say that the spirit of the rule of law is the main reason why Hong Kong can evolve as it is today. Others have said that the rule of law has become the cornerstone of our development. These comments sound correct. Compared with other places where the rule of law is relatively backward, it seems that Hong Kong has achieved great success in this respect. However, President, I can also hear many people ask: What is the rule of law in Hong Kong? They think it is designed specifically for the rich, while for members of the general public, the rule of law is practically nonexistent. For them, whether or not the law is fair is irrelevant because after all they have no access to it.

President, are these comments fair? Why? As we all know, under the existing legal procedures, whether the case be a civil or a criminal one, once the litigation is brought before the High Court, both parties have to engage not only solicitors but also barristers. It would be quite a heavy burden for the parties to the proceedings if they have to bear the total legal costs so incurred. Besides, there is yet another problem for civil cases, that is, the unsuccessful party has to pay the legal costs incurred by the winning party. Very often, some rich people or consortia may use this as a means to suppress the other party, threatening the institution of legal proceedings to resolve the relevant matters. Given the high legal costs, the aggrieved subjects in some cases are unable to institute any legal proceedings and the cases will then be closed before being properly resolved.

President, Mr LEE Cheuk-yan cited plenty of examples to point out how sad the situation would be when the subjects were unable to apply for legal aid. I would like to tell Mr LEE Cheuk-yan a case in which a member of the general public and a large real estate developer were fighting for the ownership of a certain piece of land. Although it was the real estate developer who brought the case before the High Court, fortunately or unfortunately, the member of the public was able to receive legal aid and was thus able to engage in legal proceedings with the large real estate developer and succeeded in the case. In this lawsuit, even the large real estate developer lost and the land ownership was awarded to the member of the public. If that member of the public was unable to receive legal aid, that piece of land would have been seized. Why? How can a member of the general public engage in a lawsuit with a large real estate developer? Then, the land ownership would have been awarded to that large real estate developer instead.

Therefore, I think for some members of the public, fairness is out of the question as they even do not have access to legal aid. Thus, it is very important to provide legal aid to the public so as to avoid situations in which people with wealth and influence can make use of their edge to suppress members of the general public. This is vitally important. At the same time, with the constant progress of society, the number of civil proceedings will surely increase. President, if you have any contact with the community, you should know that small property owners always have disputes with large real estate developers or owners' corporations. Though their cases are valid, these helpless small property owners are unable to bring their cases to court because they are not completely sure whether they can win. They can only helplessly submit to the others' idea and give away the rights and interests which should be theirs.

With the progress of society today, it would be an irony if no measure is in place to protect the fundamental rights and interests of the public. I hope that while striving for a civilized and advanced society, we would not allow too many of such detrimental ironies to exist. We must give members of the general public more opportunities to fight their cases in court. Whether they will succeed or not, they should be given the opportunity to express their preferences and views. Furthermore, two checkpoints must be passed in the application of legal aid. Besides the financial checkpoint mentioned by the Secretary just now, there is also the checkpoint on the merits of the case. If the Legal Aid Department considers, upon assessment, that the prospect of success of the case is low, the application will be refused. In other words, instances of abuse are relatively rare. Therefore, we should not be concerned that relaxing the financial capacity limit will lead to the abuse of the legal aid services. Actually, the checkpoints are still there, and the applicant must have a good prospect of success before his application of legal aid is approved. Therefore, I think this should not be used as an argument to prove that extending the scope of legal aid services will add to the burden of the Government. Of course, I also agree that when the applicant is awarded compensation in certain civil proceedings, part of the compensation may be used to subsidize subsequent legal aid cases. This proposal is acceptable to all.

Therefore, the issue raised by the Secretary that \$750 million was already used on legal aid services in 2008-2009, and more would be needed if the asset limit for the applicant is relaxed should not be a cause of concern. Actually, this

may not necessarily be the case as the amount spent may be recovered from subsequent litigation. Therefore, I think this is very important. In my view, the issue raised by LEE Chuek-yan is even more important. The labour sector is most dissatisfied that as the legal aid services are sometimes unable to help in bankruptcy cases, workers even may not have the opportunity to recover their wages in arrears. It is because very often if workers wish to recover their wages in arrears, the Protection of Wages on Insolvency Fund will have to put the other party, that is, the boss, into liquidation in accordance with established legal procedures. Workers with a monthly income of ten to twenty thousand dollars are already ineligible for legal aid, and thus they may not have any opportunity to recover their wages in arrears. Therefore, for workers, this is absolutely unjust and unfair. In order to protect the rights and interests of the grassroots, legal aid is vitally important, and the asset limit for the application of legal aid should be adjusted upward as much as possible so that everyone will be equal before the law. And the law can be put into practice. Or else, this would be the biggest irony of all.

DR RAYMOND HO (in Cantonese): President, regarding the original motion proposed by Dr Priscilla LEUNG, which suggests to review the existing legal aid system and relax the asset limit for legal aid applicants, Members belonging to the Professional Forum and I would like to express our support for it in principle.

The objective of legal aid is to provide assistance to members of the public who are unable to receive a fair trial due to the lack of means. Unfortunately, the existing asset limit set by the Government for legal aid applicants is \$165,700, thus the multitude of the middle class, including professionals such as engineers, architects and surveyors, whose assets often exceed this limit, have to sell their assets or obtain loans to pay the legal costs. Therefore, such a legal framework can be said to have warded off these people and driven them to despair. Given the current exorbitant litigation costs in Hong Kong, many people regard litigation as a rich man's game unaffordable to members of the general public. However, the middle-class people, who are neither the rich nor the poor in society, are unable to enjoy legal aid protection offered to the public. In order to fill this gap, the Supplementary Legal Aid Scheme (SLAS) has been implemented by the Government. But it is still unable to provide the "sandwich class" with legal aid. Dr Priscilla LEUNG has already talked about the inadequacies of the SLAS in her speech delivered just now, and I am not going to repeat them.

Regarding the third proposal in Dr LEUNG's original motion on extending the scope of the legal aid services to cover litigation cases in the Mainland involving Hong Kong people who are in the Mainland, some people may be concerned that, having regard to the difference between the judiciary system of Hong Kong and that of the Mainland, requiring the Legal Aid Department to provide cross border services will give rise to some technical problems, and is also in conflict with the principle of "one country, two systems". Prof Patrick LAU's amendment is proposed precisely in the light of the above concern of Honourable colleagues in response to that proposal. At least, it provides an alternative to prevent deterring the Government from expeditiously reviewing the legal aid system.

At present, a complaint handling mechanism is put in place by the Bureau for Letters and Calls in the Mainland and I, in my capacity as Hong Kong deputy to the National People's Congress, have referred many cases to the highest echelon of the mainland judiciary through this Bureau for follow-up. These were litigation cases or judiciary issues involving Hong Kong people who are in the Mainland, or cases in which the Hong Kong people involved considered themselves as being unfairly treated.

I hope the Government can conduct an in-depth study on Dr Priscilla LEUNG's proposal as soon as possible in order to expeditiously extend the scope of the legal aid services where possible.

President, with these remarks, I support the original motion of Dr Priscilla LEUNG and the amendment of Prof Patrick LAU. Thank you.

MS LI FUNG-YING (in Cantonese): President, Hong Kong has always been proud of being a society which upholds the rule of law. On top of the Legislative Council Building is a statue of law and justice, represented by the goddess, Themis, who is a symbol of the rule of law. The goddess has a sword in one hand to represent power and a pair of scales in her other hand to symbolize fairness; she is blind folded, which is a sign of impartiality. However, the fairness and impartiality of the law represented by the goddess of Justice has just been an ideal to be pursued so far. In reality, given the exorbitant litigation

costs and the stringent application criteria for legal aid services, the masses and even the middle class are actually unable to put their cases of injustice on the scales to allow the goddess of Justice to do justice for them.

According to the consultation paper on legal aid published by the Working Group on the Legal Aid Policy Review in 1993, legal aid is a financial support applicable to individuals whose financial position, in the absence of legal costs support, will deter them from instituting or defending legal proceedings. This is the objective of legal aid, which is unattainable with the existing asset limit of \$165,700 for legal aid applicants. This limit is set with reference to the 35th percentile of the household expenditure in the Household Expenditure Survey conducted by the Census and Statistics Department in order to cover lower- to middle-class households and make them eligible for legal aid. Sociologist Dr WONG Hung has criticized that this criterion is ridiculous and unacceptable as it implies that 65% of the households in Hong Kong belong to the middle to upper class.

There are strong voices in society, including the labour sector, requesting the relaxation of this ridiculous eligibility criterion for legal aid. At present, legal representatives are not required in respect of labour disputes handled by the Labour Tribunal (LT). This arrangement seeks to ensure that the employee and the employer are on an equal footing and prevent situations in which the employee is deterred from claiming compensation from the employer because he cannot afford the substantial legal costs. However, the labour dispute handling process may not end with the judgment made by the LT. The employer may use some of the legal points to file an appeal with and engage a lawyer to represent him in the Court of First Instance or even courts or courts of appeal of a higher level. Under such circumstances, the employee would be at a very disadvantageous position. When legal proceedings are conducted with the employee and the employer being on an unequal footing, the fairness and justice of the law may not be attained.

Even if the labour dispute is resolved by the LT without being brought before the Court of First Instance or the Court of Appeal, if the employer does not enforce the judgment of the LT, the employee still has to go through lengthy and cumbersome legal proceedings to recover the amount from the employer. This not only involves the recovery of legal costs but also the risks of the failure of the

recovery process. At present, the Labour and Welfare Bureau is considering criminalizing the employer's refusal to satisfy the judgment made by the LT. I support the imposing of heavier penalties on employers who attempt to disregard the judgment of the LT, in order to enhance the deterrence effect. However, this policy still has to take account of which party having to bear the legal costs. If the employee has to bear the relevant legal costs even if the judgment debt recovery fails, he will be concerned that not only will he be unable to recover his own entitlements but he will also have to bear the relevant legal costs, which is often the reason why employees give up recovering the judgment debts.

President, the law is a means to practise justice. In order to maintain fairness and the equal status of the employer and the employee in legal proceedings, I am of the view that for all claims lodged with the LT in which the employee has succeeded, any cost incurred by the employee in the follow-up legal proceedings should be paid under the legal aid scheme to ensure genuine protection of employees' rights and interests.

President, there is another pressing reason why the legal aid system should be comprehensively reviewed, that is, the population of Hong Kong is ageing, and many retirees and elderly persons possess assets of a value just above the asset limit for legal aid applicants, that is, \$165,700. However, this is the only amount for them to live on in the future. If we do not intend to exclude the retired elderly from our legal aid system, we have to face the problem of how this system can help them. This is also a problem we have to face with the ageing population of Hong Kong.

Thank you, President.

MR IP WAI-MING (in Cantonese): President, many Honourable colleagues stressed the importance of the proper rule of law for the people of Hong Kong, especially for the labour sector, that is, workers. I am not well-versed in Chinese studies, neither have I looked up dictionaries or referred to the "*Shuo Wen Jie Zi*", but I find the character "法" very interesting. The character "法" is made up of the character "去", meaning go, with the lateral radical of three dots, meaning water³, which gives me the feeling to put it in a more vulgar way,

³ Water also means money in colloquial Cantonese.

one can go ahead whenever he has the "water". Without "water", what will the character become? It will become "去", that is, go away, this is not a place for you, and this is not a place for the law. Without "water", how can access to the law be possible? Therefore, people in the ancient times were very wise. When they coined the character "法", they already knew very well that one had to have money before one could have access to the law. Therefore, the character "法" is made up of the character "去" with the lateral radical of three dots, and without "water", please go away.

The litigation costs in Hong Kong are exorbitant and hardly affordable for most members of the public. The Secretary mentioned the mission of the Legal Aid Department (LAD) just now, and everyone is saying that this mission can only be desired but not attained. Why? All because of this amount of \$165,700 mentioned by many Honourable colleagues, the sight of which has always caused me to clench my teeth in anger over the past ten to twenty years during my involvement in employees' interests. In many cases, it is precisely this amount of \$165,700 which makes the employees unable to receive assistance. In some cases, litigation is worth pursuing to clarify the ambiguities or grey areas in the Employment Ordinance, but this amount makes it impossible. Why? Actually, it is not very difficult for members of the general public who have joined the workforce for a period of time to have savings of hundreds of thousand dollars. However, it is this savings which has prevented them from enjoying legal protection. Therefore, we have all along been requesting the LAD to relax this eligibility criterion. Very often, workers involved in work-related injuries just wish to obtain reasonable compensations, but they are unable to apply for assistance from the LAD precisely because of this.

Honourable colleagues also mentioned the Protection of Wages on Insolvency Fund (PWIF). Actually, I would like to ask the Secretary to help me find out about some past practices. I have been working for the labour sector for more than two decades. I remember very clearly that in the early 1990s when I helped some workers with their application for legal aid, there was a division under the LAD with the name of something like the employment protection division which unconditionally assisted workers to enforce the judgment made by the Labour Tribunal (LT), provided that the employer had not filed any appeal against it. This was a free service. I once helped a printing worker with instituting such legal proceedings, and this division even helped in applying for

putting the relevant company into liquidation. I hope the Secretary can help me find out about this because when I asked the staff of the LAD, they even could not remember it, but I did use this service. Therefore, in the mid-1990s, when the LAD I consider this a regression. Why is it a regression? It is because even when the LT has ruled that we have won the case, we still have to go through the so-called means test for instituting legal proceedings to enforce the judgment. If the amount of our asset has exceeded the limit, we will not be able to enforce the judgment and apply for bankruptcy of the employer. Then, we will not be able to claim against the PWIF. I once handled a case in which the worker had to sit and wait for as long as nine months under such circumstances before he could obtain payment from the PWIF upon the application for bankruptcy of the employer made by other creditors.

I do not know whether the costs are different now. A solicitor once advised us that it took at least \$50,000 to file a bankruptcy petition, but I am not sure whether it is different now. However, I find it very ridiculous to require a worker who has been laid off or without a job to take out \$50,000 from their own pocket to apply for bankruptcy of his employer in order to claim against the PWIF. Actually, in 2000, the Hong Kong Federation of Trade Unions (FTU) proposed a private Members' bill in a bid to amend the Legal Aid Ordinance to provide the Director of Legal Aid with the discretion to exempt employees from the means test for receiving legal aid. Unfortunately, the Bill was turned down by the Government on grounds of Article 74 of the Basic Law and was thus not introduced. We hope that the Bureau can still consider the proposal put forward by the FTU in this regard, that is, to provide the Director with the discretion to, in labour dispute cases of major significance, exempt employees from the means test so that they can receive help from lawyers. In this way, employees' rights and interests can be served. It is because their personal labour issues may have bearing on the interests of workers as a whole. Therefore, we hope the Bureau can take this view of the FTU into consideration.

As for Dr Priscilla LEUNG's proposal of extending the scope of legal aid services to cover cases in the Mainland, we think that this is a fundamental change and should better be implemented upon detailed discussion in society. Therefore, today we just support the amendment of Prof Patrick LAU, and the FTU will abstain from voting on the other amendments and the original motion. Thank you, President.

MS MIRIAM LAU (in Cantonese): President, the situation of the middle-class people is best reflected by the phrase "obligations without rights". Just take legal aid as an example, its original intent is to ensure that people with reasonable grounds for instituting or defending legal proceedings will not be prevented from access to justice due to the lack of means; but in reality, although middle-class people have tax obligations, they are unable to gain access to legal aid as the threshold for application is too high. Very often, they are driven to a state of despair by the denial of access to legal aid.

Regarding the financial eligibility criteria, the financial eligibility limit under the Supplementary Legal Aid Scheme (SLAS) specifically set for the "sandwich class", that is, the middle-class, is only \$460,300. Many of the people in need of legal aid are thus unable to pass this means test, while having inadequate "ammunition" to pursue litigation on their own. Even for middle-class people with assets at a value of \$500,000 or \$600,000, I believe they would definitely not have the courage to file a lawsuit under the present circumstances of Hong Kong. Therefore, these people will be forced to give up their right to pursue justice.

Therefore, the Liberal Party agrees with comprehensively reviewing the existing legal aid system in a bid to secure fairness and justice for the middle class. We are of the view that it is necessary to substantially raise the existing financial eligibility limit for legal aid to enable more middle-class people to become eligible for application.

At the same time, the Liberal Party proposes to relax the method for calculating financial capacity applicable to elderly applicants. It is because many elderly people and the newly-retired may have Mandatory Provident Fund (MPF) benefits or retirement benefits amounting to a few hundred thousand dollars, and these benefits would very often render them ineligible for application for legal aid. The Liberal Party proposes that the relevant savings in the MPF benefits or retirement benefits be excluded in the calculation of the financial capacity of this group of applicants; or another calculation method should be established to provide exclusion to certain amounts so as to enable more people to be eligible for application for legal aid.

At the same time, the existing SLAS is only applicable to cases involving compensation claims for personal injury, death, professional negligence and so on, but the Liberal Party is of the view that it is necessary to extend the scope to cover more types of cases such as matrimonial disputes, estate litigation and even very common cases such as bankruptcy and winding-up petitions.

President, at present, Hong Kong people working or living in the Mainland may easily be involved in various legal proceedings such as those concerning real estate, share transfer, litigation on bonds, labour disputes often come across by operators of small and medium enterprises (SMEs), litigation on intellectual property rights and trademarks, or disputes over obligation in business operation, and they have to seek judiciary assistance. Besides, when they get involved in these judiciary disputes in the Mainland, they would often feel isolated and helpless and would be at a loss as to what to do.

Therefore, the Liberal Party urges the Government to extend its scope of legal advice and support, and step up the provision of legal advice for Hong Kong people through the four offices of the Hong Kong Special Administrative Region (SAR) Government in Beijing, Guangzhou, Shanghai and Chengdu respectively in order to address the aspirations of Hong Kong people in the Mainland; and consideration may also be given to allowing lawyers with licences to practise law in the Mainland and in Hong Kong to provide legal advice to Hong Kong people involving in litigation in the Mainland. It is because to my knowledge, even if a Hong Kong lawyer can obtain a licence to practise law in the Mainland, he is not allowed to institute legal proceedings in the Mainland for his client. However, I believe these Hong Kong lawyers, especially those with mainland qualifications, can definitely provide the subject with proper advice on legal procedures in the Mainland. In this connection, I hope the Government, especially the offices of the SAR Government in the Mainland, can endeavour to explore means to provide assistance to the subject in this respect. I believe this will be of immense help to Hong Kong people involved in litigation or disputes in the Mainland.

However, the Liberal Party has reservation about the proposal made in the original motion to extend the local legal aid system to litigation cases in the Mainland. We are particularly concerned that on the basis of "one country, two systems" and judiciary independence of the two places, extending the scope of the

legal aid system of Hong Kong to cover cases in the Mainland will give rise to disputes over the intrusion into the judiciary system in the Mainland. Besides, the legal system, the fee charging mechanism and the professional qualifications, conduct and regulation of lawyers of the two places are very different. These issues of principle and technical problems are indeed difficult to clarify and overcome, of course I mean at the present stage. However, if we can find a way to clarify these issues and overcome these problems, we will surely support the provision of legal aid to Hong Kong people in the Mainland. However, as we can see that there are many issues of principle and technical problems, we can hardly support this proposal at the present stage.

What is more, this precedence of extending the scope of legal aid to cover litigation in the Mainland will give rise to another concern. Now, many Hong Kong people are making investment in the Mainland, and we are talking about the need to help those who encounter problems in this respect. However, with the increasing requirements imposed by the mainland authorities on Hong Kong businessmen with regard to business activities, such as requirements on environmental protection, many Hong Kong businessmen may start up factories in places such as Vietnam. Then, do we have to extend the scope of the legal aid system of Hong Kong to Vietnam as well in the future? This is not just an issue of the legal system but is also an issue of the unlimited extension of resources, which has to be handled with great care.

President, the Liberal Party strongly supports the proposals put forward by Dr Margaret NG. The Liberal Party strongly supports the three proposals put forward by her. Unfortunately, however, Dr NG agrees with extending the scope of the legal aid services to litigation cases in the Mainland. In this regard, I have just said that we have reservation about it. Therefore, if Dr NG had put forward the three proposals as a separate motion, the Liberal Party would definitely have supported her.

As for the proposal made by Mr Albert HO, that is, to waive the asset limit for application of legal aid in respect of cases "involving constitutional issues or significant public interest", we are concerned whether it will give rise to an unlimited increase in legal aid cases, which should not be overlooked and should be subject to further deliberation.

Based on the above reasons, and after going through the original motion and all the amendments, we are of the view that Prof Patrick LAU's amendment is the closest to the stance of the Liberal Party. Therefore, we support the amendment proposed by Prof Patrick LAU.

MR ALBERT CHAN (in Cantonese): President, I will focus my speech on expressing views on the limitation of the legal aid system of not approving the provision of legal aid with respect to libel cases. Many Members have mentioned relaxing the requirements for the application of legal aid. Regarding relaxing requirement on income and other eligibility criteria, and extending the scope to cover legal disputes, the League of Social Democrats is in support of these proposals.

President, why do I have to talk about the importance of including libel cases in the scope of legal aid services? Of course, I am not proposing the inclusion of all libel cases, or libel cases arising from personal accusations between individuals. However, for cases in which members of the public, small property owners or individuals participating in social actions or social incidents are unreasonably sued by large consortia or large real estate developers because of the criticisms they have made for the sake of justice or their rights and interests, I think it is absolutely unjust and inappropriate to completely deny them of legal aid on grounds of the restrictions laid down in the legislation.

President, first of all, I have to declare interests because I am being sued by a large consortium, and the litigation proceedings, which commenced 11 years ago, are still in process, pending the final outcome. Of course, I am relatively lucky to be able to contest their charge in court. A few years ago, I succeeded in some of the proceedings when they were brought before the Court of Appeal. Although I only succeeded in some of them, after working out the costs, the other party had to pay a legal cost of over \$2 million to my solicitors and barristers. President, if I had lost, I would probably have been completely broke.

President, my case is just one of the examples, but I would like to cite a very extreme case. When I was handling a certain issue for some small property owners, a group of small property owners and their consultant, if I remember

correctly, there were more than ten of them, were all sued by a large consortium for libel. The case was really astonishing. Although they were sued for libel, the prosecution did not specify which remark constituted libel, and some of the accused had never made any remark in public or at any meeting or in any document or letter against the relevant organization and the consortium. Obviously, regarding this litigation, the relevant large consortium was trying to intimidate this group of small property owners through judicial procedures and with the use of judicial brutality in order to deter them from participating in the so-called dismissal of the management company. President, you may also realize that according to the deed of mutual covenant which is unequal and unfair, for issues involving small property owners and the management company, a 50% majority has to be obtained in an owners' meeting of any housing estate before a management company specified in the deed of mutual covenant can be dismissed. In this connection, we have to condemn the Government for colluding with businesses and transferring benefits. This is a very obvious example. More than two million small property owners in Hong Kong are being suppressed by these unfair deeds of mutual covenant. This is definitely an evidence of the offence committed by the Government, which is unpardonable. This problem has existed ever since the British Hong Kong era.

However, when the small property owners call the owners' meetings, they will have to publicly criticize the management company for its misconduct, including its unprofessional management and muddling management fees. Very often, phrases such as muddling management fees or unprofessional management may already constitute libel, and a libel case will be filed against them. Very often, when the small property owners are served a letter issued by a lawyer, not to mention the pleading issued by the court, just at the receipt of the letter issued by a lawyer, their family will be thrown into chaos, and the wife may insist that the husband resign from the position or else he will be divorced. The invisible pressure is immense. I remember when those ten or so property owners received the court documents issued by the large consortium, the whole housing estate was astounded, and those property owners were very anxious, not knowing what to do. That large consortium was the richest and most powerful in Hong Kong, and many of its trusted aides were Members of the Executive Council. It was a consortium like this which sued the ten or so helpless small property owners for libel in the absence of any evidence. A few of the accused were consultants of the owners' corporation who had never attended any of the meetings, and neither were their names appeared in the letter criticizing the company, yet they were

also sued. The case was severe, appalling, arbitrary and unscrupulous to such an extent. Secretary, I am not talking about you. I am talking about those consortia. However, when the property owners applied for legal aid, they were refused. In the reply, besides the expression of regret, it was also stated that some of the property owners would definitely succeed in their case when they were brought before the court because there were no legal grounds to institute legal proceedings against them. However, the property owners found it very difficult to engage solicitors and barristers with their own efforts to defend them. Finally, I assisted them to engage solicitors and barristers to help them handle their case.

President, I came across quite a number of such cases in the past. We were not as lucky as Mr WONG Kwok-hing, who, though sued by a certain large consortium for similar charges, managed to resolve this legal problem through political relations. This is his knack, which I do not have. Therefore, in dealing with this issue, I hope the Secretary can consider setting some conditions for certain people. They can be small property owners, consumers or certain members, and they may be sued for libel because of participating in certain work not purely for their personal benefits. Therefore, I hope the Secretary can relax the restrictions in the legislation and the financial eligibility criteria for this group of people. Secretary, I have to tell you that these libel cases can incur a cost of a few million dollars. The costs incurred in the lawsuits of "Tai Pan" and Mr TSE, that is, our Honourable colleague, were over ten million dollars. Therefore, when a person engages in a lawsuit with large consortia, not only the legal costs incurred by him are involved. He may not need to engage a trial counsel or barrister, but the legal costs incurred by the other party can be a few million dollars. When the other party appears in court, he may be accompanied by a few lawyers, including the whole team of solicitors and senior counsels. Members of the general public are definitely unable to contest the charge of large consortia and could only be abused by them, while these large consortia can, by means of legal proceedings, suppress the masses at will.

Therefore, I hope that the Secretary can, while conducting a review, consider relaxing the relevant eligibility criteria for the sake of social justice and the interests of the middle class and the masses of Hong Kong. Thank you, President.

DR LEUNG KA-LAU (in Cantonese): President, let me declare my interest first. I am now engaging in a lawsuit with the Hospital Authority (HA). At the commencement of the lawsuit a few years ago, I looked into the criteria for applying legal aid and thus realized that the applicants' assets should not be more than \$400,000. Hence, I knew that I was not eligible for legal aid because my assets had exceeded the specified limit. However, I very much hoped at the time that the asset limit for legal aid could be relaxed as I was involved in legal proceedings with the HA.

In recent years, the professional indemnities insurance I have to pay has been on the rise because of the numerous lawsuits against doctors. Then I wondered again why applications for legal aid were approved whoever applied for it. I have heard of a case in which the mother was very rich and something had happened to her child. Under the existing system, her child could apply for legal aid as an individual so as to sue the counterpart. Eventually, the plaintiff was awarded tens of millions of dollars. There are a lot of contradictory points in this case. But what is the crux of the problem? Even though we have an independent judiciary, there are still a lot of injustices. Then what is the crux of the problem?

The solution we are now proposing is to relax the asset limit for legal aid applicants. Then another point has come to my mind. If I am a person having a net worth of \$1.01 million and going to get involved in litigation with a person with a net worth of \$990,000 who has been granted legal aid, then my opponent will no longer be in a dire situation because he or she will be subsidized by public money. On the contrary, I will be more pathetic. What should I do? Will the Legal Aid Department grant assistance to both sides? Is the relaxation of the asset limit an answer?

Another example is that I have a net worth of \$2 million, but the litigation costs may be exorbitant. The legal representation fees of my opponent may be \$20 million. As I am not eligible for legal aid, I would have to declare bankrupt if I lost. So, it will not help no matter how the asset limit is relaxed. We have to look at the crux of the problem instead.

In her motion, the first thing Dr Priscilla LEUNG mentioned is that litigation fees are astronomical. Just now, I also heard that many Members lent one-sided support to relaxing the asset limit for legal aid applicants. But the

question is: Why should we accept the expensive litigation fees which are astronomical? This is the crux of the problem. Now they have left the Chamber. Did any one of them declare interests earlier?*(Laughter)*

This is an institutional problem. Why are litigation fees so expensive? In fact, there are many solutions and the last resort is to relax the asset limit for legal aid applicants. So, what are the solutions? For example, I have involved in litigation with somebody and expected to spend \$500,000. In fact, as there are many — more than 700 — barristers in Hong Kong, I can eventually find a barrister who will charge a lower fee. Although my budget is \$500,000, the counterpart has spent \$20 million. If I lose, I have to compensate my counterpart's legal fees. This is certainly impossible. Well, should we be fair to each other? On taxation of costs, we should see how much money each party has spent before deciding the costs payable to the party who has won. This is one of the solutions. In that case, if my budget for the lawsuit is \$500,000, I have to pay \$500,000 only if I lose.

Secondly, if someone needs legal aid, it will be unfair to some other people if only the asset limit is relaxed. As a doctor, I would like to explain this by quoting the system of public hospitals as an example. Under the existing system of public hospitals, all patients are admitted regardless of whether they are rich or poor. Mr LI Ka-shing will also be treated if admitted to hospital, but he cannot choose his own doctor and has to stay in a general medical ward. In other words, people can apply for legal aid as long as they consider it necessary and there is no asset limit imposed on them. If the asset limit is relaxed, even if Mr LI Ka-shing applies for legal aid, his application will be approved on the condition that he cannot choose his own lawyer. Under the existing legal aid system, however, the successful applicants can choose their own lawyers, even the fees charged are very expensive. This is a big problem which is also the problem related to financing just mentioned by the Government. As the applicants who have been granted legal aid can choose their own lawyers, the Government will really find such a system unaffordable. If Members really consider it necessary to relax the eligibility criteria for legal aid, the asset limit should be scrapped so that nobody's application will be refused on the condition that they cannot choose their own lawyers. The Government will appoint a group of lawyers who will render help in the legal proceedings. If both parties in a lawsuit apply for legal aid at the same time, the Government will assign lawyers to them so as to help them solve the problem.

In fact, there are many problems and I believe what we should do is not only a review of the legal aid system. Sometimes, the judiciary or the legal profession should also give consideration to some problems. In my opinion, neither the motion nor the amendments proposed by Members can solve the problem easily as far as the wordings are concerned. So, I have to beg your pardon, I can neither support the motion nor the amendments. However, I do agree that there is a need to review the legal aid system, but I do not agree that the problem can be solved by relaxing the asset limit alone. So, for those who are in need of help, that is, those who are facing criminal proceedings or those whose opponent is a publicly-funded institution (because such an institution will have the advantage of unlimited resources), and even those who have encountered problems in the Mainland, I agree that they are in need of help. However, all in all and from the perspective of the major principle, the relaxation of asset limit will help some middle-class people while plunging another group of middle-class people (such as me) into great difficulty.

President, I so submit.

MR PAUL TSE (in Cantonese): President, I admire Dr LEUNG Ka-lau very much. Although he is not in the legal field, he could point out precisely where the problem lies. In a society with limited resources and public funds, the situation in which no one would be prevented from access to justice due to the lack of means, as mentioned by the Secretary, can be said to be an unattainable ideal. It is because justice is relative. Just now, the example about doctors and hospitals was cited. However, the situation is even worse in the legal sector. It is because a member of the public who is taken ill can at least receive basic medical services in a public hospital, but whether one can obtain justice in court depends not only on whether one can engage the help of solicitors or barristers, but also on which solicitors or barristers and the team of barristers the other party has engaged to pursue the legal proceedings. Just try to imagine that in a hospital, a group of doctors are trying to treat you while another group of doctors are trying to harm you, then a competition or divergence will occur, and under this system, the rich will always be benefited. This is an undeniable reality.

In the face of this reality, how can we relieve the general public from such a desperate situation and at least provide them with a safety net? This should be

the intended objective of legal aid. At present, I believe that among us Members — because I am a lawyer and was once a barrister with lots of painful experiences in litigation, I am in a better position than many Members to understand the agony involved. Frankly speaking, the legal aid system of Hong Kong is not too bad because basically, all members of the public can enjoy a certain degree of protection in all criminal litigation proceedings, whether it be heard by the magistrate or district courts at a higher level, the Supreme Court, the Court of Appeal, or the Court of Final Appeal, and they can receive the assistance of solicitors and barristers, although they are unable to choose their own lawyers, as mentioned by Dr LEUNG Ka-lau. Actually, the member of the public concerned is not allowed to choose his own lawyer, though he can indicate his preference to a certain extent, but he is assigned a lawyer instead of being allowed to make his own choice.

The biggest problem is in civil litigation. Given the present constraint in public funds, we indeed have to be selective instead of providing assistance to every single case. The only question is whether legal advice and assistance in legal proceedings which will incur exorbitant costs, can be provided to those cases which merit assistance, for example, cases which are prevented from access to justice due to the lack of means. I think some assistance should be provided to these cases.

I absolutely agree that these problems should be solved. However, they cannot be solved by just relaxing the upper limit or extending the scope. Basically, as Dr LEUNG said just now, only raising the asset limit for legal aid applicants without solving the problem of supply or reducing the costs will be like "milking the bull", being unable to achieve the objective.

In this connection, there are a few points I would like the Legal Aid Department (LAD) or the relevant authorities to consider. While reviewing the mechanism, increasing the amount of financial assistance and extending the scope, I hope they can also seriously examine how the legal aid system can help in the most important areas in order to help the public. For example, first of all, the threshold is very mechanical in nature and is not without limitation. The example cited by Dr LEUNG Ka-lau is very true. When a person is walking along the road and suddenly another person is riding a bicycle along that road, the provision of legal aid is like allowing the person who has been walking to take a taxi. He can pay for the ever increasing fare indicated on the meter in the taxi

with subsidies from the public coffers. When public subsidies are available, he can then change from an unfavourable party to become a favourable party to the litigation. On the contrary, the other person, who belongs to the middle class, is ineligible for legal aid because of the small amount of assets he has. That person who was originally in lack of means can be said to have gained a "windfall" because he can receive unlimited subsidies from the public coffers. Although the majority of solicitors and barristers can uphold their professionalism, I notice that some solicitors and barristers would not stop the meter once it is turned on. Very often, regarding litigation, solicitors and barristers would think that for the sake of justice, they would pick up every single "stone" to examine clearly whether justice is served. It is precisely this mentality of seeking justice that has been abused, very often allowing some unscrupulous solicitors or barristers to spend one year on litigation proceedings which should have taken only 10 days to complete. Examples of these cases abound, and it is a serious wastage of public funds.

Therefore, I think besides extending the scope and increasing the amount of subsidies, we have to genuinely identify areas for improvement in the system. First of all, we should not be too indolent and introduce a single threshold across the board to determine whether or not legal aid will be provided. In granting subsidies, is it possible to prioritize cases according to their prospect of success upon considering their merit on a case-by-case basis? Or can a different rate of cost recovery be adopted for successful cases? Instead of adopting a single criterion across the board to determine whether or not legal aid is provided, or whether or not legal proceedings should be instituted, or whether or not the case will succeed, a more flexible approach can be adopted in the legal aid system in general. Many legal issues can be solved by considering the merits of the cases. If the rate of success is high, more subsidies can be provided; on the contrary, if the case is more marginal, greater caution should be exercised and consideration can be given to providing fewer subsidies. Consideration can be given to this more appropriate approach. Secondly, with regard to reform, should we supervise the handling of legal aid cases more closely? For example, there should not be so many cases of abuse. Should staff of the LAD supervise the trial process to find out if there is anything wrong? Even judges or members of the judiciary can report solicitors and barristers who have always been "rats" of the legal aid system to avoid the abuse of public funds.

There are still many points I would like to make, but given the constraint of time, I could only briefly mention a few more. We should make better use of the strength of the community instead of just using public funds. We can make reference to the system adopted in the United States. For example, for some cases, we can relax the relevant restrictions by allowing the engagement of lawyers in the community who will only charge legal costs for successful cases but no costs for unsuccessful ones, provided that certain conditions are satisfied. Besides, we can also make use of the so-called "legal aid voucher" mode of financial assistance, which is similar to the education voucher scheme, to reduce the administration costs. Moreover, should we also introduce time restrictions on the use of the court? There is restriction on the speaking time in this Council and also restriction on the speaking time in elections, why is there no time restriction on speeches made in court? Why are people allowed to speak for as long as they like? Even for such an important subject, we have to stop speaking when time is up. We should be aware that lawyers are allowed to speak on if they so wish even after they have spoken for a decade (*The buzzer sounded*) I have to stop speaking now, and I hope the authorities can review the system in this regard.

MR LEUNG KWOK-HUNG (in Cantonese): President, when I heard Dr Priscilla LEUNG's proposal of extending the legal aid services to cover cases in the Mainland, I thought it was a good idea. However, upon second thought, I thought it would in reality bring "dire consequences". Why? And why did so many people express opposition? It is not because of any financial concern but because the practice of the rule of law is really pathetic in the Mainland. Just look at the human rights lawyers, all of them have been arrested, right? If a Hong Kong citizen has engaged a certain human rights lawyer to defend him in the Mainland but that lawyer has been arrested, what should he do?

Therefore, most of the problems in the Mainland are caused by the lack of the rule of law. Even if a lawyer is engaged, the subject may lose the case just because that lawyer has been arrested. This is really the sorrow of our country because the rule of law is absent. Therefore, even if we really extend the scope of the legal aid services to cases in the Mainland, the question is how good lawyers can resist the reality in which the rule of the Party has taken the place of the rule of law, and judgment is made by the Committee of Political and

Legislative Affairs instead? Therefore, although I have received many complaints from the Mainland — sometimes I would refer them to Mrs Rita FAN, I may refer them to you in the future, President — I am unable to do anything to help even if I want to. This is a fundamental problem relating to the reform of the system.

The second problem is: Do we also provide legal aid services to foreigners involved in legal proceedings in Hong Kong? If so then will we do the same to foreigners in the Mainland? Are the mainland authorities practising this? Are legal aid services available in the Mainland? This is the second problem. If they are, then they can be offset. We can simply "cancel out" the amount of help we have offered to each other. However, despite this "cancel out" arrangement, we will still be "at a disadvantage" because the Mainland covers a vast area, right? This is indeed a deep sorrow. I would like to take this chance to pay tribute to the human rights lawyers in the Mainland.

What is another problem? It relates to the scope. Regarding the two human rights conventions, if we institute legal proceedings against the Government for breaching these conventions, only one of them, that is, the International Covenant on Civil and Political Rights (ICCPR), is covered; while the other one, that is, the International Covenant on Economic, Social and Cultural Rights (ICESCR), is not. In other words, if we wish to accuse the Government of breaching the ICESCR, the Legal Aid Department (LAD) would advise us that their services do not cover such cases, and this is another problem.

When we debated on constitutional reform earlier on, Secretary LAM indicated categorically that it would not be implemented. Then, has the ICESCR been implemented? Of course it has been implemented, right? Then why do services provided by the LAD not cover cases relating to it? The rights under the ICESCR are very important and are related to various sectors in society. In particular, the ICESCR is to ensure that the lower strata or the disadvantaged group in the system can obtain the rights under the ICESCR. Of else, inconceivable situations mentioned by the Hong Kong Federation of Trade Unions (FTU) would occur, that is, people would be unable to obtain their entitlements even though a judgment has been made, right? I think the reform in this area is indeed pressing. If the Government does not take any stance on this issue, it means that it has not provided proper services to enable its citizens to enjoy the rights under recognized conventions, which is obviously a crime.

Actually, I think Secretary TSANG is very innocent and should not be sitting here because this subject matter should not be under his ambit. But now, by ways unknown, work in this area is dedicated to him, not sure whether by drawing lots or other means. I think the practice adopted by the Government is appalling. The LAD, being a publicly-funded that is, although it is an organization established with public funding, the Government should not take it as its own belongings and private property just because it has provided for its funding, and it should not have put it under whoever's ambit it so wishes. The LAD should have an independence the entire society can see.

Frankly speaking, if I had any past rivalries with the LAD, I would certainly have given Secretary TSANG a dressing-down. I will soon do so because I have been helping some friends apply for judiciary review in relation to their claim that functional constituencies are in breach of human rights conventions, but our application has been repeatedly refused. Why is the Government so troubled by this? One must face the music anyway. Are you trying to avoid litigation by not granting the application? The Secretary himself is not involved in this issue, but now he has "taken the blame". I will certainly give him a dressing-down, and I do not know what he has in mind. He might think that there is nothing to fear in engaging in litigation. The LAD is under his ambit, and he should not interfere with the independent operation of the LAD. But he will take the blame because he is a man who relates himself to a relevant comment. Therefore, this Government is getting worse with regard to the progress of reform. Actually, I think adopting an open policy to allow certain lawyers to provide free litigation services and others to provide charged services is after all a viable method to solve the present problem. However, more stringent regulation is definitely required.

The second point is: Why do we have to implement the law? We do so in the hope that everyone stands equal before the law. However, if there is any system under which only the rich and powerful can, by means of their authority and financial capacity, cause the general public be it the middle-class, the "miserable" class or the proletarians — to suffer, it is definitely not a sound system. Many people, especially the former top official, Thomas MICHAEL, has described me as a busy body because they said that I always made use of the legal aid services to institute legal proceedings. Their comments are unfounded because I conduct my own defence without using any legal aid services.

However, the problem is when they made such a comment, did they realize that in this class society — and I specify that in a "class society" — the class with money and power can abuse the legal proceedings to obtain more justice? As pointed out in *Animal Farm*, all men have power, but some men have more power than others; all men are equal, but some men are "more equal" than others (*The buzzer sounded*) Thank you, President.

MR PAUL CHAN (in Cantonese): President, first of all, I would like to declare that I am Chairman of the Legal Aid Services Council (LASC).

The LASC has considered some of the proposals and views in the original motion and the amendments, and I am going to express my views briefly, but I have to restate that other colleagues in the LASC and I wish to do a good job in upgrading the quality of legal aid services in Hong Kong. Regarding how to improve legal aid services, we adopt an open attitude and would readily listen to various opinions. We would consider them carefully and boldly engage in introspection.

The original motion of Dr Priscilla LEUNG contains the proposal for "extending the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland". No doubt, this is a significant policy change that involves a different jurisdiction. This is rarely seen in foreign countries and considerable resources are involved. Whether Hong Kong should invest limited resources in this connection really deserves prudent consideration but I trust that the basis should ultimately be the needs and mainstream orientation of the community, and the Government should deeply explore this subject.

Concerning the Law Reform Commission's recommendation about conditional fees, the LASC and I do not agree too much to the implementation of the proposal in Hong Kong. According to my understanding, a lot of professional sectors, for example medical practitioners or the accounting sector that I represent, have much reservation about the introduction of conditional fees.

We think that extending the scope of application of the Supplementary Legal Aid Scheme (the Supplementary Scheme) in Hong Kong should be considered. This can also respond to the appeals of the community for extending the scope of legal aid services.

Frankly speaking, the LASC has all along been thinking about extending the scope of the Supplementary Scheme. However, in view of the self-financing nature of the Supplementary Scheme, when we consider extending the scope of application, we must take financial viability into account. If there are feasible proposals, I believe the LASC would certainly consider them proactively and take part in promoting them.

About the proposal on setting up community legal service centres, I personally think that it is worth further consideration. As far as I know, similar community legal service centres have been set up in foreign countries (such as South Africa) and they are operating quite well. If community legal service centres are set up, more people would receive information and counselling services sooner and more conveniently, which would be very helpful to our society.

On the issue of "legal fees for criminal legal aid" referred to in the amendment of Dr Margaret NG, I clearly stated my position in our debate on the Motion of Thanks for the Policy Address last year. At that time, some Honourable Members from the legal sector thought that I was meddling in others' affairs. Despite that, I would like to ask the Government again today to deal with the problem of relatively low legal fees for criminal legal aid lest the quality of legal aid services should be lowered due to low fees, and the interests of the aided persons should be impaired.

Mr Albert HO's amendment proposes "establishing an independent body for assessing and approving applications for legal aid". In this connection, I would like to make some points for Honourable colleagues' reference.

First, under the current system, are there cases in which the approval of legal aid applications is unjust and unfair, or affected by the executive authorities? Or, is the proposal made because the LAD is a government department which gives people the impression that it is not independent enough?

My understanding is that there is currently a set of quite effective mechanisms and measures in Hong Kong that ensure the independent operation of the LAD. Firstly, if a person has passed the eligibility tests, the LAD cannot refuse to grant him legal aid. The eligibility tests comprise two parts, and the first part is a means test. The methods of calculation are open and explicit, and the Director of Legal Aid does not have any leeway to make adjustments. As to the merits test, if the applicant is dissatisfied that his application has been rejected because he has failed to pass the merits test, he may lodge an appeal. All appeals are actually handled independently by the judiciary. The appeals in criminal cases are

PRESIDENT (in Cantonese): Mr Paul CHAN, please stop for a while. Dr Margaret NG, do you wish to raise a point of order?

DR MARGARET NG (in Cantonese): President, I have forgotten about this point of order. I would like Mr Paul CHAN to clarify if he is expressing his personal opinion or the opinion of the LASC.

PRESIDENT (in Cantonese): Dr Margaret NG, if you are asking for clarification, I have to ask Mr Paul CHAN first if he would object to your seeking clarification.

DR MARGARET NG (in Cantonese): I am asking him to clarify his remarks.

PRESIDENT (in Cantonese): I know that. Mr Paul CHAN, do you object to Dr Margaret NG's asking for clarification?

MR PAUL CHAN (in Cantonese): No, I do not.

PRESIDENT (in Cantonese): In that case, Dr Margaret NG, you may ask for clarification.

DR MARGARET NG (in Cantonese): President, I would like to ask Mr Paul CHAN to clarify if the remark he made a short while ago about the independence of legal aid services is his personal opinion or the opinion of the LASC. It is because the Panel on Administration of Justice and Legal Services will soon listen to the views of the LASC in this connection.

MR PAUL CHAN (in Cantonese): I would like to thank Dr Margaret NG for seeking clarification. On this issue, I have just expressed my personal opinion. President, may I continue? I am saying a short while ago that if an applicant is dissatisfied, he can actually lodge an appeal. Under the appeal mechanism, the appeals are handled independently by the judiciary. The criminal appeals are considered by judges while the civil appeals are handled by the Registrar of the High Court, which are independent of the executive authorities.

Also, for legal aid applications involving government or public bodies, human rights or the Basic Law, as stipulated, unless there are specific precedents to be cited for the legal issues that the cases involve, the Director of Legal Aid must contract out these cases for handling by lawyers in private practice to avoid a conflict of roles.

Actually, in the event that the relevant applications involve cases that challenge the executive authorities of the Government, even though the parties to the proceedings against the Government are not Hong Kong people, so long as the proceedings are held in Hong Kong court, they can get assistance. Some examples include the right of abode cases and the Link REIT cases.

Let us consider some examples in foreign countries. Even though independent legal aid bodies have been set up in the United States and Britain, provided that they are financed by government provisions, and their administrative authorities are appointed by the governments, their independence, impression-wise at least, cannot avoid being questioned. Are there really completely independent legal aid bodies in the world?

In making the remark, I do not mean to say that the independence of legal aid services is of no good. I am only presenting some points and highlighting

that this issue is not so unambiguous. There are lots of factors between the ideal and reality to be taken into account.

President, I so submit.

MR WONG KWOK-HING (in Cantonese): President, I did not intend to speak at first because Mr IP Wai-ming of the FTU has already spoken on behalf of a few Honourable colleagues.

Since I shouted until my voice was hoarse when I took part in the petition staged by PCCW employees yesterday, my voice sounds unpleasant now, and it is by no means magnetic. However, why do I have to speak? It is because Mr Albert CHAN cited me as an example when he spoke a while ago and referred to the case brought by a consortium against me for alleged libel. According to Mr CHAN, the incident was finally settled because I had some sort of political advantages. I must clarify this point lest Mr Albert CHAN's remark should mislead public opinions and impair my image.

In this incident, the members of the owners' corporation involved and I have actually fought unyieldingly, and we have paid a heavy price in this case of alleged libel. But, due to the unremitting efforts made by me and the members of the owners' corporation at the time, we have finally achieved desirable results for the residents of the housing estate. That was what happened and I would like to clarify this in a solemn manner.

President, I would also like to tell the Secretary that the Government has promoted the establishment of owners' corporations by small owners, and highlighted the merits of establishing owners' corporations. However, in amending the Building Management Ordinance (Cap. 344), I have been telling the Government that, though it has called upon people to have children, the children fail to get any legal protection when they are born.

I also wish to point out that, those who have become members of owners' corporations have to take enormous risks. Some management companies operated by wealthy but heartless consortia, in order to maintain their power of management, often use their unlimited financial resources to engage their legal

advisers in suing innocent members of owners' corporations who selflessly make efforts for the small owners. What are they sued for? The best trick is a libel claim, regardless of whether the claims are based on facts. These owners' representatives have to spend hundreds of thousands of dollars and even millions of dollars on their defence. Should they sell their properties to fight the case? Yet, they would not win the lawsuit even though they have sold their properties to fight the case.

President, I would like to denounce the existing Building Management Ordinance for it does not give members of owners' corporations any protection. On this point, the original motion and the amendments today are really meaningful. If consideration is only made on the basis of the asset limit of more than \$160,000 or the facts of the cases rather than the risks and pressure borne by members of owners' corporations so that assistance is not granted to them, President, I can say that nobody would be willing to become the chairman, secretary and members of owners' corporations because they will have to bear infinite legal risks — I already have a bitter experience. Nevertheless, I am lucky enough and I have been through. Nonetheless, is anyone willing to take the risk in future? If the Government does not solve the problem, I trust that those who have so suffered would not take the risk again.

I have spoken with difficulty today because, besides clarifying certain points, I wish to make a denouncement on behalf of the members of all owners' corporations in the territory in the hope that the Government would have listened. The saying "The yamen gate is wide open, yet with only right on your side but no money, don't go inside" still applies to Hong Kong in the 21st century when China is so affluent. There are still such sorrowful cases and it is not true that everyone is equal before the law, President.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, you may now speak on the three amendments. You may speak up to five minutes.

DR PRISCILLA LEUNG (in Cantonese): President, I am really thankful that almost 20 Honourable Members have expressed their views on the motion today. On the three amendments, I am particularly appreciative of Dr Margaret NG's generous amendment to my motion, and I concur fully with the contents of her amendment. In fact, my motion is like a Christmas tree, and I hope Honourable colleagues would suggest more specific contents as required within this framework. As point (c) of my motion is in support of the provision of legal aid services in the Mainland, I have heard some Honourable colleagues express their worries. So, I would like to give a response in this connection.

I have studied the issue for 20 years and I especially hope that Secretary TSANG would reconsider it. I have proposed offering assistance to Hong Kong people, which is, supporting Hong Kong permanent residents who are in the Mainland. If we narrow the scope to people who may be sentenced to fixed-term imprisonment of more than seven years or some very difficult cases such as those involving tainted milk for discretionary consideration by the Director of Legal Aid, so as to fight for basic legal justice for Hong Kong people in the Mainland, this will actually have no interference in "one country, two systems". It is because we are not intervening in the operation of mainland courts. In fact, as many of my friends in the mainland judicial sector have told me, if Hong Kong people encounter legal problems in the Mainland, they very often will not handle these problems under the mainland legal system. Instead, they will ask the Government to help them put pressure on the Office of the Government of the Hong Kong Special Administrative Region in Beijing. That being the case, the judicial authorities of the Mainland would to a certain extent think that we are intervening in the judicial review authority of the Mainland.

As regards the problem with the mainland judicial system that Mr LEUNG Kwok-hung has referred to, I do not have time to go into details today because there is ample room for improvement in many areas. Yet, distant water would not help put out a fire close at hand; we are now discussing how the whole system can be changed while many Hong Kong people in extreme misery are facing very difficult problems in the Mainland. These include people operating businesses

who are sentenced without cause, and most of them are small and medium enterprise operators. We may as well consider the situation of these people.

Dr LEUNG Ka-lau has just asked if extending legal aid would

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, I would like to remind you that you should speak on the three amendments within these five minutes.

DR PRISCILLA LEUNG (in Cantonese): No problem. On the amendment proposed by Mr Albert HO, he has touched upon issues involving constitutional issues or significant public interest. In my opinion, under the existing legal aid system, the upper financial eligibility limit can actually be waived in cases involving human rights and significant public interest. However, if Mr HO really thinks that this point should be added before support could be given, I would also agree.

I would like to tell Honourable colleagues once again that Prof Patrick LAU is actually left with no choice in deleting point (c) in his amendment. As he has just said, many Honourable colleagues become nervous when the Mainland is involved, and they dare not indicate support lest the Legislative Council should give people an impression that we have no sympathy for the current situation of the middle-income sandwich class. Thus, we have put forward an alternative, and we should basically vote on his amendment after we have voted on the amendments of Dr Margaret NG and Mr Albert HO. I sincerely call upon Honourable Members to change their minds and support the amendments proposed by Dr Margaret NG and Mr Albert HO. Even if their amendments are not passed, I hope that Honourable colleagues would show their attitudes and support Prof Patrick LAU's amendment. Thank you, President.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I would like to thank Honourable Members for expressing their views on the motion.

A few Honourable Members have just mentioned that the upper financial eligibility limits should be relaxed further. Based upon Honourable Members' views, we will consider making better the direction and pace of legal aid under the established mechanism. As I have said when I spoke on this motion for the first time, we must ensure that the limited legal aid resources are used to help applicants of limited means who need priority assistance.

I would like to expound again some characteristics of the existing legal aid system in Hong Kong.

First, there is no capping of legal aid expenditures. Most of the other jurisdictions have a cap on the overall legal aid expenditures, and some places even have a cap on the expenditures on individual case types. In the Hong Kong Special Administrative Region, persons in need will not be affected by preset financial limits.

Second, in some overseas jurisdictions, when calculating the financial eligibility of legal aid applicants, the personal allowance deductible from the gross income of applicants is still pegged with social security payment. Since 2000, the Legal Aid Department (LAD) of Hong Kong has adopted the 35-percentile household expenditure as the criterion. This is a significant improvement, and the total number of families in Hong Kong to become financially eligible for the Ordinary Legal Aid Scheme has increased from over 40% to over 50%.

Third, we have a comprehensive set of statutory deductions for calculating an applicant's disposable income and capital. Disposable personal income refers to the balance of the applicant's total income after deducting such expenditures as standard personal expenditures, rents, salaries tax payments and pensions.

The disposable capital of an individual refers to the balance of his bank accounts. The disposable capital will not include the total value of any interests of the applicant in his sole or main residence.

Therefore, the current exempted items are quite comprehensive and have already taken into account the applicant's need to maintain his basic living.

Some Honourable Members think that the existing financial eligibility limit fails to reflect the high costs of private actions. During the previous reviews, the Government attempted time and again to ascertain that an adjustment should be made to the limit because of the changes in legal costs within the period of review. Unfortunately, the relevant professional bodies have not compiled figures on the legal costs of individual cases. The figures provided by the LAD only show that there has not been a considerable increase or reduction in legal costs, which may not necessarily be able to reflect the fees actually charged by private practitioners. If the legal professional bodies could provide in future reliable data demonstrating that legal costs tend to increase, we will seriously consider whether it is necessary to adjust the financial eligibility limit.

Some Honourable Members have proposed extending the Supplementary Legal Aid Scheme (the Supplementary Scheme).

The Supplementary Scheme is a self-financing scheme funded by the contribution paid by an applicant upon acceptance of legal aid and the contribution deducted from the damages or compensation recovered in the proceedings with the help of legal aid. The Supplementary Scheme is originally designed to limit the scope of applications to ensure that a robust balance would be accumulated in the fund.

For the sake of maintaining the financial viability of the Supplementary Scheme, we must focus our resources on handling claims involving reasonable amounts that have a high success rate and a great chance of claims recovery, and we have to handle very prudently proposals to extend the scope of the scheme. On this point, I agree with Mr Paul CHAN.

Insofar as libel cases are concerned, the information we have shows that in many overseas jurisdictions, including England, Wales, Scotland, Ireland, New South Wales in Australia, Ontario in Canada and Singapore, libel cases are not within the scope of legal aid. I believe it is because libel cases involve harder merits tests, and the loss of reputation can hardly be calculated as an economic loss.

Concerning levy actions, when employees apply for legal aid in respect of the liquidation or bankruptcy proceedings of the employers, an employee who

meets the eligibility requirements for legal aid in terms of financial resources will usually be selected as a representative. The LAD will also assist the employees in selecting an eligible representative.

In cases involving the bankruptcy proceedings of employers, if any employee files an application for liquidation or bankruptcy against an employer who has failed to pay arrears of wages and make other relevant payments, other employees related to the cases, regardless of whether legal aid has been granted, can apply to the Protection of Wages on Insolvency Fund Board for ex-gratia payment under the Protection of Wages on Insolvency Ordinance, and lodge with the Official Receiver's Office a proof of debt after the court has issued a liquidation or bankruptcy order.

I restate that, basing on the objective of the legal aid policy, the Government considers that there are insufficient grounds on which certain persons should be exempted from the means test and merits test because of their background or case types.

Lastly, I sincerely request Honourable Members to oppose the amendments of Mr Albert HO and Dr Margaret NG, and the original motion proposed by Dr Priscilla LEUNG, but to support Prof Patrick LAU's amendment.

President, I so submit.

PRESIDENT (in Cantonese): I now call upon Dr Margaret NG to move her amendment to the motion.

DR MARGARET NG (in Cantonese): President, I move that Dr Priscilla LEUNG's motion be amended.

Dr Margaret NG moved the following amendment: (Translation)

"To add "to uphold the rule of law, it is necessary to ensure that no one is unable to exercise his or her rights under the law for want of financial means, and" after "That,"; to delete "high" after "to pay the"; to add "and extend the scope of assistance" after "a reasonable level"; to delete "and" after "eligible to apply for legal aid,"; and to add "; (d) consider

implementing the recommendations set out in the Report on Conditional Fees published by the Law Reform Commission in July 2007; (e) review the existing free legal advice service and set up community legal service centres; and (f) formulate principles for determining legal fees for criminal legal aid so as to establish a more professional criminal legal aid system" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Margaret NG to Dr Priscilla LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

PRESIDENT (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Prof Patrick LAU, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Mr Timothy FOK, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai and Dr LEUNG Ka-lau voted against the amendment.

Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Ting-kwong, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG and Mr WONG Sing-chi voted for the amendment.

Mrs Regina IP voted against the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the amendment, eight against it and eight abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in

favour of the amendment, one against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Relaxing the eligibility criteria for legal aid" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the motion on "Relaxing the eligibility criteria for legal aid" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Mr Albert HO, you may move your amendment.

MR ALBERT HO (in Cantonese): President, I move that Dr Priscilla LEUNG's motion be amended.

Mr Albert HO moved the following amendment: (Translation)

"To add "and establish an independent body for assessing and approving applications for legal aid" after "legal aid system"; to delete "and" after "eligible to apply for legal aid;"; and to add "; and (d) consider amending the law to enable the Director of Legal Aid to waive the asset limit for application of legal aid in respect of litigation cases involving constitutional issues or significant public interest, in addition to that for litigation cases involving human rights issues" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Dr Priscilla LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Prof Patrick LAU, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai and Dr LEUNG Ka-lau voted against the amendment.

Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Ting-kwong, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG and Mr WONG Sing-chi voted for the amendment.

Mrs Regina IP voted against the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the amendment, 10 against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the amendment, one against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Prof Patrick LAU, you may move your amendment.

PROF PATRICK LAU (in Cantonese): President, I move that Dr Priscilla LEUNG's motion be amended.

Prof Patrick LAU moved the following amendment: (Translation)

"To delete "; and (c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Prof Patrick LAU to Dr Priscilla LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

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

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, you may now reply and you have three minutes 12 seconds. This debate will come to a close after Dr Priscilla LEUNG has replied.

DR PRISCILLA LEUNG (in Cantonese): President, the motion today actually does not have a binding effect, and all Honourable Members of the Legislative Council are just making known our positions to the middle-income sandwich class, who have contributed a lot to Hong Kong but have been neglected all along.

I have mixed feelings about the remarks made by a number of Honourable Members a while ago. First, I think that the reply given by Secretary TSANG appears somewhat indifferent. Regarding the difficulties faced by the middle class and their states of mind, as I have just said, many of them may not need legal aid at the moment, but in respect of attitudes and mechanisms, we would like to ask if the Government has considered that they should also have the rights. If Honourable Members attended the meeting of the Panel on Education two days ago, they would understand that Mr CHEUNG Man-kwong and I met many from the middle class at the Panel meeting — all of them were university staffs, and they expressed indignation at the lack of such rights.

I would like to supplement the remarks just made by a few Honourable colleagues. Dr LEUNG Ka-lau fears that extending the scope of legal aid recipients would be unfair to another group of people, but if he has listened carefully to what I just said, he would know that I have just said that a review of

the legal aid system is necessary because the scope of the Supplementary Legal Aid Scheme specially targets professional negligence. I have then asked a question: Why are banks and other victims not included? Why can dental, medical and legal services be included under the Scheme? Is it because approval is given most easily? Should there be a review of the legal aid system? According to Mr Paul TSE, the lawyer system comprises many issues that warrant review, with which I absolutely agree. Yet, as I have said a short while ago, distant water would not help to put out a fire close at hand, and the Law Society has argued over the issues for years. If the middle-income sandwich class are deprived of the chance to apply for legal aid in an emergency due to the problems with the mechanisms, I think it would be unfair.

So, I am very grateful for Mr Paul CHAN's remark that the Government is expected to go on considering point (c) in my motion. I hope the Government would adopt an open attitude, and if it is feasible technically and in principle, I hope the Government would partially provide legal assistance to Hong Kong people in the Mainland.

Lastly, I agree with the point in Dr Margaret NG's amendment about the feasibility of setting up community legal service centres. Actually, we would like to tell Dr LEUNG Ka-lau that we really wish that this could be done. When can legal service centres be set up within the public hospital system? At present, many people fail to get assistance in emergency, and I believe we have to realistically consider the current situation of the middle class.

I am very grateful to Honourable Members for their speeches, and I would like to thank Honourable colleagues for at least passing Prof Patrick LAU's amendment. Again, I hope that Honourable colleagues would change their minds and support point (c) in my motion. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Priscilla LEUNG, as amended by Prof Patrick LAU, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 18 February 2009.

Adjourned accordingly at eight minutes past Seven o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Paul TSE's supplementary question to Question 5**

As regards why the Official Receiver's Office (ORO) has not introduced an outsourcing system for opening bank accounts for bankrupts, the ORO does not require a bankrupt to open a bank account. However, the Official Receiver (OR) as a provisional trustee or trustee may, upon the application of a bankrupt, consider allowing a bankrupt to open a savings account at a bank of his own choice for the purpose of receiving salaries/wages, social security allowance, and so on. As the bankrupts are free to choose a bank to open such accounts, there is no need for the ORO to operate an outsourcing system. No special conditions are imposed on the operation of such accounts.

In addition, pursuant to section 91 of the Bankruptcy Ordinance, the OR is required to open an account at a bank approved by the Chief Executive and pay all monies received by him as the OR or as trustee to that account. As for other trustees, they are also required to open an account in the name of the bankrupt's estate for receiving monies payable to the estate at that bank. If trustees wish to open accounts at other banks, they may approach the ORO to make the necessary arrangements. The Ordinance also provides that the OR may, on the application of the creditors' committee, authorize a trustee to open an account at any other bank specified by the creditors' committee.

Appendix II

WRITTEN ANSWER**Written answer by the Secretary for Financial Services and the Treasury to Ms Starry LEE's supplementary question to Question 5**

The number of field audits conducted by the Official Receiver's Office on the private firms handling winding-up and bankruptcy cases for the last five years is as follows:

<i>Financial year</i>	<i>Number of field audits</i>	<i>No. of private firms involved</i>
2003-2004	140	30
2004-2005	124	41
2005-2006	101	32
2006-2007	93	33
2007-2008	62	24
2008-2009 (up to January 2009)	147	22

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Paul CHAN's supplementary question to Question 5**

As regards details on cases of which directors were sentenced by the Court to punishment other than fines due to misconduct for the last five years, during the past five years, in respect of prosecutions issued by the Official Receiver's Office pursuant to the Companies Ordinance, there were three cases in which the Court punished the convicted defendants by means other than fines. Details of such cases are as follows:

- (i) In March 2008, two former company directors convicted under sections 121 and 274 of the Companies Ordinance for failing to keep proper books of account were each ordered to sign a bond in the sum of \$500 to be of good behaviour for a period of 12 months.
- (ii) There were two defendants convicted by the Court in October 2005 and July 2007 respectively under section 156 of the Companies Ordinance for acting as director, or being concerned in the management, of a company whilst being an undischarged bankrupt. They were sentenced respectively to 28 days' imprisonment suspended for three years and four weeks' imprisonment suspended for two years.