

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 11 March 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

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 JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.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 EMILY LAU WAI-HING, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE ABRAHAM SHEK LAI-HIM, 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 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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

THE HONOURABLE TANYA CHAN

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 YUK-MAN

THE HONOURABLE IP WAI-MING, M.H.

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

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

MEMBERS ABSENT:

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

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

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

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

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

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

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

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

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

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

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

THE HONOURABLE IP KWOK-HIM, G.B.S., 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 WONG YAN-LUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION

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

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

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

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

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 JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber?

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

PRESIDENT (in Cantonese): The meeting now begins.

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>
Tramway Ordinance (Alteration of Fares) (Amendment) Notice 2009	33/2009
Tramway Ordinance (Commencement of Alteration of Fares) Order 2009	34/2009
Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2009	35/2009

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.

Ex Gratia Allowances for Mariculturists Affected by Marine Works Projects in Hong Kong Waters

1. **MR WONG YUNG-KAN** (in Cantonese): *President, at present, mariculturists affected by marine works projects in Hong Kong waters are eligible for ex-gratia allowances (EGAs) if one of the following two criteria is met: (a) the shortest water distance between the designated boundary of a sand dredging or mud disposal operation and the gazetted zone boundary of a fish culture zone (FCZ) is 5 000 m or less, or (b) the concentration of suspended solids in a FCZ reaches the prescribed levels (that is, 100% more than the highest level recorded at the zone during the past five years or 50 mg per litre of sea water). Given that such eligibility criteria have not been revised since December 2000, will the Government inform this Council whether or not it will review the eligibility criteria, for example, considering extending the shortest water distance to "15 000 m or less" and lowering the prescribed concentration level of suspended solids; if so, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the Administration reviewed the mechanism of granting EGAs to mariculturists affected by marine works projects in Hong Kong waters in 2000. In December the same year, the Finance Committee (FC) of the Legislative Council endorsed the proposal to revise the basis for calculating the amount of EGAs and the eligibility criteria for EGAs. The revised eligibility criteria for EGAs are as follows:

- (a) To continue adopting the "suspended solids" criterion approved by the FC of the Legislative Council in 1993, that is, if, due to the undertaking of marine works, the concentration of suspended solids in the sea water of a FCZ in the vicinity is 100% more than the highest level recorded at the zone during the five years before the commencement of such works, or the concentration of suspended solids reaches 50 mg per litre of sea water, the licensed mariculturists operating in the zone will be eligible for EGAs; and

- (b) To introduce a new "proximity" criterion applicable to sand dredging and mud disposal works, that is, if the shortest water distance between the designated boundary of a sand dredging or mud disposal operation and the gazetted zone boundary of a FCZ is 5 000 m or less, the licensed mariculturists in the zone will be eligible for an one-off payment of EGAs for the first two years of the project, irrespective of the concentration of suspended solids. EGAs may be granted again upon the expiry of the first two-year period should the concentration of suspended solids in the sea water in the FCZ reach or exceed the level set out in the abovementioned "suspended solids" criterion because of the project.

Where necessary, an inter-departmental working group comprising representatives from the Lands Department, the Agriculture, Fisheries and Conservation Department (AFCD), the Home Affairs Department and other relevant departments will be set up immediately by the Government to consider, having regard to the abovementioned criteria, whether or not the mechanism of granting EGAs should be activated to process the applications of eligible mariculturists.

The yardstick of 5 000 m adopted under the "proximity" criterion was derived from the water-quality-monitoring data and the general condition of the marine works projects carried out since the introduction of the "suspended solids" criterion in 1993. Between 1993 and 2000, three major sand dredging projects (carried out to the south of Tsing Yi, east of Tung Lung Chau and at the Tathong Channel) caused the concentration of suspended solids in the nearby FCZs to exceed the level prescribed under the "suspended solids" criterion, thereby triggering the mechanism of granting EGAs to the affected mariculturists. The distances between these three projects and the FCZs concerned were less than 5 000 m. For that reason, the Administration considered that the yardstick of 5 000 m adopted under the "proximity" criterion could provide adequate protection to the mariculturists.

In fact, since the implementation of the "proximity" criterion in 2000, there were four sand dredging or mud disposal projects meeting the criterion and as a result, EGAs were granted to the mariculturists in six affected FCZs. As for the FCZs which were more than 5 000 m away, these projects did not cause the concentration of suspended solids in the water to exceed the level prescribed under the criterion or lead to abnormal fish kills in the FCZs. Apart from these

four projects, no similar sand dredging or mud disposal projects of a large scale have been carried out in Hong Kong during this period. The Administration considers that the existing arrangements have already provided suitable protection to the mariculturists and consequently, there is no need to revise the criteria.

As for the "suspended solids" criterion, in drawing up the criterion in 1993, the Administration had taken into account the local culture fish species and the mariculture environment, in addition to making reference to the findings of relevant scientific studies. According to the relevant scientific literature, fishes will not die in normal circumstances unless the concentration of suspended solids reaches a really high level (for example, several thousand milligrammes or above per litre of sea water). If the concentration of suspended solids is just several hundred milligrammes per litre of sea water, only the growth and development of fishes will be affected. It will only cause a mild physiological response in fishes if the concentration of suspended solids is below a hundred milligrammes per litre of sea water.

Based on the above information, it was already very prudent for the Administration to set the level concerned at 50 mg per litre of sea water under the "suspended solids" criterion, so as to provide adequate protection to the local mariculture industry. In addition, having factored in the fact that fishes may be affected because of the failure to adapt to a sudden and substantial increase in the concentration of suspended solids within a short period of time even if it does not reach the level of 50 mg per litre, the Administration has introduced another criterion, so that affected mariculturists are eligible for EGAs if, due to the undertaking of marine works, the concentration of suspended solids in the sea water of a FCZ in the vicinity is 100% more than the highest level recorded at the zone during the five years before the commencement of such works.

The Administration has made reference to latest scientific literature from time to time, including the two recent studies on some local culture fish species. The findings of these studies are consistent with the basis on which the "suspended solids" criterion was drawn up at the time. Therefore, we do not consider that there is any need to revise the existing criterion.

We will continue to have in view the operation of EGAs for mariculturists affected by the marine works projects undertaken in Hong Kong waters.

MR WONG YUNG-KAN (in Cantonese): *President, because of these several revisions made by the Government, the Disneyland works caused death to a large amount of fish at the FCZ in Cheung Sha Wan that year — this happened not only just once but twice. On the second occasion, the Government, however, did not offer any compensation. Its conclusion was that the prescribed level had not been reached and for that reason, it refused to grant any compensation. However, even when a concentration exceeding the prescribed level had been recorded, it would still refuse to do so. Therefore, I wish to ask the Government why it has not revised this criterion. In the future, many marine works projects, including the Tsing Ma Bridge project, the connecting bridge project and the cross harbour tunnel project and so on will be carried out in New Territories West. Given that these works will cause damage to FCZs or the sea, has the Government conducted further studies and considered revising this criterion?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, Mr WONG has just mentioned two instances that happened in 2000 and 2004. According to our information, we granted EGAs in 2000. At that time, in addition to the Disneyland works, other marine works projects were also being carried out in the vicinity of Cheung Sha Wan. Therefore, these works projects or the weather might have an impact on the water current, resulting in the concentration of suspended solids exceeding the prescribed level. For that reason, the Government granted EGAs.*

However, regarding the instance in 2004 which Mr WONG alleged that we did not grant EGAs, the concentration of only one of the 869 sea water samples tested by us just reached the prescribed level of 50 mg, while those of the remaining ones did not exceed the prescribed level. At that time, the Government was of the view that the works projects had no direct relationship with the death of fishes and so, it did not activate the mechanism for granting EGAs. However, Mr WONG raised a question just now as to whether or not the Government would conduct a review of the existing criteria. Although I do not consider a review necessary for the time being, we will make a decision as to whether or not it is warranted, having regard to the water quality of the monitored waters, especially waters in the vicinity of the FCZs. We consider that the present criteria have provided adequate protection to the mariculturists.

MR LAU KONG-WAH (in Cantonese): *President, the Government will carry out many major infrastructure projects in the future. Nevertheless, it may not be possible to use past experience as our future reference. At present, the Government adopts 5 000 m as the cut-off line. Despite this, I am of the view that the granting of compensation should be subject to whether or not any effect has been caused. Now that the cut-off line is set at 5 000 m, compensation will not be granted if an affected raft is located more than 5 500 m away. Does the Secretary consider this situation unreasonable and inflexible?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, if the Government had adopted only the "proximity" criterion as the main factor for consideration, of course, I would consider this unreasonable. However, as I have made clear in the main reply, the most important thing is that we will make a decision after factoring in the issue of water quality, especially in terms of the concentration of suspended solids, which is considered an important factor. Even though the concentration may not have reached 50 mg, if it increases drastically and significantly — the highest concentration of suspended solids at some fish farms in Hong Kong, for example, those in Yung Shue O, is 9.2 mg — when it increases drastically to 18.4 mg, we will still grant compensation. We will make a decision having regard to the location. In Cheung Sha Wan, the highest concentration of suspended solids over the past five years was 25.9 mg and this was the figure for 2004. However, over the past period of time, for example, in 2008, it was recorded that the highest concentration of suspended solids at the same location was 10.4 mg. This reflects the fact that the figure concerned has seen continuous changes over the past five years. For that reason, we are of the view that the reference point for the past five years is some important data that we can make reference to, and the relevant criterion has provided adequate protection to the mariculturists. Therefore, we consider that this practice is sufficient and we do not make a decision by solely considering the proximity factor.*

MR CHAN HAK-KAN (in Cantonese): *President, we are aware that the volume of effluent discharge in the Pearl River Delta (PRD) Region is constantly on the rise, and many large-scale works will get underway in the vicinity of the PRD Region in the future. In view of this, it is certain that the quality of sea water to the west of Hong Kong will be greatly affected. May I ask the Secretary whether or not he knows if any water quality improvement projects of a large scale will be*

carried out in the future, with a view to improving the quality of sea water to the west of Hong Kong on one hand and, facilitating the development of the fish farming industry on the other? If the Secretary is unable to give an answer, may I also invite the Secretary for the Environment to make additional comments?

PRESIDENT (in Cantonese): Mr CHAN Hak-kan, I believe that your supplementary question bears no direct relationship with the main question because the latter is related to the granting of EGAs to those mariculturists who are affected by marine water pollution. However, you are asking about the improvement of water quality.

MR CHAN HAK-KAN (in Cantonese): *My supplementary question is that if the quality of sea water shows some improvement, this will be beneficial to the mariculture industry. For that reason, it is relevant to the main question.*

PRESIDENT (in Cantonese): Mr CHAN, I do not think that your supplementary question is related to the main question. Maybe you can give it some further thought. The question that Mr WONG Yung-kan asked was very clear in that it focused on the criteria for granting EGAs.

MR WONG YUNG-KAN (in Cantonese): *President, I would like to ask the Secretary on what grounds did the Government set the cut-off line at 5 000 m? Mr LAU Kong-wah asked just now why compensation would not be granted if an affected raft was located 5 500 m away. The difference in terms of distance is only 500 m and this is ridiculous. Why do I ask about this? In fact, although at that time the Cheung Sha Wan FCZ was more than 15 000 m from the Disneyland works, still, the effluent drifted there. For that reason, I am of the view that the Government needs to consider revising this mechanism and I hope that it can re-examine the situation. If similar instances happen again, the operation environment for the fish farming industry in Hong Kong will gradually deteriorate. After the launch of the government projects, there will be a lot of problems.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I mentioned in the main reply just now that the adoption of 5 000 m as the cut-off distance was based on previous occasions when the mariculture industry was affected and it was found that 5 000 m was a safe distance. However, we do not only rely on this criterion of 5 000 m. As we have said just now, the quality of sea water is important and so we have laid down a definition for the concentration of suspended solids. Therefore, we consider this more important. I have also explained just now that it is already very prudent to set the concentration level at 50 mg and this standard is quite lenient. In addition, as I have explained, we will also take into account sudden changes in water quality.

As for the incidents relating to the Disneyland and in Cheung Sha Wan, which happened in 2000 and 2004 respectively, we conducted detailed studies at that time before making the decision. As I have said, we will closely monitor the development of the fish farming industry in Hong Kong and the impact of the works conducted within Hong Kong waters on the industry. For example, we will pay attention to whether a greater accumulative impact will be caused if several works projects are underway in the vicinity. We will mainly factor in the issue of water quality.

I would also like to give a reply in passing to the supplementary raised by Mr CHAN just now. There are 29 FCZs in Hong Kong and two of them are located in the waters west of Hong Kong, namely, the FCZ in Ma Wan and the one in Cheung Sha Wan. We have also paid attention to the relevant situation. In the coming few years, the Government will put in place a sewage treatment system purposely for New Territories West, so as to improve the quality of the sea water in Lau Fau Shan and other places. I believe it is the hope of the Government that, by undertaking so much work, the quality of sea water in Hong Kong can be maintained at a satisfactory level and the continuous development of the fish farming industry can be promoted.

PRESIDENT (in Cantonese): Last supplementary question.

MR LAU KONG-WAH (in Cantonese): *President, I wish to ask the Secretary how he will ensure that the monitoring stations are functioning fairly and effectively when works are underway. In addition, will fish farm operators be*

allowed to participate, so that there will be communication among the parties concerned when undertaking the monitoring work?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we frequently conduct water-quality-monitoring work at the 29 FCZs and we will do so more frequently if works are in progress in the vicinity. The current practice is that we carry out biweekly water quality monitoring work at six major areas while such work is also carried out monthly at the remaining 29 FCZs. Therefore, the monitoring work concerned is performed 12 times per year at the minimum. That is to say, a water sample is taken monthly at various locations within a FCZ, and so doing is important. In addition, professionals from the AFCD frequently liaise with members of the fish farming industry, so as to understand the health condition of the fish reared by mariculturists. If an emergency arises, for example, the recent occurrence of red tides and other incidents, we will also inform them and render assistance at the earliest opportunity.

PRESIDENT (in Cantonese): Second question.

Legislation on Hong Kong Monetary Authority

2. **MR CHEUNG MAN-KWONG** (in Cantonese): *President, the Hong Kong Monetary Authority (HKMA) has been established for 16 years but its terms of reference, governance structure and matters relating to the appointment and removal of its management, and so on, have not yet been provided in a piece of legislation at present. In this connection, will the Government inform this Council:*

- (a) *given that the existing legislation has not provided for the tenure of office of the Chief Executive of HKMA and there are speculations in the community over the future move of the incumbent Chief Executive, whether the authorities have assessed if these uncertain factors have an adverse impact on the stability of the monetary and financial systems of Hong Kong;*

- (b) *since it has been reported that the remuneration arrangement for the Chief Executive of HKMA has all along been a subject of criticism, whether the authorities have any plan at present to change the arrangement so as to enhance the accountability of HKMA; and*
- (c) *whether the authorities have any plan at present to formulate a new piece of legislation to prescribe the status and organizational structure of HKMA, as well as to provide for the selection process, tenure of office, removal procedure and remuneration arrangement, and so on, of the Chief Executive of HKMA?*

FINANCIAL SECRETARY (in Cantonese): Mr President, the monetary and financial systems in Hong Kong have all along been stable with no systemic risk. Since last September, we have introduced a series of measures to ensure the stability of the market and bolster public confidence in our financial systems. In view of the turbulence in the global financial markets, the Government and the regulators will continue to monitor closely the latest developments around the world and take further action as appropriate to maintain the stability of the financial system.

The Government has been working as a team. Postings and movement of individual staff members would not have any negative impact on our system.

As regards the second part of Mr CHEUNG's question, the Governance Sub-Committee of the Exchange Fund Advisory Committee conducts annual review on the remuneration of all HKMA staff, including the Chief Executive, in light of the findings of independent consultants on Hong Kong's pay trends and the pay levels in the financial sector. As Financial Secretary, I will take into account the recommendations of the Governance Sub-Committee, its assessment of the performance of HKMA staff during the preceding year and other relevant factors in making the appropriate decision.

As for the third part of Mr CHEUNG's question, the main functions of the HKMA are provided for by the Exchange Fund Ordinance and the Banking Ordinance. With regard to the appointment, dismissal and the remuneration of the Monetary Authority, section 5A(1) of the Exchange Fund Ordinance provides adequate flexibility for the Financial Secretary to make such decisions. I

consider the current arrangement appropriate. The Government has no plan at present to formulate a new piece of legislation to prescribe the above issues.

MR CHEUNG MAN-KWONG (in Cantonese): *President, the gist of the Secretary's main reply is to make no change, but Mr Joseph YAM is the world's highest paid central bank chief, his remuneration is over HK\$10 million, or seven times higher than that of the Chairman of the Federal Reserve of the United States. He has been in office for 16 years, spanning the rule of the colonial government and the 10-year period of the post-reunification government of Hong Kong, and he has worked with five Financial Secretaries, namely Hamish MACLEOD, Donald TSANG, Antony LEUNG, Henry TANG and John TSANG. The annual remuneration of this post is extremely high, but there are no tenure and term of office, no retirement age restrictions, and decisions about this post are made by the Financial Secretary, as well as a Governance Sub-Committee comprising members from the senior management of the banking industry and the business sector. Does the Government consider that the degree of transparency of this powerful and influential position is pretty low, and the system is rather slipshod, irrespective of the salary, tenure and term of office and retirement arrangement, and it is simply the rule of men instead of the rule of law? Every time when there are rumours about changes in the Chief Executive of HKMA, unnecessary disturbances to Hong Kong's financial market will be caused. This will have an extremely unhealthy impact on Hong Kong's role as a financial hub. The Government stated in the main reply that it had no plan to formulate a new piece of legislation, but will the Government amend the existing legislation, in order to formulate rules and regulations for the remuneration, tenure and term of office of the Chief Executive of HKMA?*

FINANCIAL SECRETARY (in Cantonese): President, we consider the present arrangement appropriate, and we have no plans to change the existing legislation for the time being.

PRESIDENT (in Cantonese): A total of 11 Members are waiting for their turns to ask supplementary questions. I wish to remind Members that they should be as concise as possible when asking supplementary questions.

MR CHIM PUI-CHUNG (in Cantonese): *President, we understand from the Financial Secretary's main reply that even the incumbent Chief Executive has to meet the requirement of two terms of office, then why does the power of the Chief Executive of HKMA surpass that of the Chief Executive? Is this a challenge to the Central Government and forcing the Central Government to speak out? Or is it because the Financial Secretary had indicated that he had a superior and subordinate relationship with him, therefore he can make use of the personal relationship to keep him in office?*

FINANCIAL SECRETARY (in Cantonese): President, I believe that it is absolutely unrelated to the supplementary question raised by Mr CHIM Pui-chung.

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

MR CHIM PUI-CHUNG (in Cantonese): *President, is it because the Financial Secretary has openly admitted the special relationship between him and Joseph YAM, therefore he has not changed the policy?*

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

FINANCIAL SECRETARY (in Cantonese): I have nothing to add. I think that under the scope of section 5A(1) of the Exchange Fund Ordinance (EFO), I have sufficient flexibility to deal with this issue.

MR WONG YUNG-KAN (in Cantonese): *President, after the Lehman incident, the public has lost confidence in the way the HKMA monitors the banks. Members of the public have been speculating on the question of whether the Chief Executive of HKMA will stay or quit. The Chief Executive of HKMA is handsomely paid, but has no restrictions in tenure. May I ask the Secretary*

whether the Government will set out the tenure of office and remuneration for the next Chief Executive of HKMA?

FINANCIAL SECRETARY (in Cantonese): President, I have already said that section 5A(1) of EFO has given me full flexibility to determine the candidate for the Monetary Authority and other relevant provisions. Of course, I will also take into account views from all sides before making the appropriate decision.

MRS REGINA IP (in Cantonese): *President, the Financial Secretary indicated in the main reply that the remuneration of Chief Executive of HKMA is determined in light of the findings of independent consultants on Hong Kong's pay trends and the pay levels in the financial sector. However, as the functions of the Chief Executive of HKMA is similar to that of a central bank, which is very different from that of private financial institutions, why should we take reference to the private sector? Does the Financial Secretary consider that the Chief Executive of HKMA possesses some very important and valuable knowledge very much needed by the private sector? If this is the case, it only reflects that the Government is lacking in talented people and failing to nurture talented people, it may also reflect that the incumbent Chief Executive of HKMA lacks a sense of mission to serve the community, and that he only uses his expertise to blackmail the Government. How will the Financial Secretary respond to these remarks?*

FINANCIAL SECRETARY (in Cantonese): President, I have explained in detail in the main reply about the mechanism which deals with the issue concerning the remuneration of the Chief Executive of HKMA. I do not have anything to add.

PRESIDENT (in Cantonese): Mrs Regina IP, has your supplementary question not been answered? Can you raise your supplementary question in a more accurate and precise way?

MRS REGINA IP (in Cantonese): *The Secretary said that he had explained in great detail, but in fact he has only uttered one sentence as his reply, how can this be said to be a detailed reply? Mr Financial Secretary, I do not understand, can*

you explain what the details are? The Financial Secretary has not answered at all.

PRESIDENT (in Cantonese): Mrs Regina IP, would you please point out the part of the supplementary question raised by you earlier which was left unanswered by the Financial Secretary. This is not a debate session.

MRS REGINA IP (in Cantonese): *The Financial Secretary has not answered why did the Administration only take reference to the private sector instead of making reference to the standard for determining the remuneration adopted by central banks all around the world? This is a public service post, not a money-making post in private banks.*

PRESIDENT (in Cantonese): It is now clear. The Financial Secretary, please reply.

FINANCIAL SECRETARY (in Cantonese): President, I believe that different administrations in different parts of the world will take into account their own legal, economic, political and historical background in the course of making different arrangements. I consider that our current arrangement is appropriate and it suits the needs of Hong Kong as well.

MR ALBERT CHAN (in Cantonese): *President, HKMA is not only responsible for making investment, but also responsible for performing supervision, that is to say, it plays the police, but it also plays the robber. The person in charge of HKMA is in fact a bandit, he is paid more than \$10 million each year, and he is despotically arrogant. However, he does not try his best to conduct effective supervision and he inflicted serious losses to small investors. Under such circumstances, President, if the Government is not going to review the responsibility and tenure of office of the Chief Executive of HKMA, is the Government trying to cover up some malpractices and dereliction of duties and it is unrepentant? Does the Government see that the problem is serious, yet it is still hesitant in examining whether there are problems with the functions and operations of HKMA and formulating a comprehensive reform afterwards?*

FINANCIAL SECRETARY (in Cantonese): President, I think Mr CHAN's earlier remarks were unfair to our colleagues in HKMA. We have an appropriate mechanism in place to deal with these issues.

MR ALBERT CHAN (in Cantonese): *The Financial Secretary has not answered my supplementary question at all. I said that it played the police and it also played the robber, HKMA was responsible for making investment but it was also responsible for monitoring*

PRESIDENT (in Cantonese): Mr CHAN, this is your opinion.

MR ALBERT CHAN (in Cantonese): *My supplementary question is: Should it change the system of playing the police and the robber simultaneously?*

PRESIDENT (in Cantonese): Financial Secretary, in short, should the system be reformed?

FINANCIAL SECRETARY (in Cantonese): President, the functions of HKMA are properly divided. The situation referred to by Mr CHAN does not exist.

MR ALBERT HO (in Cantonese): *President, in short, the biggest problem faced by HKMA is the fact that the powers are conferred on it, but a system is not in place, and the fact that a system is not in place means that there is no clear legal framework for the creation of a system. HKMA turns out to be the one-man band under the Financial Secretary. The flexibility, as the Financial Secretary said, is to appoint or dismiss the Chief Executive of HKMA and to determine his pay and bonus at the pleasure of the Financial Secretary, thereby affecting the exercise of the powers of the Chief Executive of HKMA. This has sparked some rumours in society. Recently, some rumours even said that as Joseph YAM was about to leave, the Government had already designated his successor, that is, the Chief Executive's Office, that is, since the Chief Executive has been adhering to the principle of differences in the closeness of relationship, the director of*

Chief Executive's Office will be appointed as the successor of the current Chief Executive of HKMA. Mr Financial Secretary, I hereby give you the opportunity to clarify if these rumours are true? Or will you take actions to prove that these are purely rumours, will the Government put in place clear appointment and removal procedures, and will there be no predetermined candidate?

FINANCIAL SECRETARY (in Cantonese): President, I will not comment on any speculative information and reports. However, under the framework of section 5A(1) of EFO, I will consider ways to further improve the mechanism from time to time. I have heard Mr HO's proposal, I will also listen to views of other colleagues, and I will make the appropriate decision at the appropriate time.

MS EMILY LAU (in Cantonese): *President, I also wish to follow up the issue about the system. Members have all along been asking will there be a piece of legislation which spells out the formation of the organization and the selection of the Chief Executive of HKMA, his tenure of office, removal from office and remuneration? President, the Financial Secretary said that the main reply given was very clear, very detailed. But the so-called detailed reply was that it was his personal decision. He added that there was a Governance Sub-Committee under HKMA. President, you have also seen reports that the Governance Sub-Committee used to propose to provide for the tenure of office of the Chief Executive of HKMA a few years ago, it had also put forward various recommendations, but he did not accept any of the recommendations and he did not listen to the recommendations of the Governance Sub-Committee. Of course he will not answer our question. The discussions of the Governance Sub-Committee's are confidential, they are pure black-box operations. My supplementary question is about formulating a system to regulate HKMA. Is the approach adopted by HKMA different from that of other international financial cities? President, has Hong Kong deviated from international practices? Is Hong Kong the only place on earth adopting such an approach? Is it very unusual?*

FINANCIAL SECRETARY (in Cantonese): President, our current approach has not deviated from international practices. The present mechanism is appropriate. We have no intention to change the existing mechanism for the time being.

MS EMILY LAU (in Cantonese): *President, I was asking the Financial Secretary, could we bring our approach in line with international practices? If many other places are acting arbitrarily like we do and everything is decided by one person alone, then the Secretary should give us examples to illustrate that. The Legislative Council has studied that in conjunction with the authorities; will the Secretary inform us which international financial institution acts arbitrarily as we do?*

PRESIDENT (in Cantonese): Ms Emily LAU, I believe your follow-up supplementary question has gone beyond the scope of your earlier supplementary question. You were just asking the Financial Secretary whether or not our practices had deviated from international practices, and I have clearly heard that the Financial Secretary has actually provided an answer. Let me see whether he has anything to add.

FINANCIAL SECRETARY (in Cantonese): I have nothing to add.

MR JAMES TO (in Cantonese): *President, it is strange that if the Financial Secretary said that Hong Kong has not deviated from international practices, then why did he say that the situation of Hong Kong was unique in response to Mrs Regina IP's supplementary question about remuneration? I am trying to give the Financial Secretary an opportunity to explain once again as to what makes Hong Kong's situation so unique that we can only take reference to that of private financial institutions, instead of taking reference to the remuneration of other central banks? Does the Government still wish to benefit its own people in the Chief Executive's Office, does it still uphold the principle of differences in the closeness of relationship and nepotism? Is it because the parties concerned have waited for a long time, and at last, patience pays off after a long wait, therefore they can benefit? If not, will the Financial Secretary please explain Hong Kong's unique situation? Whether the unique situation includes differences in the closeness of relationship, practising nepotism and benefiting their own people? Is this the so-called unique situation?*

PRESIDENT (in Cantonese): Mr James TO, you have asked a lot of questions, please ask one question clearly.

MR JAMES TO (in Cantonese): *President, my supplementary question is very clear. I have asked earlier: What is the unique situation? Is the so-called unique situation nepotism, just like the controversies caused by the appointment of Under Secretaries? Are the two exactly the same?*

PRESIDENT (in Cantonese): Please stop making arguments. The Financial Secretary, please reply.

FINANCIAL SECRETARY (in Cantonese): This is absolutely not the case as mentioned by the Member.

MR JAMES TO (in Cantonese): *The Financial Secretary has not answered my supplementary question. He did not answer what the unique situation was.*

PRESIDENT (in Cantonese): You have to make your supplementary question clear.

MR JAMES TO (in Cantonese): *He has to explain what the unique situation is.*

PRESIDENT (in Cantonese): Are you asking the Financial Secretary what the unique situation is?

MR JAMES TO (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): The Financial Secretary, please answer.

FINANCIAL SECRETARY (in Cantonese): President, I have already said that different places would have different legal, political, economic, or even historical background. Our situation is a bit different from other countries, therefore, it is

possible that our present circumstance is slightly different from other places, but it can meet the needs of Hong Kong.

MR JAMES TO (in Cantonese): *President, he did not answer my question. Of course Hong Kong is different from any part of the world, Hong Kong is Hong Kong.*

PRESIDENT (in Cantonese): You may consider the Financial Secretary's reply unsatisfactory, but I believe that the Financial Secretary has provided an answer. We should give other Members the opportunity to ask supplementary questions.

MS AUDREY EU (in Cantonese): *President, the main question today is about the appointment and removal system of the Chief Executive of HKMA. Since the system is also significantly concerned with matters relating to the regulatory matters after the incumbent Chief Executive of HKMA has departed, I therefore would like to ask the Financial Secretary that after the incumbent Chief Executive of HKMA has left his office, will the Government regulate the future employment of this person? For example, civil servants and accountability officials are subject to regulation, but what about the regulation for Joseph YAM? If there is no regulation, is this a matter of no system being put in place? If there is, what regulatory arrangements are in place?*

FINANCIAL SECRETARY (in Cantonese): President, as to this supplementary question, I know that we have put in place a mechanism. As I said earlier, the Governance Sub-Committee under the Exchange Fund Advisory Committee will deal with all matters in this regard.

MS AUDREY EU (in Cantonese): *President, he has not actually explained that clearly. If the Financial Secretary does not know well enough now, he may provide a written document to explain what criteria does the Sub-Committee adopt, such as what kind of regulation is in place? The Financial Secretary has not answered this question at all. If the Financial Secretary is unsure about it, can he reply in writing?*

PRESIDENT (in Cantonese): The Financial Secretary, will you inform the Member of the specific criteria and regulation?

FINANCIAL SECRETARY (in Cantonese): I will try to provide a written reply. (Appendix I)

MR WONG YUK-MAN (in Cantonese): *Am I really that lucky to have the opportunity to raise a supplementary question? Just now after listening to the Financial Secretary's reply, I believe everybody is not satisfied, we are not satisfied in particular. Joseph YAM has been in the post ever since HKMA came into being, he has been serving in that post for more than a decade. No one can do anything about him, the Financial Secretary had even been one of his subordinates. Since we said last time that he caused losses in stock market speculation, which amounted to some \$100 billion, thus there was no reason for him to receive a bonus. However, he told us to query the Exchange Fund Advisory Committee. He is in such a "couldn't-care-less" mood now; he is so despotically arrogant*

PRESIDENT (in Cantonese): Mr WONG Yuk-man, a number of Members are waiting for their turns to raise supplementary questions.

MR WONG YUK-MAN (in Cantonese): *Hong Kong's financial market is in a mess. Everybody can see that the share price of HSBC was driven down significantly on the other day during the last three seconds before the close. Should we not carry out a fundamental reform of Hong Kong's financial system? The reform of HKMA is one of the most important steps and methods. May I ask the Financial Secretary, does he have the determination to reform HKMA?*

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

FINANCIAL SECRETARY (in Cantonese): President, I have already said that under the framework of section 5A (1) of the Exchange Fund Ordinance, we will consider from time to time ways to further improve the existing system.

MR RONNY TONG (in Cantonese): *President, I believe that the Financial Secretary will agree that he and Joseph YAM are taking care of the wealth of Hong Kong. They play a decisive role in maintaining the stability of Hong Kong's economy, therefore, their appointment and dismissal will definitely have a significant impact on the market. Recently, there have been many speculations about the impending departure of Joseph YAM, which have already negatively impacted the stability of our economy. Does the Financial Secretary agree that these negative speculations are precisely the bad consequences of the absence of a good system of appointment and dismissal? If he agrees, why is a mechanism not set up by legislation?*

FINANCIAL SECRETARY (in Cantonese): President, I believe the two things are unrelated.

MR RONNY TONG (in Cantonese): *The second part of my supplementary question is, why does he not legislate for that?*

PRESIDENT (in Cantonese): Mr TONG, are you asking the Financial Secretary in your supplementary question whether such speculations are the bad consequences of the absence of a proper system? If so, how will the Government make the improvements? I believe that the Financial Secretary has provided an answer. He said that he considered the two were unrelated.

We have spent more than 20 minutes on this question. If any other Members wish to raise a question, I am afraid they have to follow up on other occasions.

PRESIDENT (in Cantonese): Third question.

Job-specific Skills Courses Under Qualifications Framework

3. **MR IP WAI-MING** (in Cantonese): *President, to tie in with the implementation of the Qualifications Framework (QF), the Education Bureau has so far assisted 12 industries in setting up their respective Industry Training*

Advisory Committees (ITACs) and the ITACs are to draw up Specifications of Competency Standards (SCSs) for their respective industries. Moreover, the functions of the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ) include assessing the qualification levels of courses relating to job-specific skills. In this connection, will the Government inform this Council:

- (a) of the total number of courses of various levels on job-specific skills under the QF assessed by the HKCAAVQ since 1 October 2007 and among them, the respective numbers of those which meet and do not meet the SCSs of the respective industries;*
- (b) whether or not it has assessed if the existence of some courses which do not meet the SCSs of the respective industries will affect the work of the ITACs of the respective industries in drawing up the SCSs; if it has, of the results; if it has not, the reasons for that; and*
- (c) regarding the industries which have not yet drawn up their respective SCSs, whether or not those courses of which the levels have been assessed will be affected (including whether or not these courses will have to be reassessed) when the ITACs concerned have finished drawing up the SCSs; if so, of the details of the relevant arrangements; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Cantonese): President, I now give a reply to the three parts of the question as follows:

- (a) From 1 October 2007 to 28 February 2009, the HKCAAVQ accredited a total of 3 203 vocational training courses. Upon the request of the course providers concerned, 214 of these courses were further assessed as SCS-based courses. SCS-based courses refer to those courses which have adopted the SCSs of the respective industries in designing the main contents and the assessment criteria of the courses.
- (b) Through the drawing up of the SCSs, the ITACs set out clearly the skills, knowledge and outcome standards required of practitioners in different functional areas of the industries to facilitate the design of

training courses to be offered by course providers in accordance with the requirements of the respective industries. During the process of developing the SCSs, the ITACs will conduct extensive consultation with members of the respective professions and will focus on the practical skills and knowledge required of practitioners in the workplace instead of laying emphasis on the contents of training courses. For that reason, the work of the ITACs in developing the SCSs will not be affected by the training courses offered in the market at present.

- (c) Although we encourage course providers to design their courses in accordance with the SCSs, the adoption of the SCSs is voluntary. Therefore, courses that have been accredited will not be affected when the ITACs concerned have finished drawing up the SCSs.

MR IP WAI-MING (in Cantonese): *President, the Secretary pointed out in the main reply that there were 214 courses which had been designed in accordance with the SCS-based courses at present. That is to say, 2 989 courses were not developed according to the SCSs. However, the Secretary highlighted in part (b) of the main reply that the reason why the Bureau drew up the SCSs was to facilitate the design of training courses to be offered by course providers in accordance with the requirements of the respective industries. In part (c) of the main reply, the Secretary mentioned that the adoption of the SCSs in the design of courses was voluntary and course contents could be totally unrelated to the SCSs. For that reason, I wish to ask the Secretary: What practical purpose does the Bureau wish to serve by introducing the SCSs?*

SECRETARY FOR EDUCATION (in Cantonese): Regarding this, we have to make clear two matters first. The first matter relates to time. The SCSs were introduced in July last year and only a short period of time has lapsed since then. For that reason, the courses concerned only account for a relatively small number. The second matter is that the skills, knowledge and outcome standards required in various industries are set out in the fundamental contents of the SCSs, so as to facilitate the design of "tailor-made" courses in the light of the needs in these areas, thereby meeting the relevant standards. However, generally speaking, in addition to covering the abovementioned aspects, those courses also involve the inculcation of knowledge in other regards. For example, apart from

skill-specific knowledge, some industries also require marketing skills or capabilities in other areas, such as knowledge of a general nature. All these are covered in those courses. Therefore, even though these two types of courses are different from each other, the difference only lies in their respective areas of emphasis. What is the most important is that many courses were launched prior to the introduction of the SCSs by the Bureau. For that reason, these courses can basically cover part of the competency requirements and contain some knowledge and outcome standards. Needs in these two regards are accommodated. However, not only can this be achieved, but needs in other areas can also be satisfied in those courses. Therefore, in spite of the difference existing between the two types of courses, there is no contradiction between them.

MR IP WAI-MING (in Cantonese): *President, since these courses were not designed in accordance with the SCSs, actually, the contents of these courses are, to a certain extent, of a very academic nature as I see them and I believe that the Secretary will also agree with my remark. However, the purpose of developing the SCSs and the QF for industries is to give an opportunity to employees who have not, or may not have, acquired formal academic qualifications to know the corresponding levels of their capability from the SCSs through the accreditation of their qualifications. In such circumstances, if these courses continue to be developed in this direction, will this ultimately affect the accreditation of qualifications of those employees who do not possess any formal academic qualifications but some experience?*

SECRETARY FOR EDUCATION (in Cantonese): I pointed out earlier that the SCSs were introduced only in July last year and a limited period of time has lapsed since then. That said, we are able to provide very clear course requirements to other course providers at present. As I mentioned earlier, some of the courses have already been launched. In view of this, if the course contents are not in line with the requirements of the industry concerned, we hope that the course provider concerned can be aware of what is actually required in the profession. When it is prepared to introduce new courses in the future, market force will drive it to make amendments to the course contents in response to market demand if another course that can reach the requirements of an industry

attracts a large number of people to register for enrolment. However, this of course requires some time to realize.

In view of the fact that we have just put in place the SCSs, only 214 out of some 3 000 courses can reach the standard. Undoubtedly, this represents a big shortfall. However, we hope that after some process, we can identify what the needs are and complementary measures can be taken by the market accordingly.

DR PAN PEY-CHYOU (in Cantonese): *At present, many employees do not possess high academic qualifications. When the Administration draws up the SCSs, how will it ensure that importance be attached to the working experience of these employees who do not possess high academic qualifications but substantial experience? How to ensure that these experienced employees can climb up the ladder within the QF?*

SECRETARY FOR EDUCATION (in Cantonese): I have pointed out in part (b) of the main reply that we have invited practitioners from various industries to form ITACs, so as to give an opportunity for them to express their views on the needs in their respective professions, thereby drawing up the SCSs. Of course, the main contents of the SCSs cover such areas as skills, knowledge and outcome standards. As for the level of academic qualifications, it varies according to the requirements of different industries. Therefore, we hope that through the ITACs — of which the members are practitioners of their respective professions — a better understanding on the requirements of the respective industries can be fostered. The standards that they set have already factored in the acceptability of practitioners. At the same time, employees who have received training can also bring their capacity into play in their respective trades and in this way, adjustments can gradually be made.

At present, we have 12 ITACs and six of which have already drawn up the SCSs while the remaining ones are in the process of so doing. We hope to accumulate experience, so that various trades can draw on the good practice adopted in other trades, thus achieving a gradual progress.

MR LEUNG YIU-CHUNG (in Cantonese): *It was highlighted in the assessment of academic qualifications that a number of industries would be developed in this direction and the same will also be applicable to practitioners. Although the adoption of SCSs is said to be voluntary, the objective environment will compel them to participate in a recognized framework. The Secretary pointed out earlier in his reply that course providers were able to make amendments and adjustments to course contents in response to market demand, so that the contents of courses can go in line with those set out in the SCSs.*

Taking these courses, employees are really unaware of the contents of the SCSs and for that reason, they will have to rely heavily on the course providers. When a course provider offers a course, they will register for enrolment, despite the fact that they have no idea as to whether or not the course contents really meet the requirements set out in the SCSs. In this connection, will the Government assist the course providers, so that the contents of the courses they offer are indeed designed according to the SCSs without deviating from them? Or, will the Government consider not only providing assistance, but also conducting inspection and monitoring work lest employees should waste their time and resources on taking these courses?

SECRETARY FOR EDUCATION (in Cantonese): The main role we play is not so much about taking the initiative to provide services, but we are more than willing to help. We will draw up guidelines to specify the parameters and the requirements of SCS-based courses. In relation to the names, levels and credit requirements of courses and those designed by course providers, we will provide specimens for their reference. If training institutions possess experience in this regard, they can undertake the relevant work by themselves. That said, adopting the specimens designed by us will of course better meet the needs.

PRESIDENT (in Cantonese): Mr LEUNG, which part of your supplementary has not yet been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *I feel it glad to hear the Secretary say that assistance will be given. However, my supplementary question was on whether or not the Administration would take the initiative to conduct inspection*

and monitoring work lest employees should waste their resources on taking unfruitful courses.

PRESIDENT (in Cantonese): On whether or not the Government will take the initiative, I have heard the Secretary give an answer. Secretary, as for that of conducting inspection and monitoring work, do you have anything to add?

SECRETARY FOR EDUCATION (in Cantonese): We will not conduct direct inspection or monitoring work. However, during the assessment process, the HKCAAVQ will factor in various aspects before making a decision on whether or not to grant accreditation.

MR IP WAI-MING (in Cantonese): *I have the impression that the Secretary fails to address the thrust of the main question I raised when giving a reply today because the Administration had already granted permission to some industries to offer courses prior to the drawing up of the SCSs. In fact, this will cause the future accreditation of qualification of the industries concerned to become academic in nature whereas employees' original accreditation of qualification will be neglected.*

In addition, I wish to ask the Secretary something more. At present, although some of the industries have yet to draw up their respective SCSs, the Bureau has already allowed them to offer courses. Employees who have taken these courses may not know whether or not the contents of these courses will eventually be in line with the requirements set out in the SCSs. In this circumstance, is the Bureau conniving at some organizations cheating employees, thus causing a waste of their money and time?

SECRETARY FOR EDUCATION (in Cantonese): I think this is somewhat like the chicken and egg question. In fact, we can refuse to grant approval to all courses. However, we have to be aware that the setting up of ITACs for various industries is not as easy as one imagines. At present, one or two industries are forming their respective ITACs. These industries comprise a considerable

number of practitioners and there are various organizations in these industries. Moreover, it seems that there are several trade unions in these industries as well. For that reason, it will take a longer period of time to lead all the members of the respective industries to come together, form some advisory committee and reach a consensus on the standards to be observed.

Despite the fact that 12 ITACs have been formed, only six of them have drawn up their respective SCSs and only three have organized courses. For that reason, this process needs time and all of us should have confidence.

In relation to the supplementary question raised by Mr IP, my reply is that if we really have to make a choice, are we going to wait until all the relevant work has been undertaken by the industries concerned and the guidelines drawn up before granting permission to them to organize courses or to factor in issues relating to training providers at present first — we should not have any misconception about training providers — because they know the needs in their industries. However, it may be impossible for courses to be designed entirely in accordance with the standards that members of a profession have drawn up and mutually agreed. For that reason, contents pertaining to academic knowledge and those to skills should be complementary to one another to a certain extent and emphasis should not be laid only on skills. We hope that through what we are doing in this regard, some consensus can be reached with them in the future. At that time, the deviation can be reduced greatly.

PRESIDENT (in Cantonese): Fourth question.

Conduct of Media

4. **MR LAU KONG-WAH** (in Cantonese): *President, there have been comments that there are problems with the conduct of quite a number of media organizations in recent years, which have far-reaching impact on the social trend and young people. In this connection, will the Government inform this Council:*

- (a) *whether it knows if the number of complaints received by the authorities or the related organizations in the industry about the problems of printed and electronic media organizations' behaviour and conduct, as well as the number of cases of these organizations*

being penalized for such acts, had been on the rise in the past two years; and whether it had reviewed in the period if the existing measures were adequate for handling these complaints;

- (b) given that the dissemination of news and messages via the Internet is becoming more and more popular, whether the authorities have noticed if the situation of some media organizations adopting immoral practices to report and publish contents of messages (including texts, photographs and footages) is getting more and more serious; whether it had issued warnings to or instituted prosecutions against the media organizations concerned in the past two years; and*
- (c) under the premise of respecting press freedom and protecting intellectual property rights, how the authorities monitor media organizations in exercising self-regulation to refrain from infringing on the intellectual property rights of others?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, freedom of expression and freedom of the press are core values, which the HKSAR Government vigorously uphold at all time. They are expressly guaranteed under the Basic Law. Nevertheless, to protect individual sectors, particularly children and other vulnerable groups, different media are subject to different forms of regulation under the law in Hong Kong. Electronic media, mainly television and sound broadcasters, are subject to licensing under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) respectively. Local printed media, whether newspapers or magazines, are required to be registered under the Registration of Local Newspapers Ordinance (Cap. 268). They are also subject to the general law, for example, publication of obscene or indecent articles or undesirable medical advertisements, prevention of child pornography, copyright protection, defamation, and so on.

In recognition of the responsibility it carries to ensure that the press operates in an appropriate manner at all times, the newspaper sector has founded the Hong Kong Press Council (Press Council), a self-regulatory body, to deal with public complaints against local newspapers with respect to intrusion of

privacy or articles of a prurient, indecent or sensational nature. The Council operates independently and the Government has no role to play in its work.

My main reply to the Member's main question is as follows:

- (a) Broadcast contents in television and radio are regulated by the Broadcasting Authority (BA) in accordance with the provisions in its relevant codes of practice issued under the Broadcasting Ordinance (Cap. 562) and the Broadcasting Authority Ordinance (Cap. 391), which set out the commonly accepted standards of broadcast contents. Upon receipt of public complaints against contravention of the codes, the BA will investigate the circumstances leading to the complaints. If the complaints are found substantiated, the BA will impose appropriate sanctions (including financial penalties) against the concerned broadcasting licensees. The BA processed 1 147 and 1 475 complaint cases against broadcasters breaching the codes in 2007 and 2008, with 67 and 60 cases substantiated respectively. None of these cases are related to the conduct of news reporting by the broadcasters. We have also not detected any trend that complaints were on the rise in the past two years and there is no evidence to suggest that existing measures are inadequate for handling complaints.

Newspapers, magazines and websites fall under the ambit of the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) which regulates the publication of obscene and indecent articles. The Television and Entertainment Licensing Authority (TELA) is one of the departments responsible for the enforcement of the COIAO. In 2007 and 2008, the TELA received 4 686 and 1 042 complaints against media organizations respectively. After investigation, prosecution action was taken against 16 and 11 cases respectively. The actual number of complaints shows a decline over the past two years. We are currently conducting a review and public consultation on the operation of the COIAO.

According to the information on its website, the Press Council handled 47 complaint cases against newspapers in 2007, and 21 cases from January to November 2008.

(b) and (c)

As major content providers, media organizations in Hong Kong should act responsibly and observe the law in the dissemination of news and messages, whether through the printed platform or the Internet. To create a fair and positive business environment conducive to the sustainable development of the creative industry, Hong Kong has an established legal system for the protection of intellectual property rights, including copyright. We review on a regular basis the efficacy of our legislation to ensure that it remains appropriate in present day circumstances. The Customs and Excise Department takes rigorous enforcement actions against breaches of criminal provisions under the Copyright Ordinance (Cap. 528), with a view to safeguarding the rights of copyright owners including media organizations. Copyright owners are also encouraged to take civil action against the infringers, thereby deterring infringing activities and protecting their own interests.

To raise public awareness of and promote respect for intellectual property rights, the Government rolls out sustained publicity and public education activities. In particular, the Intellectual Property Department has published a booklet entitled "Copyright for Journalists in Hong Kong" for media organizations to help journalists better understand their basic rights and duties.

In the past five years, the Customs and Excise Department has received three complaints against media organizations in respect of alleged copyright infringement acts. Two cases were found unsubstantiated after investigation while the remaining one is under investigation.

Media organizations, as copyright owners, have been taking an active part in promoting respect for intellectual property rights in the community, thus safeguarding the creative works of the intellectual property right owners. We believe that the media industry will comply with the relevant legislation on intellectual property protection, and act in a responsible manner when handling others' copyright works.

MR LAU KONG-WAH (in Cantonese): *President, I would like to follow up with part (a) of the main reply on the circumstances concerning the publication of obscene and indecent articles. In 2007 and 2008, over 4 600 and over 1 000 complaint cases were lodged respectively by the public. However, prosecutions were instituted by the Government for only 16 and 11 cases respectively. Would that deviate from the expectation and standards of the public? Besides, given that the current penalties are relatively light and that certain media keep on publishing these kinds of articles, would the Government consider amending the relevant legislation to increase the penalties against those repeated offenders?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Enforcement work of COIAO is carried out by TELA at various levels. Upon receipt of a complaint, assessment of the complaint content in accordance with the guideline in the Ordinance is needed, thereafter there would be a grading assessment by the Obscene Articles Tribunal before appropriate follow-up actions are adopted. All complaint cases are handled in this manner.

Under the current legislation, there are heavy penalties for the publication of obscene and indecent articles. The highest penalty for publication of obscene articles is \$1 million and three years' imprisonment; while the penalty for publication of indecent articles is \$200,000 and \$400,000. All these are governed by provisions, with higher penalties for repeated offenders.

I am of the view that the entire Ordinance is now under the consultation stage, and we would consider any feedback on the need for a further review.

MR VINCENT FANG (in Cantonese): *In her main reply, the Secretary stated that there were only three complaint cases against media organizations for copyright infringement acts in the past five years, two of which were found to be unsubstantiated. Hence, complaints against copyright infringement concerning the mass media may just be the tip of an iceberg. Recently, we read from newspapers that some media have repeatedly infringed on the copyrights of their peers during the past several years. Does it mean that the Customs and Excise Department has not exerted its full strength in combating copyright infringement activities, or is it due to difficulties in successful prosecution that complaints are not lodged?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Hong Kong has a highly established legal framework for the protection of intellectual property rights. Furthermore, the Customs and Excise Department has been highly stringent and prudent in enforcing the Intellectual Property Ordinance all along.

I reckon that there could be two points of views to this. First, the system for protection of intellectual property rights in Hong Kong has been highly effective, and I believe the Customs and Excise Department has made great contributions in the relevant law enforcement with its full strength. For example, in 2008, the Hong Kong Business Software Alliance (an organization that represents the global software manufacturers) specifically presented the best award for work on intellectual property rights to the SAR Government, which is the first economic zone in the Asia-Pacific Region to be granted the award. This reflects the effectiveness of the law-enforcement efforts of the Customs and Excise Department.

Apart from law enforcement, we certainly have to exert our efforts in education as well. In light of this, the Intellectual Property Department has organized specific public educational activities on an ongoing basis. To enable the public to understand the salient points in the Intellectual Property Ordinance, educational activities are conducted in various sectors (including adolescents, small and medium enterprises, as well as business end-users, and so on) to impart to them knowledge on intellectual property rights.

Besides, in this year's budget, \$63 million has been set aside by the Financial Secretary for educating the Internet users (particularly the adolescents) through the Internet. One important aspect in this area of work is placing the protection of intellectual property rights as the focus of education. We hope that work in this aspect can be done as soon as possible.

DR SAMSON TAM (in Cantonese): *In her main reply, the Secretary indicated that the Intellectual Property Department had published a booklet "Copyright for Journalists in Hong Kong", which I had downloaded from the Internet for reading. I found that it is stated clearly in the booklet that it is just a guideline with no legal effect. Recently, there have been frequent discussions among journalists on whether they should read the reports of other people on the Internet, and to what extent they may copy or quote. Actually, quite a lot of grey*

areas still exist. I would like to ask the Secretary whether we would follow overseas practice to effect follow-up or amendment work to the laws regarding Internet news reporting in future.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I would like to point out that under the current Copyright Ordinance, any work of copyright recorded in whichever media is granted equal copyright protection. Therefore, even creative works recorded on the Internet fall within its protection as well.

Certainly, we cannot comment on individual cases, but for the sake of protection of intellectual property rights while at the same time bringing benefits to — especially news report, I would like to emphasize that this warrants special consideration, for there is a premise to the issue of the protection of intellectual property rights concerning news reporting, and that is: under the premise of public interest, the exclusive property rights of copyright owners are subject to certain restrictions. The main aim is to protect freedom of the press and current affairs reporting in the light of public interest, therefore, we have to strike a balance, especially in handling news reporting by media organizations. Relevant provisions should be stipulated in the law for granting practitioners in news reporting the relevant rights and responsibilities.

Hence, I reckon that the entire mechanism and provisions on the protection of intellectual property rights are on a par with and no less favourable than the international practice.

MR WONG YUK-MAN (in Cantonese): *President, in part (a) of her main reply, the Secretary mentioned that information on the website of the Press Council stated that in 2007, 47 complaint cases against newspapers were dealt with and that from January to November 2008, 21 cases were dealt with. What has that to do with you?*

The Press Council is an internal organization of the press, and without the joining of the best-selling newspapers, it is only a "toothless tiger". Mr LAU Kong-Wah raised three very good questions in his main question, in which the conduct of the media was mentioned. However, each question is indeed equally important on its own; the main question could indeed be broken down into

several main questions. He should raise the questions on several occasions but not in one go. I would like to ask what the Press Council has to do with you. This reply is highly ridiculous. First, please answer what that has to do with you; second, as for the issue of intellectual property rights, I am a victim the DVD which I published was pirated on the Mainland, but you failed to give any assistance, just now Mr Vincent FANG

PRESIDENT (in Cantonese): Mr WONG Yuk-Man, I would like to remind you that Members are only allowed to ask one question in raising supplementary questions.

MR WONG YUK-MAN (in Cantonese): *Really?(Laughter)*

PRESIDENT (in Cantonese): Please state clearly what question you would like the Secretary to reply.

MR WONG YUK-MAN (in Cantonese): *It is certainly the issue on intellectual property rights and newspapers copyright infringement, that is, certain newspapers infringing the copyright of other newspapers. In her main reply, the Secretary indicated that there is law enforcement by the Customs and Excise Department, and claims could be made against the infringing party. However, copyright infringement at present is very serious, but you turn a blind eye to it. In fact, the current legislation cannot address the problem at all.*

I am for the freedom of the press. In principle, we would not agree to any government regulation imposed on the media. The best practice is the media's own regulation. However, it is different for intellectual property rights because interests are involved, the copyright of our creative works are infringed — I am an author, a program host and I publish DVDs, my copyright is infringed

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

MR WONG YUK-MAN (in Cantonese): *But the Government has done nothing in this regard. Could the Secretary tell me substantially what means she has for addressing these infringement activities among the media?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): First, I would like to respond to Mr WONG's query as to why I mentioned figures of the Press Council in my main reply. The main reason is that the scope for part (a) of the main question involving organizations in the relevant industry is rather wide; I merely provided information which is also found on the Internet.

I would like to raise two points regarding Mr WONG's question as to how we protect the rights of the intellectual property owners. First, just now I provided figures concerning the media organizations; however, apart from the cases concerning the media organizations, there were 880 and 770 infringement cases handled by the Customs and Excise Department respectively within the two years in 2007 and 2008, all of which are successfully prosecuted with the total value of goods detained exceeding \$110 million and \$78 million respectively. This is evidence that the Customs and Excise Department spares no effort in law-enforcement action for the protection of intellectual property rights.

DR PRISCILLA LEUNG (in Cantonese): *In her main reply, the Secretary suggested that if the victims intended to claim for compensations, they could do so by civil means. I would like to inform the Secretary and raise a question. In the past, though quite a number of victims claimed for compensations through endless civil means under the existing legislation, the compensations awarded to them were only minimal, and they had to pay for legal fees. Since the outcomes do not worth the efforts, there are not many complaint cases; consequently, it is really not fair to them.*

I notice recently that even some of the top-selling newspapers indicated that they were often victims. I reckon that the problem has become very serious, hence, besides encouraging the victims to take civil actions, has the Administration researched on more effective measures to enable these endless indeed we all have a high regard for intellectual property rights, sometimes it is just simply for the sake of "venting out" grievances that one goes on for a 10-year law suit. The financial strength of media organizations is relatively

strong, whereas an ordinary author would not be able to afford. The Secretary indicated that the Customs and Excise Department would conduct combating activities; however, in fact, currently, many peoples' intellectual property rights

PRESIDENT (in Cantonese): Dr LEUNG, please raise your supplementary question.

DR PRISCILLA LEUNG (in Cantonese): *..... there is absolutely no deterrent effect, especially for this kind of casual infringement activities and uploading on the Internet, hence, I would like the Secretary to answer this question.*

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

DR PRISCILLA LEUNG (in Cantonese): *Apart from encouraging the victims to sue for compensations through civil actions, I would like to ask the Administration, has it considered improving the existing mechanism so that these casual Internet infringement activities on others' intellectual property rights can be deterred effectively?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, copyright infringement is an act regulated by statutory tort, I cannot comment on individual cases; however, generally speaking, compensations for damage in tort awarded to a claimant are meant to enable the claimant to reach a status as if infringement activities had never occurred. In other words, damage compensations are of a compensation nature and are awarded after the Court has considered the proofs of damage provided by the claimant and the circumstances of individual cases. Hence, I am in a difficult position to comment on whether the compensations for individual cases are sufficient or on what they reflect.

However, generally speaking, apart from suing for copyright owner's own rights through civil actions, the legislation clearly states the criminal liabilities corresponding to various circumstances. Selling of copied items of creative

works in the course of one's business without the approval of the copyright owner, or distributing copied articles of an infringement nature for the sake of obtaining interests or rewards would amount to contravention of the criminal law. Upon receipt of relevant intelligence or complaints, the Customs and Excise Department would conduct follow-up actions. Such is our protection for copyright owners through criminal provisions.

Even though an act is not commercial in nature, that is, the act of distribution is not of a commercial nature, it would amount to an illegal act if the degree of distribution is such that it affects the rights of copyright owners, in which case the Customs and Excise Department can take law-enforcement actions.

PRESIDENT (in Cantonese): Six Members are still waiting for their turns to raise questions. Since this Council has spent nearly 23 minutes on this question, please have the issue followed up on some other occasions.

PRESIDENT (in Cantonese): The fifth question.

Fares of Kowloon Motor Bus Company (1933) Limited

5. **MR FREDERICK FUNG** (in Cantonese): *President, last year, based on estimated increases in fuel prices, staff salaries, tunnel tolls and other operating costs, the Kowloon Motor Bus Company (1933) Limited (KMB) applied for increase in fare by 9% on average, and the Government subsequently approved a 4.5% increase. On the other hand, international crude oil prices have continued to fall since the fourth quarter of last year, and have remained at a low level of about US\$30 to US\$40 per barrel recently. In this connection, will the Government inform this Council:*

- (a) *of the actual rate of increase in KMB's operating costs last year and the authorities' latest estimation of the change in such costs this year; whether the Government has assessed, having regard to factors such as the substantial drop in oil prices and rise in patronage during the economic downturn, if the fare increase approved by the authorities last year was too high; if it has, of the assessment results;*

- (b) *of the "supportable fare adjustment rate" calculated with the latest data; and as the Government has emphasized that the formula employed to calculate such adjustment does not operate as an automatic determinant of the bus fare adjustment outcome, whether the Government has assessed if it may take the initiative to activate the mechanism to demand KMB to reduce fares when the formula yields a negative result or when there is a reverse in the "basket of factors for consideration" (for example a substantial reduction in operating costs due to the drop in oil prices or a decrease in household income); and*
- (c) *in response to the substantial reduction in operating costs of bus companies as a result of the sustained low level of international oil prices, the anticipated increase in bus patronage due to the sustained economic downturn, as well as the falling trend in household income, whether the Government will take the initiative to demand KMB to lower fares, so as to assist the public in countering economic adversities?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, currently, a comprehensive mechanism has been in place to regulate the level of franchised bus fares. When determining the fare level, the Chief Executive in Council takes into account a basket of factors, including:

- (i) changes in operating costs and revenue since the last fare adjustment;
- (ii) forecasts of future costs, revenue and return;
- (iii) the need to provide the operator with a reasonable rate of return;
- (iv) public acceptability and affordability;
- (v) quality and quantity of service provided; and
- (vi) outcome of the fare adjustment formula (0.5 Change in Wage Index + 0.5 Change in Composite Consumer Price Index (CCPI) - 0.5 Productivity Gain).

In assessing the franchised bus companies' applications for fare adjustment in 2008, the authorities considered all of the above factors on the basis of the latest available data. For changes in fuel cost, apart from considering the actual expenditure of the bus companies in the past, we also took into consideration international forecasts on changes in fuel prices. As a result, the Government has lowered the bus companies' forecast fuel prices and the magnitude of fare increases proposed in the applications from KMB, Long Win Bus Company Limited, Citybus Limited (Franchise 1) and New World First Bus Services Limited.

However, oil prices have been highly volatile in recent years. Take 2008 as an example. The crude oil price per barrel soared from about US\$90 in early 2008 to about US\$140 in mid 2008, representing an increase of more than 50%, far exceeding what was anticipated in the earlier market forecast on the oil price trend. Since the bus companies' fare increase applications were approved in mid 2008, the companies have been under pressure from escalating operating costs due to rising oil prices. Take KMB as an example. Its parent company, Transport International Holdings Limited (TIH) issued a profit warning in July 2008. According to the interim results announced by TIH in September 2008, the loss after taxation of KMB for the first half of 2008 was HK\$50.2 million. Since October last year, the oil prices have continued to drop and remained at low levels. This has alleviated the pressure on the bus companies. We will keep close watch on the oil price trend and its impact on the operating costs of the bus companies.

The audited financial report of KMB for the entire year of 2008 will be released by its parent company by around late March 2009. The financial data of KMB for 2008 that can be released to the public is not yet available.

On fare reduction, when the franchises were extended for a number of bus companies in 2006, we introduced an arrangement to enable upward or downward bus fare adjustment. Under the arrangement, bus fares can be adjusted upwards and downwards in the light of prevailing economic conditions and changes in operating costs. When the Government announced the arrangement, it was stated that, to avoid frequent fluctuation in bus fares which will cause inconvenience to passengers, fare change, be it upward or downward adjustment, will only be implemented if it amounts to 10 cents or more per bus trip on average. Ten cents per trip are equivalent to about 2% of average fare per trip. The fare adjustment formula would be applied on a quarterly basis. The

authorities will proactively initiate a comprehensive fare review if the formula outcome reaches -2%. Taking into account the outcome of the formula and all relevant factors, the authorities will consider making a recommendation of downward fare adjustment to the Chief Executive in Council.

Wage index is published on a quarterly basis. The most recent index available is the one for the third quarter of 2008 announced in late December 2008. The latest quarterly formula outcome based on the latest wage index and CCPI is -0.66%.

The current formula mainly reflects changes in the macro-economic situation. The components of the formula include the wage index and CCPI. Since the weighting of motor fuel in CCPI is 0.69%, substantial fluctuations in oil prices will not cause significant upward or downward movement in the formula outcome. For example, during the period when the oil prices surged in 2008 and the bus companies had to cope with the pressure of escalating operating costs, the outcome of the formula did not show an increase of the same magnitude. This could avoid the impact on fare stability resulted from large magnitude of upward and downward changes in the formula outcome in response to short-term drastic fluctuations in oil prices.

President, we will continue to monitor the quarterly outcome of the formula. The authorities can initiate a downward bus fare adjustment after taking into account the formula outcome and all relevant factors under the established mechanism.

MR FREDERICK FUNG (in Cantonese): *I found three contradictions in the Secretary's reply, and I will point them out and ask my supplementary question. First of all, the Secretary pointed out in the fourth paragraph of the main reply that the interim results of TIH announced in September 2008 recorded a deficit of \$50.2 million, but I found in the same report that the corporate surplus of TIH reached \$450 million. Without doubt, the corporate surplus was generated from the RoadShow Holdings Limited (RoadShow) which exists because of the presence of the bus company in the first place; and the profit-making property projects, such as the depot at Mei Foo which has now turned into luxury apartments. Therefore, I find that the Secretary has only mentioned part of the report, without telling us the full picture.*

Secondly, I remember when the bus companies applied for a fare increase last year, they voiced out loudly that the soaring oil prices had increased their operating costs; and the Secretary also said the same in the fourth paragraph that the bus companies had been under pressure from escalating operating costs. In the second last paragraph, however, she said that the oil prices should not be a source of pressure. These are two contradictions. Thirdly, when the oil prices surged by 50% last year, the bus companies desperately demanded for a fare increase. In the six months since last October, however, we saw oil prices drop by 60%, but the Government did not ask the bus companies to lower their fares. This is the third contradiction. Thus, in view of the three contradictions above, may I further ask the Government why it did not demand the bus companies on behalf of the public to lower their fares by 10%?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, perhaps let me explain the present mechanism first. We can activate the mechanism to lower the fares, but we have to do it according to the mechanism, that is, the fare adjustment formula. As I have explained just now, the present outcome of the formula is -0.66%. If the formula outcome is -0.2%, it means that the fares can be reduced by 10 cents per bus trip on average. I believe Members also understand that it is actually hard to implement any fare reduction of less than 10 cents because our lowest denomination is 10 cents. We will keep a close watch on the situation.

Regarding the three points raised by Mr Frederick FUNG just now, first of all, other profits generated by the corporation certainly belong to the corporation, but I wish to clarify that, for instance, the profit generated from RoadShow, which he has mentioned, went to the account of KMB; and KMB determined the revenue through tender. Regarding the property project, although the project was developed from the depot, the lot was originally planned for residential purpose and it was acquired from the market by KMB. We did not allocate the lot to KMB because of the franchise. These are two separate issues. Thus, the deficit of HK\$50.2 million recorded by KMB was due to the operation of its buses.

The second point concerns the trend of rising oil prices. We approved the fare increase in May 2008, after which we saw a falling trend in oil prices, dropping gradually since October to under US\$100 per barrel. We will closely monitor the activation mechanism mentioned just now and take actions according

to it. However, Members have to understand that although oil prices are one of the factors affecting the costs, there are other factors to consider. In considering fare adjustments, we will take into account the basket of factors which I mentioned in the beginning.

MR WONG KWOK-HING (in Cantonese): *The main reply of the Government tells us that there is a quarterly outcome of the formula. May I ask the Government through the President whether the quarterly outcome will be made public? The Secretary said that various factors and the relevant forecast were taken into account last year, but the forecast still differed greatly from reality. Then, what was the formula outcome which the Government adopted for approving the substantial fare increase of the bus companies last year?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, not only did we consider the formula outcome at that time, but also the basket of factors which I mentioned just now. If we only consider the formula outcome alone, we may not be able to accurately assess the situation because a balance must be struck among the basket of factors. Costs are certainly one of the factors to consider because oil prices, salaries and even maintenance costs were on the increase in mid 2008. On the other hand, the bus companies are duty-bound to contain their costs through cost-cutting and revenue generation and examine whether they are making a reasonable return. Hence, we have struck a balance among the basket of factors.

Mr WONG Kwok-hing asked whether the formula outcome could be made public. We can certainly do so. In fact, the formula was adopted at that time for its transparency in the first place. Members can actually calculate the outcome themselves by simply including the wage index figures into the formula, and we are now talking about the wage index for the third quarter of 2008 and the next set of figures will be available in end March. Moreover, the Government announces the CCPI figures every month. Thus, there will be two sets of the latest statistics available by end March. We will then make the calculations again and members of the public can also do the calculation themselves with the statistics published.

MR CHEUNG KWOK-CHE (in Cantonese): *Basically, we have been very concerned about fare concessions for the elderly and the disabled as well as return-journey concessions for the grassroots on long-haul routes. May I ask the Government through the President whether the fare concessions or return-journey concessions which I have mentioned just now are included in the formula? If so, what is the percentage they account for? Why do the bus companies not help the grassroots, the elderly and the disabled in this regard?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the entire mechanism is for regulating the basic fares. Hence, rebates or special fare concessions offered by bus companies to a certain group of commuters do not fall within the scope of regulation for basic fares. Certainly, when we renewed the franchise of the bus company in 2006, we did not include this as a condition for the franchise. If this is the consensus reached in the community, we will assess the need of changing the policy at the next franchise renewal, and public views will certainly be heeded. As of now, however, we will not include the regulation of a certain group of commuters as a factor for assessment; but rather, we will use the fares of all bus routes as the basis for regulation.

MR ALAN LEONG (in Cantonese): *President, I notice that six factors have been listed in the first paragraph of the main reply, and the first five factors are in fact not entirely quantifiable. May I ask the Secretary, apart from the formula outcome in factor (vi) which can be made public, whether the Secretary can tell us more about factors (i) to (v) which may not be entirely quantifiable?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in fact, we have explained these factors one by one when we approved the previous fare adjustment. As the main question is about KMB, perhaps let me take KMB as an example for illustration. Since last fare adjustment (that is, the fare increase in 1997), we have briefed Members on KMB's overall operating costs and changes in revenue. As for its forecast costs and revenue, which mainly depend on its patronage and fares, we have stated in the paper tabled to the Legislative Council at that time that, for instance, there would be a slight drop

in both the forecast patronage and bus fares in 2008, but there would be a slight increase in 2009, forecasting an increase of 0.8% in patronage and 1.9% in bus fares.

We have also briefed Members on the forecasted operating costs, that is, the costs would go up by 6.3% in 2008 and slightly climb by 2.4% in 2009. Of course, concerning the reasonable rate of return of the franchise, we mainly use 9.7% of the rate of return of the average net fixed assets as the basis, while public acceptability and affordability are also factors for assessment. Regarding the quality and quantity of the service, we have conducted surveys on Passenger Satisfaction Index through the Transport Department. So we had given an account on different aspects when we approved the previous fare increase. Of course, we had also given an account of the formula concerned at that time.

MR LEUNG YIU-CHUNG (in Cantonese): *President, I hope the Secretary will remember that for seven consecutive years — and this is the eighth year — Members in this Council have reached a consensus on demanding public transport providers to offer half-fare concessions for the disabled. I hope that the Secretary will include this message in the next franchise negotiation, although it will be a long time later, and do not forget about our consensus.*

President, the Secretary has mentioned just now that if the difference in fare changes is too small, the fares will not be frequently adjusted to avoid large fluctuations which the public will find hard to cope with. If the formula outcome truly indicates the need to adjust down the fares but the Government does not do so, is the public not overcharged for the fares? May I ask the Secretary how the money overcharged will be disposed of? How will the money be used? How should the difference in bus fares which should not be charged by the bus company be dealt with? Will the bus company repay the community, with the money, such as to the elderly and the disabled?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, perhaps let me clarify. When I said earlier that the formula outcome had to be -2% (that is, 10 cents per bus trip on average), I was referring to the time to activate the mechanism concerned and I was not saying that the fares would only be cut by 10 cents. In other words, to activate the mechanism to adjust the fares downwards, the formula outcome has to be -2%. The reason behind it is that if the downward adjustment amounts to less than 10 cents, it is

simply not workable in reality because our lowest denomination is 10 cents. This concerns the activation of the mechanism only, and after the mechanism is activated, we will still take into account the basket of factors. There is thus a possibility that the downward adjustment may amount to more than 10 cents, depending on the reasons at that time. In fact, with this activation mechanism in place, we already have the arrangements of repaying the passengers which what Mr LEUNG has asked just now. If the revenue generated by the bus companies exceeds a reasonable rate of return, that is, 9.7% of the rate of return of the average net fixed assets which I have mentioned, the arrangement under the present franchise is that 50% will be shared with the passengers as rebates. However, with this activation mechanism in place, not much so-called surplus should be able to accumulate because the mechanism will be activated by then. We do not think that this rebate arrangement needs to be extensively implemented.

PRESIDENT (in Cantonese): Mr LEUNG, which part of your supplementary question has not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *Two questions have not been answered. The first question is whether the authorities will include our consensus in the next negotiation on the franchise. She has not answered that. Secondly, what I do not quite understand is that, from my point of view, this is a surplus, but the Secretary said that it would be evenly paid back to the public. My question is, given that it will only take place some time later, whether we can immediately benefit the people we all concern about, including the elderly and the disabled? I think it is better to do this as soon as possible rather than waiting for the next*

PRESIDENT (in Cantonese): Mr LEUNG, it is not possible that the Secretary has not answered both of your questions because you can only ask one supplementary question. Secretary, please reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we will conduct a thorough consultation at every franchise renewal; by then, we will certainly come to the Legislative Council to listen to Members' views. I said earlier that this is an arrangement to repay the passengers and to be

shared with all passengers. What is the present status then? At present, the rebate arrangement is not yet activated because the bus companies have been subject to immense pressure since mid 2008 due to the oil prices, and thus their rates of return have not reached 9.7%. Hence, the mechanism is not yet activated.

PRESIDENT (in Cantonese): This Council has used over 20 minutes on this question. Last oral question.

Contribution of Tourism Industry to Gross Domestic Product

6. **MR PAUL TSE** (in Cantonese): *During the Question and Answer Session of this Council on 15 January this year, the Chief Executive pointed out that the contribution of the tourism industry to the gross domestic product (GDP) was less than 3%. In this connection, will the Government inform this Council:*

- (a) *what method and elements were used for computing the aforesaid percentage; and*
- (b) *whether Hong Kong's method differs from that of other places (for example, neighbouring places such as Macao, Singapore and Taiwan) and international organizations such as the World Trade Organization; if so, of the differences?*

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

- (a) In compiling the direct economic contribution of tourism to Hong Kong, that is, the percentage share of value added of tourism to Hong Kong's GDP, the Census and Statistics Department (C&SD) adopts the "value added" method which is generally used by the international communities.

Value added refers to the net output of industry. It is calculated by deducting the cost of goods sold and the value of goods and services used in production from the business receipts. The value added of

tourism is derived based on the aggregated data from the two categories of economic activities related to tourism, viz. inbound tourism and outbound tourism. The "value added" method is also adopted in compiling the percentage share of Hong Kong's GDP for other industries.

The economic activities related to inbound tourism straddle across different industries. These industries cover retail trade, hotels, restaurants, cross-boundary passenger transport services, entertainment services, and so on. As these industries provide services to both local residents and visitors, in compiling the value added of these tourism-related industries, tourism ratios (that is, the proportions of business receipts attributable to visitors to the total business receipts of the respective industries) have to be derived in order to apportion the value added of the economic activities to inbound tourism.

The C&SD relies on two main data sources for compiling the tourism ratios. They are (i) visitors' spending by type of consumption collected through on-going visitor surveys conducted by the Hong Kong Tourism Board (HKTB); and (ii) business receipts of various industries collected via the annual economic surveys conducted by the C&SD.

The economic services related to outbound tourism cover travel agents and cross-boundary passenger transport services, pertaining to the segment of services provided to local residents travelling abroad, that is, the economic activities of these industries other than for inbound tourism. In other words, the total value added of travel agents and cross-boundary passenger transport services for both outbound and inbound tourism are included in the value added of tourism.

- (b) The methods adopted by the C&SD for compiling the value added of tourism and tourism ratios, which I have just explained, are in full compliance with the international standards established by the United Nations World Tourism Organisation (UNWTO). The same standards are commonly adopted by a number of economies such as the United States, the United Kingdom, Canada, Australia, Japan,

and so on. Therefore, the compilation method of the percentage share of value added of tourism to GDP adopted by the C&SD is basically similar to that used in other advanced economies.

MR PAUL TSE (in Cantonese): *President, when we stroll around shops of famous brands in Hong Kong, it is quite clear that most of the customers are tourists, and in particular tourists from the Mainland. Tourism has long been hailed as one of the four pillars of Hong Kong's economy. Would the Secretary be surprised to learn that tourism only accounts for 3% of our GDP? Would it be a good time to review whether this figure accurately reflects the important contribution tourism has for Hong Kong? If it does not, then this myth should be shattered and we should stop emphasizing the importance of Hong Kong's tourism. If it does, the true importance of tourism should be represented in figures, and the 3% figure should no longer be used as a benchmark.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, as I have just said in my reply, the method we use to compute is based on the international standards laid down by the UNWTO. As to whether the figure can accurately reflect tourism's contribution to our economy, we can imagine that, as the figure only takes into account direct value added of tourism for the related industries, some indirect benefits might not have been reflected. On the indirect benefits of tourism on the economy, for example, when a tourist eats in a restaurant, his spending would have indirect benefits on food manufacturers, transport companies, the electricity company, and so on, in addition to net value added that is being computed. These indirect impacts have not been reflected in the said figure because we are using data that are more objective and readily collated. The use of such data is also generally used by international communities. In general, indirect data are very difficult to compute with.

MR CHIM PUI-CHUNG (in Cantonese): *President, the Secretary has said in his main reply that Hong Kong adopts the "value added" method to compile statistics. As Hong Kong is a service-based society and tourism is one of Hong Kong's four pillar industries, can the Secretary tell us roughly the respective*

percentages the remaining industries in the four pillars, apart from tourism, in GDP? Which industry is the most crucial in Hong Kong?

PRESIDENT (in Cantonese): Mr CHIM, it seems that your supplementary question is not directly related to the main question.

MR CHIM PUI-CHUNG (in Cantonese): *It is related because tourism is already listed as one of the four pillars, but the Secretary said it only took up 3% of GDP. In his main reply, the Secretary also said that the "value added" compilation method is commonly adopted. Given Hong Kong's position as a service-based society, which industry has the highest value added?*

PRESIDENT (in Cantonese): Do you mean that as data from other industries are also compiled using the same method, you want to know the computation results?

MR CHIM PUI-CHUNG (in Cantonese): *Which industry has the highest percentage? Because out of the four pillars, tourism, given its importance, only takes up 3%. What about the percentages of the other industries?*

PRESIDENT (in Cantonese): I think this supplementary should be answered by the Secretary for Financial Services and the Treasury.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I wish to thank Mr CHIM for asking the question. In fact, I may not have all the data with me. But I do have some figures at hand, say, trading and logistics services accounted for 25.8% of GDP. This was the figure in 2007. Financial services accounted for 19.5% of our GDP, while professional and other business support services accounted for 11%.

MRS REGINA IP (in Cantonese): *Many people from the tourist industry have told me that Hong Kong's tourism, both inbound and outbound, is now facing the same problem as tourist industry around the world, that is, business loss arising*

from increasing Internet sales of tourism products. More and more people are now using Internet travel sites to book air tickets, hotels or tour packages. Business is getting more difficult because of such fierce competition. Many travel agencies in Hong Kong are small scale operations run by traditional methods. I do not know whether the Government has any information on hand to indicate whether the 3% value added of tourism has increased or decreased over the years. If it has decreased, will the Government directly, or through the HKTB, implement any measures to enhance the productivity and economic value added of tourism?

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I would like to provide some information to Mrs IP to illustrate tourism's contribution to Hong Kong's GDP in recent years. Perhaps I will quote the figures of some years as illustration: in 2003, tourism accounted for 2.3% of GDP, and the figure increased to 3.2% in 2005. In 2007, the figure in fact reached 3.4%. It is evident that with our strenuous efforts to promote Hong Kong's tourism, the figure is rising steadily.

MR LAU KONG-WAH (in Cantonese): *President, some countries have tax refund arrangements for tourists and hence, it helps give an objective picture of tourist spending. But in Hong Kong, there is no way to distinguish between spending by visitors and local people in restaurants or shops. How can the C&SD gather the relevant information correctly? Because there is no way to tell unless spending by local people and foreign visitors can be distinguished? How can the Government compile such data accurately?*

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I will try to answer. How can we apportion the value added of tourism to service industries? As I have said in my main reply, there are two ways to do so, namely (i) visitors' spending by type of consumption collected

through on-going visitor surveys conducted by the HKTB; and (ii) business receipts of various industries collected via the annual economic surveys conducted by the C&SD. Based on these data, the C&SD will do the estimation.

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

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has not answered my question, that is, notwithstanding data collection by the C&SD, will the shops or restaurants distinguish between spending by visitors and local people?*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): As I have just replied, we rely solely on the surveys. As for distinction of spending sources, the hotels will do so. But as far as individual industries are concerned, and of course, bearing in mind that their distinction may not be entirely correct, when we conduct surveys on the shops, some industries will distinguish between spending by locals and visitors. I beg your pardon, let me check through the information first. For major consumption categories, such distinction is made, that is, some major retail sectors will distinguish between different spending sources. We also rely on these surveys to compute from the sales receipts of the industries.

MR PAUL TSE (in Cantonese): *The Secretary has just mentioned that some of the economic contributions of tourism may be non-direct or indirect. To me, it seems that the Secretary is referring to multiplying effect, that is, an effect that spreads out continuously. However, this will hold true for all industries and all kinds of spending. Hence, if we really want to use a more general standard to calculate the economic contributions of tourism, I do not think multiplying effect is an important feature that we should be emphasizing too much. Otherwise, it would be very difficult to do any calculations at all. Even now, I still find it difficult to understand the whole thing. To me, the percentages of the other*

three pillars as cited by the Secretary seem to be all on the high side, for example, 25.7% for logistics, 19.5% for financial services, and 11% for professional and business support services. The Secretary for Commerce and Economic Development Mrs Rita LAU was talking about technology innovation industries yesterday, and this sector accounts for as much as 4% of GDP. I am very puzzled as to why tourism only accounts for 3% of GDP, although we have repeatedly stressed the importance of our tourist industry. What factors are missing here? Or are the calculations all wrong? If not, does the Government need to review its line about our tourist industry? Or is there something we can add into the formula? Otherwise, it would be very unfair to the tourist industry, or may be to other industries as well.

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr TSE has raised a very good supplementary question. We all understand that every industry would have some indirect benefits. As such, Mr TSE knows very well that these data should not be mixed together for fear of double-counting. Therefore, we have made reference to international standards when compiling the data. As to whether there is any omission or mistake, I really cannot say for sure here. We have compiled the data according to some internationally accepted standard. Our primary concern is to calculate direct receipts from tourism to service industries, including hotel, catering and retail. As we are now using a compilation method that is generally adopted by the international communities, I do not see there is any scope for change.

MR LAU KONG-WAH (in Cantonese): *President, I think Mr Paul TSE, by raising this supplementary question, is concerned about the Government underestimating the economic contributions of tourism. When answering my supplementary, the Secretary is saying that for some industries, spending by locals and visitors would be distinguished, say, the hotel industry. But can we get the same information from Hong Kong-style cafés? It seems that the Secretary is not entirely sure how this statistical information is compiled. We are thus concerned about not having a sound basis for compilation. Will the*

Secretary consider studying the matter further to improve the accuracy of the figure so that it serves to reflect the true picture more objectively?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Yes, please allow me to elaborate further. In fact, different industries would be included in the surveys, for example, Hong Kong-style cafés, other catering services and various service industries, and so on. We rely on ongoing surveys to obtain relevant data as a reference. At the moment, we do not see any gaps or discrepancies in these data because we are using a method that is accepted internationally. This is a very interesting issue, and I am sure we are all wondering about this figure. Is there a need for further academic study and research? Personally I think that we can ask the C&SD to review these figures. Or may be the tourist industry can do its own survey and studies to reveal more about these figures. I think that these studies could be helpful.

MR LEUNG KWOK-HUNG (in Cantonese): *President, I really would like to praise Secretary Prof K C CHAN for his excellent reply. It would be good if only he can give equally good replies when answering questions in relation to the Lehman Brothers minibond incident. He is very clear with his answers today.*

In fact, I would like to seek your expert view on one issue. Just now, you were talking about double-counting in GDP, as the Mainland used to calculate GDP in a different way, the figures might not be that accurate. I am seeking your expert view on this: In this year's budget — you have a role in this because you work under the Financial Secretary — the Government has proposed to spend \$1.6 billion on job creation, and this is only "fudging the numbers", double-counting. Is this compilation method in accordance with international standards? That is to say, when

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, the main question is related to the percentage of tourism in local GDP.

MR LEUNG KWOK-HUNG (in Cantonese): *President, this is related.*

PRESIDENT (in Cantonese): You have to explain clearly what the relation is.

MR LEUNG KWOK-HUNG (in Cantonese): *Give me 15 seconds and you will know. If the Government has double-counted when preparing the budget, I will have grounds to believe that the Government has double-counted when calculating the economic contributions of tourism. If, according to the Secretary, there was no double-counting, I will have confidence that he has not double-counted, right? Because there is only one government, there should only be one standard. If, according to international standards, the Government has not double-counted in its budget, I will have confidence that it would not double-count in other areas. Therefore, the Secretary would only need to answer whether the "fudged numbers", or suspected "fudged numbers" of job creation, are calculated in accordance with international standards. If the Secretary's answer is "yes", I will then ask him whether the same method has been adopted in the other case.*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you are still asking a supplementary question not directly related to the main question. You can put your question this way: In its reply to Mr Paul TSE's question, the Government has mentioned a

MR LEUNG KWOK-HUNG (in Cantonese): *Thank you President for your assistance, please ask the question for me.*

PRESIDENT (in Cantonese): a compilation method

MR LEUNG KWOK-HUNG (in Cantonese): *I have always felt that you have a very high intelligence.*

PRESIDENT (in Cantonese): has mentioned a compilation method, and whether this method has been adopted when compiling other data including, as you have mentioned, the

MR LEUNG KWOK-HUNG (in Cantonese): *"fudged numbers" of job creation in the budget*

PRESIDENT (in Cantonese): the budget, and whether the same principle has been adopted?

MR LEUNG KWOK-HUNG (in Cantonese): *It is great that you have asked the question for me. Although I have not voted for you as the President, you have done a good job. Secretary, you will need to answer the question right away. This is a question from the President, and you cannot avoid answering; otherwise, you will be ordered to leave the Chamber.*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please sit down. The Secretary for Financial Services and the Treasury, please reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, Mr LEUNG, the subject under discussion is compilation method of tourism's contribution to local GDP. I do not see any relevance with other issues.

MR LEUNG KWOK-HUNG (in Cantonese): *President, the Secretary has not answered the question. He does not show much respect for you. Having faired the question for me, you have in fact allowed me to raise my question.*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *The Secretary is questioning your Honour's judgment, this is so incredible.*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *So incredible.*

PRESIDENT (in Cantonese): Please sit down. I think the Secretary has replied.

This Council has spent more than 20 minutes on this question. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Protection of Bank Deposits

7. **MR WONG YUK-MAN** (in Chinese): *President, under the Deposit Protection Scheme (DPS) and the Government's full guarantee measure implemented since October last year for customer deposits held in all authorized institutions in Hong Kong (Full Guarantee Measure), deposits which are not protected include time deposits with a maturity exceeding five years, structured deposits, secured deposits, bearer instruments, offshore deposits and other financial products such as bonds, stocks, warrants, funds and insurance policies. The deposits of customers of integrated accounts who have applied for secured overdraft facility may not be protected, even if the amount of such facility is small. The Hong Kong Monetary Authority (HKMA) has thus required banks to inform their customers in writing before 31 May 2009 which deposits are not protected. In this connection, will the Government inform this Council:*

- (a) of the reasons for time deposits with a maturity exceeding five years not being protected;*
- (b) of the reasons for stocks kept in banks not being protected;*
- (c) what measures HKMA has to sanction banks which do not follow its guideline to issue notice before 31 May 2009 to their customers who are not under protection; and*
- (d) whether it has assessed, in the event of a bank failure before 31 May 2009, if their customers who have applied for secured overdraft facility but have never received the aforesaid written notice will have their deposits protected?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the Administration's response to the question is as follows:

(a) and (b)

The types of eligible deposits covered by the DPS launched since September 2006 and the Full Guarantee Measure which involves the use of the Exchange Fund to guarantee customer deposits held with all Authorized Institutions in Hong Kong from 14 October 2008 to end 2010 are the same. The HKMA has conducted a consultancy study and two rounds of public consultation when formulating the details of DPS. The Deposit Protection Scheme Ordinance, which was passed by the Legislative Council in May 2004, has clearly set out the legal framework of DPS, including the types of eligible deposits covered by DPS.

Under the Deposit Protection Scheme Ordinance, time deposits with a maturity exceeding five years and stocks kept in banks are not eligible deposits. One of the policy objectives of DPS and Full Guarantee Measure is for the Hong Kong Deposit Protection Board (HKDPB) to provide compensation to the affected depositors as soon as possible under the relevant legal framework in case of bank failure, so as to avoid affecting the liquidity of the depositors. Compared with various types of eligible deposits, the liquidity of time deposits with a maturity exceeding five years is relatively lower. As such, time deposits with a maturity exceeding five years are not categorized as eligible deposits upon prudent balance of relevant factors, including the policy objectives of and resource consideration concerning DPS and Full Guarantee Measure. This arrangement is in line with the types of deposits covered by the priority payment scheme applicable to depositors under the Companies Ordinance. In addition, DPS and Full Guarantee Measure aim at protecting deposits but not other financial products held in banks' custody. Generally speaking, since stocks kept in banks remain the asset of the relevant clients and will not be used to repay banks' creditors in case of liquidation of the banks, such stocks have not been regarded as eligible deposits.

- (c) HKMA issued a guideline in December 2008 requesting banks to write to depositors holding unprotected deposits again by the end of May 2009 to set out which deposits held by these depositors are not protected under DPS and Full Guarantee Measure. HKMA has closely monitored the implementation of the guideline and will continue to do so. In case of non-compliance with the guideline, HKMA will request banks to promptly rectify the situation and carry out appropriate regulatory actions if necessary.
- (d) Collateralized deposits held by depositors are not eligible deposits under DPS and Full Guarantee Measure. Depositors can enquire the relevant banks concerning whether their deposits have been pledged. In case their deposits have been pledged, depositors can take appropriate actions, such as requesting the banks to cancel the charge on the deposits, so that the relevant deposits can be regarded as eligible deposits under DPS and Full Guarantee Measure. According to HKMA's understanding, while the arrangements under the contractual terms of different banks may vary, automatic offering of credit facilities to customers holding integrated accounts and charging all deposits under the relevant accounts for credit facilities are not a common practice among banks in general. A major bank which has adopted this practice has already changed the arrangement and notified affected customers in February 2009.

Under DPS, relevant banks are required to make representation to depositors concerning their membership and protection status of their products according to the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules. As mentioned above, HKMA issued a guideline in December 2008 requesting banks to write to depositors holding unprotected deposits again by the end of May 2009 to set out which deposits held by these depositors are not protected under DPS and Full Guarantee Measure. HKMA and HKDPB have been closely monitoring the implementation of the aforesaid representation requirements. They will continue to do so and carry out appropriate follow-up actions when necessary.

Counterfeit Hong Kong Banknotes

8. **MR WONG TING-KWONG** (in Chinese): *President, it has been reported that the Guangdong Provincial Public Security Bureau indicated that counterfeit Hong Kong banknotes with a total face value of over three million dollars were seized last year, and emphasized that there was no technology available on the Mainland "to produce counterfeit Hong Kong banknotes of such high quality", estimating that those counterfeit banknotes were most probably circulated into the Mainland through money exchanges in Hong Kong. In this regard, will the Government inform this Council:*

- (a) of the respective numbers of cases of counterfeit Hong Kong banknotes being seized by and reported by members of the public to the police last year, as well as the number and major denominations of the counterfeit banknotes concerned;*
- (b) of the level of the imitation skills in respect of the counterfeit Hong Kong banknotes seized last year, and whether the general public and banknote authentication devices can tell if they are counterfeit banknotes;*
- (c) whether the police has found out if it is true that counterfeit Hong Kong banknotes were circulated into the Mainland through money exchanges in Hong Kong; if it is true, whether the police will step up monitoring the related money exchange activities in Hong Kong; if not, of the reasons for that; and*
- (d) of the measures taken by the police to monitor counterfeit Hong Kong banknotes activities, and the effectiveness of the collaborative efforts of the police and the Guangdong Provincial Public Security Bureau in combating counterfeit banknotes activities?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): *President,*

- (a) The police seized a total of 3 156 counterfeit Hong Kong banknotes in 2008. The relevant statistics on denomination are as follows:*

<i>Denomination</i>	<i>Number</i>
\$1,000	383
\$500	556
\$100	1 029
\$50	691
\$20	359
\$10	138
Total	3 156

The police do not maintain statistics on cases of counterfeit Hong Kong banknotes reported by members of the public.

- (b) According to the police, most counterfeit Hong Kong banknotes seized last year are of "average" or "poor" quality. In most cases, members of the public can distinguish the counterfeit banknotes by naked eye or touch. The banknote authentication devices currently used by banks can verify the authenticity of Hong Kong banknotes.
- (c) With the increasing flows of trade and tourism between Hong Kong and the Mainland, there exist a large number of cash transactions in Hong Kong dollars. Therefore, the police cannot preclude the possibility of counterfeit Hong Kong banknotes finding their way into such cash transactions in the two places. The police will continue to enhance intelligence exchange with the law-enforcement agencies on the Mainland and urge local money changers to stay vigilant in a bid to curb the circulation of counterfeit Hong Kong banknotes. Also, the police will spare no efforts in combating offences related to counterfeit banknotes by taking swift and targeted actions to investigate such cases.
- (d) The police have been exchanging intelligence with the Hong Kong Monetary Authority (HKMA), the banking sector as well as the mainland and overseas law-enforcement agencies in order to keep a close watch on unlawful activities in connection with counterfeit Hong Kong banknotes. On receipt of report on counterfeit Hong Kong banknotes, the police will carry out investigation promptly. In addition, the police organize seminars on how to verify the authenticity of banknotes jointly with the HKMA, and educate the

public and raise their awareness on how to distinguish counterfeit banknotes through television, newspapers and distribution of leaflets.

The police have been working closely with the law-enforcement agencies, including the Economic Crime Investigation Department of the Guangdong Provincial Public Security Bureau, on the Mainland to combat cross-boundary crimes involving counterfeit banknotes. In addition to exchanging intelligence, the law-enforcement agencies of the two places also join forces to bring offenders to justice. For instance, a counterfeit Hong Kong banknotes syndicate was neutralized through the co-operation of the law-enforcement officers of the two sides last June.

Burial Services

9. **MR WONG KWOK-HING** (in Chinese): *President, quite a number of elderly care organizations and poor elderly people have all along been dissatisfied with the policy on burial service and the management of public columbaria in Hong Kong. They are especially concerned about the acute shortage of columbarium niches, the heavy burden of burial expenses and the management of Gardens of Remembrance where members of the public may scatter cremated ashes. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the demand for columbarium niches in the coming 10 years and planned for the construction of columbaria strictly according to such demand, so as to resolve in the long run the problem of insufficient columbarium niches; if it has, of the relevant demand figures and plans for construction of columbaria;*
- (b) *whether it will provide incentives to attract undertakers to recommend to members of the public the use of eco-coffins and ways of burial which are cheaper and more environment friendly, so as to reduce the burden on poor elderly people and promote environmental protection; and*
- (c) *whether it has, having regard to the need and expectation of the public in Hong Kong, formulated rules and regulations on the*

management of Gardens of Remembrance and deployed dedicated personnel to manage them; if so, of the details of the relevant arrangements; if not, whether it will consider formulating the management rules and regulations, and increasing the manpower in this regard?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Administration has been paying due attention to the demand and usage of cremation services, columbarium facilities and gardens of remembrance. In addition to actively identifying suitable locations for the development of relevant facilities in different areas in Hong Kong, in terms of cremation services, we are now replacing our existing facilities with more efficient and environmental friendly cremators so as to provide more cremation sessions. At present, half of the crematoria (that is, Kwai Chung, Diamond Hill and Fu Shan Crematoria) have been upgraded. Compared to the original cremators, these new cremators can increase the number of cremation sessions by 8 268 sessions a year. Moreover, the reprovisioning projects at the Wo Hop Shek and Cape Collinson Crematoria will commence in this year and the next respectively. After the two projects are completed in 2014, the annual number of cremation session will increase from the present 37 600 sessions to 51 500 sessions, which will be able to cope with the anticipated demand.

As regards the Member's question, our reply is as follows:

- (a) Based on the estimated number of deaths in Hong Kong each year, and the rising rate of cremation recently, the total number of cremations is estimated to be about 428 700 cases in the next 10 years (that is, from 2009 to 2018). At present, about 55 000 niches are being planned by the Government, including 18 500 niches at the Diamond Hill Columbarium to be completed early next month and 37 000 niches at Kiu Tau Road, Wo Hop Shek, which are expected to be completed in 2012. Apart from public niches, niches are also provided by the non-governmental Board of Management of the Chinese Permanent Cemeteries; cemeteries managed by religious bodies such as Catholic, Protestant and Buddhist organizations; and in premises managed by private entities such as Po Fook Hill at Shatin, monasteries, nunneries, and so on.

There are suitable sites in the New Territories for constructing columbarium facilities, but such developments could only be realized with the support of the District Councils and the local community. In the meantime, the Administration has been actively encouraging the public to handle cremains through alternative means, such as scattering the cremains in gardens of remembrance or in designated Hong Kong waters.

- (b) Since early 2008, the Food and Environmental Hygiene Department (FEHD) has imposed an additional licensing condition on all newly issued and renewed Undertakers of Burials Licences, requiring undertakers of burials to provide eco-coffins so as to provide another option to the public. At present, 84 out of all 94 licensed undertakers in Hong Kong are already subject to this additional licensing condition. The remaining 10 will be subjected to the same requirement by mid 2009, when the existing licences are renewed. At the same time, FEHD has also stepped up publicity to promote the use of eco-coffins through various channels, such as publicity leaflets, FEHD's homepage, announcements of public interest and talks. In addition, FEHD is working with non-government organizations providing elderly services to strengthen the promotional efforts. In fact, some social welfare organizations also hold valid Undertakers of Burials licences. They provide low-priced burial services, including the provision of eco-coffins, for members of the public in need to choose from.
- (c) Under the Cremation and Gardens of Remembrance Regulation (Cap. 132M), the Director of Food and Environmental Hygiene is tasked with the management of the eight gardens of remembrance under his purview, including the determination of their hours of opening, allocations and layout as well as regulation over the disposal of ashes, placement of memorials and the conduct of persons in the gardens, and so on. Any person who wilfully obstructs any member of the staff of any garden in the carrying out of the staff's duty shall be guilty of an offence. At present, the daily cleaning, repair and maintenance, and gardening work of the eight gardens of remembrance are undertaken by FEHD or its contractors

in accordance with contract or operational manual, and under the supervision of FEHD staff.

FEHD is now carrying out landscaping works in the gardens of remembrance under its management and plans to provide additional gardens of remembrance in existing public cemeteries to offer more choices to the public.

Film Development Fund

10. **MR PAUL CHAN** (in Chinese): *President, the Government injected \$300 million into the Film Development Fund (FDF) in 2007 to expand its scope to finance film productions with a production budget not exceeding \$12 million, with the maximum contribution set at 30% of the production budget or \$3.6 million. I have recently received complaints from members of the film sector pointing out that the FDF provides limited funding support for small-to-medium budget film productions on the conditions of cost recoupment and profit sharing. Such a measure has not only increased administrative and accounting work for small-to-medium film producers, but has also rendered the funding support to be of little benefit to the development of the film industry. In this connection, will the Government inform this Council:*

- (a) *of the total number of applications for funding support for film productions received by FDF since the Government's injection of fund in 2007, together with the production budget, amount of funding support, film title, name of production company and name of director, and so on, in respect of each application; and for other film-related projects receiving funding support, the total amount of funding support approved, the number, as well as the contents and the categories of the projects;*
- (b) *whether it has estimated when the commitment of FDF will be used up, and whether it has plans to adjust the ceiling of funding support; if so, of the details; if not, the reasons for that;*
- (c) *whether it has completed the review on the effectiveness of FDF since the commencement of its operation, including whether it can*

help promote more film-related activities, increase employment opportunities in the industry, nurture film talents and enhance the overall image of Hong Kong; if so, of the details and whether it has sought the views of the film sector during the review process; if so, of the views; if not, the reasons for that; and

- (d) *whether it will cancel the arrangement of profit sharing as a condition for funding support and retain only the requirement of cost recoupment, so as to reduce administrative and accounting work for applicants?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the film industry in Hong Kong, through its own initiative and hard work, has built a reputation for creativity and success comparable to the best in the world. As such, while Government recognizes the need to support the industry, we feel this support should be targeted, proportionate and focused on nurturing new talent. With this in mind, the Government has injected \$300 million into the FDF in order to support small-to-medium budget film productions through the Film Production Financing Scheme (the Scheme). The Scheme aims to provide funding support to encourage commercial investment in film productions, create employment opportunities, and nurture new directors and other industry talent in order to revitalize Hong Kong's film industry.

My replies to the questions are as follows:

- (a) From October 2007 when the FDF first started to invite application until 9 March 2009, a total of 17 applications for financing film productions have been received. 10 of these have been approved with a total funding of some \$27.2 million. Two applications are still being processed; two have been withdrawn by the applicants, and three were rejected. During the period, a total of 24 applications for financing other film-related projects were approved with a total funding of \$38.22 million. Details of the approved film production cases and other film-related projects are set out in the Annex.
- (b) As at the end of February 2009, the FDF has a balance of about \$240 million which should be sufficient for use in the next few

years. The Government will continue to closely monitor the funding situation of the FDF. In the event that there is insufficient balance to cater for actual needs, the Government will consider whether to seek further provisions from the Finance Committee of the Legislative Council to increase the commitment of the FDF.

There is at present no plan to revise the maximum contribution ratio for funding film productions, but we will conduct a review on the operation of the FDF shortly and this will be one of the issues to be considered.

- (c) Since applications were first invited slightly more than one year ago, the Scheme has been well received. So far, 17 film production applications have been received of which 10 have been approved. Two of the approved films have been theatrically released in Hong Kong and on the Mainland. The rest of the films approved will be released in the next few months. The 10 approved films have involved a total of six novice directors who are directing commercial films for the first time. Some of the films have been nominated to participate in the Hong Kong Film Awards and in international film festivals, including the Tokyo Film Festival, the Berlin International Film Festival and the Golden Horse Awards Competition in Taiwan. When measured against the total release of around 60 local films in Hong Kong last year, the response to the Scheme is considered to be satisfactory. The FDF has played an active role in generating more film-related activities, increasing employment opportunities, nurturing film talent and strengthening Hong Kong's film industry as a whole.

In addition to this, it is also clear that through the implementation of the Scheme, the local film industry has had to adopt appropriate rules and regulations to bring the industry in line with international best practices in terms of financial management and the contract arrangements for film productions. This will attract more local and overseas capital to invest in local films and be conducive to the long term development of the local industry.

The Government will shortly commence wide consultation with the film industry to review the operation of the FDF. This exercise will

allow us to take stock of the first year of operation and make changes as necessary to the Scheme so that it fully meets the needs of the industry.

- (d) In accordance with the approval granted by the Finance Committee of the Legislative Council for expanding the scope of the FDF in July 2007 to finance film productions, the Government when financing a film production will require cost recouping and profit sharing in respect of the film which is commensurate with the Government's share of contribution on a pro rata basis. The first two films approved have already been released and according to the box office so far, we see chances for them to pay back the support received from the FDF. However, there is no guarantee in respect of the box office of each film which is market-led and we may not be able to recoup the contribution from the FDF. We will closely monitor the situation. Regardless of whether the films supported by the Scheme would recover its costs, our policy objectives to promote the film industry have already been met.

There is at present no plan to abolish the profit sharing requirement, but this will be considered in the context of the review on the operation of the FDF.

Annex

Approved Applications for Financing Film Productions

	<i>Film Title</i>	<i>Film Company</i>	<i>Director</i>	<i>Budget for Film Production (\$)</i>	<i>Fund Approved (\$)</i>
1	McDull Wudang	Bliss Pictures Limited	TSE Lap-man	11,996,000	3,598,800
2	Claustrophobia	Runaway Films Production Limited	HO Pik-mun	5,394,186	1,618,255
3	Coweb	Joy Charm Enterprise Limited	XIONG Xin-xin	9,977,265	2,993,179
4	Give Love	BIG Pictures Limited	MA Wai-ho; LEE Ka-wing	8,065,580	2,419,674
5	Strawberry Cliff	Glory Top Properties Limited	CHOW Chun, Chris	10,058,118	3,017,435

	<i>Film Title</i>	<i>Film Company</i>	<i>Director</i>	<i>Budget for Film Production (\$)</i>	<i>Fund Approved (\$)</i>
6	Prince Tears	Far-Sun Film Company Ltd	YANG Man-shih (YANG fan)	11,950,000	2,390,000
7	Lover's Discourse	ET Media Group Limited	Derek TSANG; Jimmy WAN	7,838,640	2,351,592
8	The Fighters	One Hundred Years of Film Company Limited	MAK Chi-sin, Marco	11,520,000	3,456,000
9	歲月神偷 (English name pending)	Dadi Entertainment Limited	LAW Kai-yui, Alex	11,994,249	3,598,274
10	Break Up Club	Diva Productions Limited	WONG Chun-chun	5,865,000	1,759,500
			Total	94,659,038	27,202,709

Approved Applications for Financing Other Film-related Projects

	<i>Description and Type</i>	<i>No. of Projects</i>	<i>Fund Approved (\$)</i>
1	To sponsor major film promotion activities, such as Entertainment Expo Hong Kong, Hong Kong — Asia Film Financing Forum, Hong Kong Film Awards Presentation Ceremony and Asian Film Awards, and so on	8	32,697,456
2	To sponsor seminar(s) relating to the long term development of the Hong Kong film industry	1	969,200
3	To sponsor local films nominated to participate in film festivals or film financing forums overseas	12	1,638,537
4	To sponsor "The Hong Kong Filmmakers' Code of Practice and Film Industry Safety Handbook"	1	702,700
5	To sponsor the production of a teaching kit for promotion of film education in the senior secondary school visual arts curriculum	1	1,811,665
6	To sponsor the production of a short film to promote Hong Kong films	1	400,000
	Total	24	38,219,558

Acting Appointment of a Government Driver

11. **MR ALBERT HO** (in Chinese): *President, recently, there were media reports that the Secretary for Constitutional and Mainland Affairs had allowed a Motor Driver, who had served him for a number of years but was not qualified for driving saloon cars for directors of bureaux, to act up in a Chauffeur post, which is at the next higher rank, so that the driver could continue to provide chauffeur service to him. The driver concerned receives an acting allowance of over \$1,000 per month and has acted up in that post for as long as seven consecutive years. Under the existing regulations, acting appointments lasting or expected to last for longer than six months should be approved by the appropriate authority for substantive appointment, and the need for making acting arrangements should be reviewed on a regular basis. In addition, the Government Chauffeurs Union indicated that it had lodged complaints against the acting appointment for a number of times, but the Government had not taken heed of them. In this connection, will the Government inform this Council:*

- (a) *during the period when the driver was acting up in the Chauffeur post, whether the Constitutional and Mainland Affairs Bureau (CMAB) had made any request in writing or orally to the government department concerned for allowing the driver to continue to work in the post concerned; if so, of the details;*
- (b) *why the driver was allowed to act up for as long as seven years; how many reviews of the acting arrangement had been conducted by the authority for substantive appointment during the period; and of the decision made in each review; and*
- (c) *whether it has assessed if allowing the driver to act up on a long-term basis has hindered the promotion of other qualified drivers; if it has conducted such an assessment, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): *President, the following is the reply to the three-part question:*

- (a) As the driver in question was conversant with the relevant operational requirements and had a good performance during the acting period, the then Constitutional Affairs Bureau/CMAB has recommended him in writing to take up acting appointment in the Chauffeur post in the Bureau. Having taken into account the manpower situation of the Chauffeur grade, the operational need and the recommendation of the Bureau, Government Logistics Department (GLD) agreed to the acting arrangement.
- (b) Under the prevailing requirement, there is no time limit for an acting appointment but the department concerned has to conduct regular reviews. As regards the acting appointment in question, a total of seven reviews were conducted. After each review, CMAB confirmed that the acting arrangement was necessary to meet operational need and recommended the said driver for continued acting as Chauffeur. Having considered the manpower situation of the Chauffeur grade, the operational need and the recommendation of the Bureau, GLD agreed to the acting arrangement.
- (c) An acting appointment is a non-substantive appointment which will be arranged when there is an operational need to assign an officer to carry out the duties of a vacant post at a higher rank. As explained in (2) above, under the prevailing requirement, there is no time limit for an acting appointment but the department concerned has to conduct regular reviews. A total of seven reviews were conducted regarding the acting appointment in question. Furthermore, after confirming that there was a long-term operational need and that there would not be any surplus staff in the coming few years, GLD conducted two in-service recruitment exercises in 2005 and 2007 and invited Special Drivers and Motor Drivers in the civil service to apply for the post of Chauffeur so as to fill the vacancies substantively. A total of 25 serving Motor Drivers were selected in the two exercises and took up the posts of Chauffeur. As such, the opportunities for the Special Drivers and Motor Drivers to be appointed to fill the posts of Chauffeur have not been affected by the acting appointment in question.

Labelling of Prepackaged Food

12. **MR FRED LI** (in Chinese): *President, to avoid the health of consumers being affected due to inappropriate use of prepackaged foods, the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) (the Regulations) provide that "Where special instructions are needed in order that appropriate use may be made of a prepackaged food, such instructions shall be legibly marked or labelled on the food". However, the labels on preparation method of certain brands of milk powder produced in Japan, which are on sale in Hong Kong, are in Japanese only. Furthermore, smoking points vary with different types of olive oils, and carcinogenic substances will be produced when products with low smoking points are cooked at a high temperature. Yet, relevant descriptions or instructions are not labelled on some of these products. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed if the aforesaid examples comply with the requirement of the above provision; if the assessment result is in the negative, of the reasons for that;*
- (b) *whether there was any food manufacturer or agent prosecuted in the past three years for selling prepackaged foods not in compliance with the requirement of the above provision; if so, of the number of such cases each year, and the penalties imposed on the convicted persons; and*
- (c) *how the Government monitors if the food manufacturers and agents concerned comply with the requirement of the above provision?*

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

- (a) Schedule 3 of the Regulations stipulates that where special instructions are required for the storage or in order that appropriate use may be made of a prepackaged food, such instructions shall be legibly marked or labelled on the food. Such expression can be made in either the English or the Chinese language or in both languages.

Whether special instructions are required for the storage or use of a food depends on a number of factors, including the ingredients used, the method of preparation, how the food is consumed, and characteristics of the population group who will consume the food, and so on. Food manufacturers are best acquainted with the details and properties of the food they produce, and they are also responsible for providing consumers with sufficient instructions for the storage and consumption of the food.

With regard to law enforcement, the Food and Environmental Hygiene Department (FEHD) will take into account various factors when determining whether prepackaged food should be marked or labelled with appropriate instructions for use, such as the nature of the prepackaged food, the general knowledge of consumers about the food and whether inappropriate use will cause food safety problems, and so on. In short, if food safety problems may arise when special instructions for use are not followed, the food trade is required to mark or label the food with such instructions. On the other hand, for methods of use that are generally known to the average consumers (such as meat must be cooked before consumption) or methods of use that do not concern food safety (such as method of preparing general beverages for adults by diluting drink mixes), special instructions are not necessary.

As for infant formula, the trade is required to indicate the appropriate methods of preparation on the food labels in either the English or the Chinese language or in both languages, in accordance with the requirements stipulated in Schedule 3 of the Regulations, so as to prevent health problems caused by the consumption of inappropriately prepared milk. For instance, there may be adverse effects on an infant's health and growth due to excessive or insufficient intake of energy or nutrients. Regarding the possible health problems caused by cooking oil (including olive oil) heated at high temperature, there is as yet no definite scientific evidence showing that the derivatives produced by heating cooking oil will cause cancer in human. Nevertheless, the Administration has conducted risk assessment studies to address the concern on cooking food at high temperatures and provided relevant information on food safety to the public.

- (b) From January 2006 up to the present, the FEHD issued about 240 warning letters and took out 150 prosecutions in relation to the requirements on food labelling under Schedule 3 of the Regulations (for example, indication of appropriate durability, list of ingredients, and so on). Amongst these cases, in 2008, the FEHD found three types of Japanese infant formula with indications of their methods of preparation in Japanese only, which was in breach of the requirement on special instructions for use under Schedule 3 of the Regulations. The FEHD issued warning letters to the retailers concerned who have subsequently re-labelled the infant formula appropriately or stopped selling the products. The maximum penalty for breaching the Food and Drugs (Composition and Labelling) Regulations is a fine of \$50,000 and imprisonment for six months.
- (c) FEHD will monitor through a surveillance programme on whether food for sale in the local market complies with the Food and Drugs (Composition and Labelling) Regulations. FEHD checks about 55 000 prepackaged food labels annually. Items checked include name or designation of food, list of ingredients, indication of appropriate durability, name and address of manufacturer or packer, statement of special conditions for storage or instructions for use, and so on. FEHD will issue warning letters or take out prosecutions for contravention of the Regulations. Besides, the public may file a complaint to FEHD for problems related to food labelling.

Hong Kong Shaolin Wushu Culture Centre

13. **MS MIRIAM LAU** (in Chinese): *President, it has been reported that the Hong Kong Shaolin Wushu Culture Centre (Shaolin Centre), which had once been very prosperous and attracted many lovers of martial arts and tourists from around the world to enrol and visit, lost its attraction before the Chinese New Year due to management problems. All the Shaolin monks who taught martial arts there have left, all martial arts classes have been suspended, and even the special vegetarian meal services which are very popular with tourists have nearly stopped. In this connection, will the Government inform this Council:*

- (a) *given that the Home Affairs Bureau's aim of supporting the development of the Shaolin Centre in Tai O a few years ago was to promote the culture and spirit of Chinese traditional Shaolin martial arts, and make it blend with the natural scenery of Tai O to become a unique tourist attraction, whether the authorities have kept in view and followed up the management and operation of the Shaolin Centre since its opening in 2006; if so, of the situation in this regard; if not, the reasons for that;*
- (b) *whether the authorities will provide assistance to enable the Shaolin Centre to restore smooth operation, so as to continue to promote martial arts as well as foster the tourism and economy of Tai O; and*
- (c) *given that it has been reported that the Hong Kong Shaolin Temple is applying to the Government for allocation of a 50 000-square-metre site for the construction of a temple and a Shaolin park, which are of a scale comparable to the Shaolin Temple in Songshan, Henan Province, so as to provide opportunities for people to learn martial arts and practise meditation in Hong Kong, whether the authorities will equally support this plan actively in order to promote Shaolin martial art culture; if so, how they ensure the smooth implementation of the plan and prevent the recurrence of circumstances similar to the near paralysis of the operation of the Shaolin Centre?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, the Administration's reply to the respective parts of the question is set out below:

- (a) and (b)

Since the Shaolin Centre commenced to operate in 2006, the Leisure and Cultural Services Department has maintained liaison with its operator, the Hong Kong Culture Association Limited (HKCAL). HKCAL has already publicly clarified that the allegations that the Centre is no longer in operation as reported by the media are not true; and

- (c) If an organization requires land to build facilities for government, institution or community uses, including religious use, the

Government would provide assistance based on the actual situation of each case. With regard to the Hong Kong Shaolin Temple's application for land to construct a temple, the Home Affairs Bureau is studying the proposal in detail and has requested the Hong Kong Shaolin Temple to provide further information on relevant issues. If the information provided by the applicant indicates that the project possesses the necessary conditions for further deliberation, the Planning Department would conduct a site search. Based on the result of the site search, Hong Kong Shaolin Temple may apply to the Lands Department (LandsD) for granting of land. LandsD would consult relevant policy bureaux and departments in processing the application. If the application is approved, the lease conditions would stipulate the specific uses of the site concerned and include the clauses on "commence to operate" and "cessation and diminution of user" to ensure that the land granted would be put to appropriate use.

A Site Adjacent to Sunny Bay MTR Station

14. **DR DAVID LI:** *President, in response to my question at the Council meeting of 24 October 2007, the Government advised that the site adjacent to the Sunny Bay MTR Station, which had earlier been designated for use as an "emergency vehicle holding area" for the Hong Kong Disneyland, had been returned to the Lands Department (LandsD) in February 2007, and that LandsD planned to let the site by short-term tenancies at full market rental. To date, the site remains unused. In this connection, will the Government inform this Council:*

- (a) of the current status of the site;*
- (b) whether the proposed use of the site mentioned in the said response has encountered any opposition and, if so, of the nature of the objections; and*
- (c) of the timetable for achieving market rental for the site?*

SECRETARY FOR DEVELOPMENT: President, the site in question remains a vacant government site available for short-term uses upon temporary allocation to government departments or upon application by other parties. The proposal mentioned in my reply to the Legislative Council question on 24 October 2007 was one such application for a short-term tenancy of the site. However, this application was subsequently rejected on 8 July 2008 due to various reasons on the part of the applicant.

Since then, the LandsD has received requests from government department and applications from other parties for temporary use of the site. While government department has proceeded with its temporary use, none of the other applicants took their applications to fruition.

For better utilization of the site, LandsD in consultation with relevant departments has been considering other possible options to put the site to temporary use. It remains LandsD's intention to tender the site for short-term use at full market rental. LandsD plans to put the proposal to the District Lands Conference in the next quarter.

Assistance to Unemployed Middle-class and Professionals

15. **DR PRISCILLA LEUNG** (in Chinese): *President, the latest seasonally-adjusted unemployment rate has risen to 4.6% and the number of unemployed persons has also exceeded 150 000. It has been reported that the unemployment rate might reach 6% by the end of the year, with the Financial Secretary (FS) recently not ruling out the possibility of the unemployment rate rising to 8%. There have been comments that in his Budget Speech delivered on 25 February, FS had not proposed any new measure which would provide real assistance to the unemployed to undergo training and switch occupation. Instead, he only indicated that he would earmark \$400 million non-recurrent funding for the Labour Department (LD) to enhance and integrate its various employment programmes at present. Moreover, applications for subsidy under the Continuing Education Fund (CEF) are not restricted to unemployed persons and the subsidy has been capped at \$10,000, while the target group of the Employees Retraining Board (ERB) is limited to people with education attainments of sub-degree or below, resulting in the middle-class or the professionals with higher education attainments being unable to benefit from its*

services when they become unemployed. In this connection, will the Government inform this Council:

- (a) whether at present it has any specific programme to assist the middle-class people who have become unemployed after the onset of the financial tsunami to switch occupation;*
- (b) whether it will consider setting up an "interest-free loan fund for occupation switching" specifically for unemployed persons to apply, so as to finance them to take occupational value-added or occupation switching courses organized by tertiary institutions or training organizations according to their professions;*
- (c) whether it will consider expanding the target group of ERB to include unemployed persons with any education attainments; and*
- (d) of the principles adopted by the authorities for deciding which new occupation areas unemployed persons should switch to before providing them with retraining?*

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

- (a) The global financial tsunami has caused the economies of many regions to contract, resulting in the loss of different categories of jobs and affecting a wide spectrum of people, including the middle class. In face of an uncertain economic outlook, the middle class may have to consider adjusting their short-term employment expectations and grasp every available opportunity.

The LD will adopt multi-pronged measures to promote labour market efficiency and disseminate employment and vacancy information with a view to assisting job seekers find jobs as efficiently and as early as possible. Under the 2009-2010 budget, the Government proposes to provide additional funding for LD to adopt a more proactive approach in providing employment assistance to employees who lost their jobs in redundancy or closure exercises amidst the financial crisis. LD will contact the concerned employees and provide them with priority referral and job matching

services to assist them to find suitable jobs. LD will also organize thematic job fairs targeted at industries hard hit by the economic downturn and organize district-based job fairs at shopping centres or community halls to reach out to job seekers for the dissemination of vacancy and employment information.

Moreover, LD will enhance the Employment Programme for the Middle-aged to assist middle-aged job seekers in re-entering the labour market as early as possible. The improvement measures will include relaxing the eligibility criteria for joining the Programme in order to cover people with different education attainments and skill levels, increasing the level of on-the-job training allowance payable to employers, and extending the length of the subsidy period.

- (b) Unemployed persons who wish to pursue continuing education for self-enhancement may apply for subsidies under the CEF and/or loans under the Non-means-tested Loan Scheme (NLS).

For CEF, Hong Kong residents aged between 18 and 65 who wish to pursue continuing education may apply for subsidies there under. CEF is administered by the Student Financial Assistance Agency (SFAA). Applicants may claim reimbursement of 80% of the fees of any CEF registered course upon successful completion of the course, up to a ceiling of \$10,000 for person.

As to NLS, individuals pursuing eligible continuing and professional education courses provided in Hong Kong by registered schools, non-local universities and professional and recognized training bodies may apply for loans to meet their tuition fees under the scheme. NLS is also administered by SFAA. The maximum amount of the loan is the tuition fees payable for the academic year.

We consider that existing schemes already provide unemployed persons of different background with subsidy or loan for pursuing further education.

- (c) Over the years, the ERB has been serving the unemployed or those needing to upgrade their skills who are aged 30 or above and with education attainment of Secondary three or below. Taking into

account the relatively high unemployment rate among young people and the training needs of our workforce with sub-degree or below, the Chief Executive-in-Council decided in October 2007 that the eligibility criteria of the Employees Retraining Scheme administered by ERB should be relaxed to cover young people aged between 15 and 29 and people with education level at sub-degree or below. The relaxation took effect on 1 December 2007. About 2.7 million of Hong Kong's working population are now ERB's service targets and the Administration has no plan to further expand the scope of coverage of ERB.

- (d) In developing and designing training courses, ERB will take into account all relevant information, including the local economic condition, latest statistics, manpower demands of individual industries and job vacancies, and so on, in order to identify job types and employment opportunities that are suitable for those who are unemployed or seeking jobs. ERB will also consult employers, trade associations and professional bodies on the training contents and prospects of target job types to ensure that its courses keep abreast of market needs.

Apart from meeting the eligibility criteria for enrolment and the relevant course requirements, unemployed persons who wish to enrol in ERB's full-time placement-tied courses are required to go through an admission interview conducted by the training bodies. If an applicant is not considered suitable for admission into the course that he/she applies for, the training body concerned will advise, where appropriate, the applicant to consider other more suitable courses for him/her with a view to enhancing his/her chance of employment upon completion of training.

Dispensation of Medicines in Residential Care Homes for Elderly

16. **MR WONG SING-CHI** (in Chinese): *President, it has been reported that during the period from April 2006 to August 2008, the Hospital Authority (HA) received 39 reports of wrong intake of medicines by elderly residents in residential care homes for the elderly (RCHEs) and, among them, three elderly*

residents passed away allegedly because of this. In this connection, will the Government inform this Council:

- (a) of the number of reports received in each of the past three years of medicines being dispensed wrongly at RCHEs; whether it had carried out investigations into such incidents occurring in private and government-aided RCHEs respectively; if so, of the respective details; if not, the reasons for that;*
- (b) whether it will step up regulation on private and government-aided RCHEs respectively and require that they must comply with the relevant stipulations in the code of practice for Residential Care Homes (Elderly Persons) when dispensing medicines; if so, of the respective details; if not, the reasons for that; and*
- (c) whether it will consider increasing the subventions granted to private and government-aided RCHEs respectively, so as to minimize the incidents of medicines being dispensed wrongly which are caused by insufficient manpower in the institutions; if so, of the respective details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to the Honourable WONG Sing-chi's question is as follows:

- (a) In the past three years, the Social Welfare Department (SWD) received a total of 100 complaints, referrals or self-reported cases by RCHEs about suspected cases of improper handling of drugs in RCHEs, that is, an average of about 33 cases a year. Those 100 cases include the 39 suspected cases of wrong intake of hypoglycemic agents by elders reported from April 2006 to August 2008 as mentioned in the question.

On learning about such cases, the Licensing Office of Residential Care Homes for the Elderly (LORCHE) under SWD will immediately conduct investigations, including unannounced inspections of the concerned RCHEs, examination of their drug handling records, and meetings with staff members and elderly residents of the concerned RCHEs to enquire about the incidents.

For substantiated cases involving staff negligence or deficiencies in the drug management systems of RCHEs, LORCHE will issue advice or warning to the concerned RCHE and follow up the case closely to ensure that corresponding improvements will be made.

LORCHE has completed the investigations into the above 100 cases, 80 of which were substantiated. These cases involved wrong intake of drugs, omission of prescribed drugs in drug distribution, repeated distribution of drugs, inaccurate dosage of drugs, or taking drugs at wrong timing, and so on. The incidents were mainly caused by the failure of staff in following the correct drug handling procedures. Taking into account the nature and severity of individual cases, LORCHE has issued advice or warning to the RCHEs and staff concerned, and has referred them to receive training on drug handling provided by the Visiting Health Teams (VHTs) of the Department of Health (DH). LORCHE will continue to monitor these RCHEs closely to ensure that they have adopted effective improvement measures.

- (b) All RCHEs that have obtained an RCHE licence from SWD (whether they are subsidized or private RCHEs) are required to comply with the code of practice for Residential Care Homes (Elderly Persons) issued by SWD. The code has set out clearly the requirements on storage and management of drugs in RCHEs. Besides, SWD, DH and the HA have jointly compiled a drug management manual in early 2007, which has provided clear and detailed guidelines on the major procedures in drug management including the storage, preparation, sorting, checking and distribution of drugs. The manual also provides standardized flow charts illustrating the relevant procedures for RCHE staff to follow. Moreover, SWD issues circulars to RCHEs from time to time to remind their staff to strictly follow the proper procedures in drug management.

LORCHE will pay special attention to the performance of RCHEs in drug management during their inspections, and will refer RCHE staff to receive training on drug handling provided by DH's VHTs where necessary. In case LORCHE comes across any negligence or non-compliance of RCHE in drug handling, it will issue advice or

warning to the concerned RCHE based on the nature and severity of the case. If the concerned RCHE fails to make appropriate improvements, SWD will consider taking prosecution actions in accordance with the Residential Care Homes (Elderly Persons) Ordinance. To ensure effective monitoring in this respect, LORCHE created five Health Inspectorate posts in 2006 which were undertaken by registered nurses to strengthen the monitoring of health and care services in RCHEs, including the storage and management of drugs.

In addition, LORCHE will target at RCHEs with more non-compliance records, and increase the frequencies of both routine and unannounced inspections of such RCHEs. LORCHE will also conduct inspections during non-office hours, on Sundays and public holidays, and focus more on high-risk items such as drug management.

- (c) As mentioned above, drug-related incidents in RCHEs are usually caused by the failure of staff in following the correct drug handling procedures. As such, the Government has all along considered that it will be more effective to enhance the knowledge and capability of RCHEs and their staff in drug management through the provision of clear guidelines and appropriate training, which will help reduce the risk of drug-related incidents, instead of direct subsidy or manpower to RCHEs. Therefore, apart from the above-mentioned drug management manual which was jointly compiled by SWD, DH and HA, four briefing sessions on the manual were organized by SWD, DH and HA in 2007 to explain the key points in the manual. The four briefing sessions attracted over 1 500 participants. In 2008, the concerned departments further organized three refresher courses on drug management in RCHEs to strengthen the knowledge and skills of RCHE staff on drug management, which attracted over 950 participants. In 2009, SWD and DH will co-organize four workshops on nursing care to train new recruits and rejoining staff of RCHEs. Drug management is one of the key training items. The first workshop has already been held on 2 March 2009 with about 550 participants. Where necessary, RCHEs can also approach DH's VHTs for tailor-made on-site training so as to further improve the knowledge of their staff in drug management.

To alleviate the problem of nurse shortage in RCHEs, SWD collaborated with HA to organize a two-year full-time Enrolled Nurses Training Programme for the social welfare sector. A total of four classes were organized from 2006 to 2008. Another four classes will be organized in phases from now to 2011. A total of 930 training places will be provided in all eight classes. The tuition fees are subsidized by the Government, and graduates are required to work in the social welfare sector for at least two years after graduation. Trainees of the first two classes of the Enrolled Nurses Training Programme graduated in April and October 2008 respectively. Among the first batch of graduates, about 78% are now working in the social welfare sector.

Development of Cycle Tracks in Urban Areas

17. **MR KAM NAI-WAI** (in Chinese): *President, the Cycling Study Final Report, which was published by the Transport Department in 2004, pointed out that any proposals to expand the role of cycling in the urban areas of Hong Kong and Kowloon must first remedy the very vulnerable condition of cyclists in these areas which arose due to factors such as high traffic flows and speeds on many roads. On the other hand, there are very few cycle tracks on Hong Kong Island, and also the Government has no plan to construct cycle tracks on the Island at present. In this connection, will the Government inform this Council:*

- (a) *apart from confirming to study the provision of cycling facilities along the Hong Kong Island East harbourfront for leisure and recreational purposes, whether it will expeditiously study the feasibility of constructing cycle tracks along other harbourfront areas on Hong Kong Island;*
- (b) *of the criteria and mechanism the authorities will adopt for considering the priorities of various proposals to construct cycle tracks in various locations in urban areas, when the proposals are received at the same time; and*
- (c) *how various government departments will complement the intentions of District Councils to use the funds for district minor works projects programme to construct harbourfront cycle tracks, so as to achieve optimum use of resources?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government is developing a cycle track network with a total length of about 82 kilometres in the New Territories for enhancing the quality of living as pledged in the Policy Agenda for 2008-2009. The Government will also give appropriate consideration to providing cycle tracks and ancillary facilities in planning new towns and new development areas. For instance, the Kai Tak Planning Review proposes the construction of a cycle track of about 6 600 metres in length to link up a multi-purpose stadium complex and various tourist attractions.

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

- (a) The Planning Department will start the Hong Kong Island East Harbourfront Study in mid-2009 for completion in end 2010. The scope of the study will include exploring whether a waterfront promenade can be constructed along the waterfront to connect the proposed waterfront park in Wan Chai Development Phase II in the west and Siu Sai Wan Promenade in the east, as well as whether cycle tracks can be constructed at suitable locations along the promenade. The Planning Department is also conducting the Urban Design Study for the New Central Harbourfront for completion in end 2009 to refine the urban design framework and to prepare planning/design briefs for key sites in the new Central harbourfront. The study also explores proposal for providing an environmentally-friendly transport system in the new harbourfront, including proposals of cycle tracks or electric trolley buses and associated facilities.
- (b) Upon receiving proposals for constructing cycle tracks in urban areas, the Government will carefully consider their feasibility. The Government will examine the relevant factors in this process, including compatibility with overall development of the districts and adjacent land uses, ancillary facilities, geographical conditions, road safety, traffic management arrangements and public opinion. If the proposed cycle tracks are found to be feasible, they will usually be implemented through the Public Works Programme. We will examine the justifications for the projects, urgency and cost effectiveness so as to determine their priorities for implementation.

- (c) If District Councils intend to fund the development of waterfront cycle tracks through the District Minor Works Programme, I believe the Home Affairs Department which is responsible for coordinating this type of projects will liaise with the relevant Government departments in identifying suitable sites in the planning stage and in offering advice so as to dovetail the proposed cycle tracks with adjacent facilities and land uses thus facilitating optimum use of resources. Upon approval of these projects by District Councils, their design and construction may be undertaken by works agents including term consultants of the Home Affairs Department or relevant works departments of the Government. The relevant Government departments will continue to provide appropriate advice and support during the implementation stage to ensure smooth implementation and appropriate management as well as repair and maintenance of the projects upon completion.

Soccer Development in Hong Kong

18. **DR LAM TAI-FAI** (in Chinese): *President, regarding the Secretary for Home Affairs' reply on 11 February this year to my question on soccer development in Hong Kong, will the Government inform this Council:*

- (a) *of the commencement and expected completion dates of the consultancy study to examine the similarities and differences of soccer development in Hong Kong and in neighbouring regions; whether it will report to this Council the contents and major areas of the study;*
- (b) *whether it has assessed if the situation of the continuous 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 will seriously affect the image of the Hong Kong sports sector; if it will, of the solutions to restore the image of the Hong Kong sports sector; if not, the reasons for that;*
- (c) *whether it knows the total ticket sales of the first division soccer matches (League and Cup) in each of the three seasons between 2005 and 2008;*

- (d) *whether it has assessed how the Mong Kok Stadium, upon completion of the improvement works, can assist in promoting soccer development; whether the Government and the Hong Kong Football Association (HKFA) have any detailed plan in place in this regard; if so, of the contents of the plan; whether it has assessed the attendances per season for the first division soccer matches to be held at the Mong Kok Stadium upon completion of the improvement works; if it has, of the assessment result and the criteria adopted; if not, the reasons for not carrying out such an assessment;*
- (e) *given that the Government said that upon completion of the improvement works, the Mong Kok Stadium would provide a finer sports activity venue for Hong Kong to assist in promoting the development of soccer on the one hand and, on the other hand, to stage more large-scale community activities, of the percentage of these two types of activities to be held at the venue as estimated by the Government, as well as what events of these two types are planned to be held respectively;*
- (f) *whether it knows the number of matches and attendances of the first division soccer matches (League and Cup) held at the Hong Kong Stadium in each of the previous three seasons; and*
- (g) *given that soccer is one of the sports events funded by the Sports Subvention Scheme administered by the Leisure and Cultural Services Department (LCSD), whether the Government had reviewed in the past two years the effectiveness of the scheme in promoting soccer development; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) In respect of the consultancy study, the LCSD conducted a re-tendering on 26 February 2009 with the tender submission deadline set on 19 March 2009. If the tendering process goes smoothly, the consultancy report is expected to be completed by early 2010.

The consultancy study seeks to explore the successful experience of other Asian countries or cities where football has successfully developed and review the current state of local football development, with a view to helping us map out the long-term positioning of local football. We will brief the Legislative Council upon completion of the consultancy report.

- (b) In terms of a particular sport, the world ranking of an athlete or a team is undoubtedly one important indicator of the development of the sport. However, the ranking of an individual item (such as the Hong Kong Football Team) does not reflect the international image of the Hong Kong sports sector as a whole. Moreover, we should not equate success in developing this sport in Hong Kong and the efforts made by athletes with the world ranking.
- (c) According to information provided by the HKFA, ticket sales for first division matches (League and Cup) held at the Hong Kong Stadium and the Mong Kok Stadium in the three seasons between 2005 and 2008 were as follows:

<i>Season</i>	<i>Ticket Sales (HK\$)</i>		<i>Total Sales(HK\$)</i>
	<i>Hong Kong Stadium</i>	<i>Mong Kok Stadium</i>	
2005-2006	405,760	1,066,300	1,472,060
2006-2007	750,920	2,782,300	3,533,220
2007-2008	490,940	3,211,700	3,702,640

- (d) Upon completion of the improvement works for the Mong Kok Stadium, the levels of service will be enhanced. The new facilities can be used for staging first division football matches or international football matches. This will promote public interest and participation in football and meet the training needs of our athletes in a more effective manner. As for the promotion of football development in Hong Kong, the Government has been giving appropriate support to the HKFA in terms of provision of facilities.

Regarding the first division football matches, as the number of participating teams and the format of the competition varies from year to year, it is difficult for the Administration to assess the future number of matches and attendance figures at first division matches to be held by the HKFA at the Mong Kok Stadium per season.

In view of the upward trend in attendance figures for football matches held at the Mong Kok Stadium in the past three seasons, it is expected that the upgrading of the Mong Kok Stadium will contribute further to the promotion of football development.

- (e) Given its convenient location, the Mong Kok Stadium has long served as one of the major venues for staging local football matches and large-scale community events such as the annual parades of the Hong Kong Road Safety Association and the Hong Kong Girl Guides Association. The LCS D will maintain the turf pitch of the Stadium in a good condition for the purposes of holding football matches or conducting training. At the same time, the LCS D will liaise with national sports associations and other organizations to meet their requirements as far as possible in order to optimize the use of the Mong Kok Stadium.
- (f) The attendance data for the first division matches (League and Cup) held at the Hong Kong Stadium in the past three seasons are listed below:

	<i>Number of Matches</i>	<i>Total Number of Spectators</i>	<i>Average Number of Spectators at Each Match</i>
2005-2006	14	19 587	1 399
2006-2007	13	26 707	2 054
2007-2008	6	17 930	2 988

- (g) In recent years, we have been co-operating with the HKFA in organizing football activities under the relevant subvention scheme. As regards football training, the LCS D works in collaboration with the HKFA annually through the relevant subvention scheme to promote systematic, comprehensive and interlinked youth football programmes such as the School Sports Programme, the Youth

Football Scheme, the Primary and Young Athletes Football Training Schemes, the District Youth Football Teams Training Scheme and the Regional Football Squad Training for students and youngsters aged five to 19 to enhance local youth football training and provide new recruits for local football.

To support the promotion and development of football, the LCSD has granted additional funding of over \$900,000 to the HKFA since 2007-2008. The number of HKFA subvented programmes was 2 083 in 2008-2009, involving over 54 200 participants and a subvention of around \$7.31 million.

To tie in with the work of the HKFA in the promotion and development of football, the LCSD holds annual meetings with the HKFA to review the effectiveness of the subvention schemes. The LCSD and HKFA also work together to promote the development programmes in order to nurture football development in Hong Kong.

Impact of Infrastructural Projects on To Kwa Wan and Ma Tau Kok Districts

19. **MS STARRY LEE** (in Chinese): *President, it is learned that parts of the related works of quite a number of major infrastructural projects (including the Kai Tak Development (KTD), Central Kowloon Route (CKR) and Shatin to Central Link (SCL)) will commence consecutively in the To Kwa Wan and Ma Tau Kok districts. As the project sites concerned are in close proximity to residential areas and the works will involve reclamation, it is anticipated that a large number of dump trucks will enter and leave the districts during the construction period, and that the noise and air pollution problems arising from the works will have great impact on the residents of Grand Waterfront and Wyler Gardens, as well as the schools and the residential area nearby. In this connection, will the Government inform this Council:*

- (a) of the measures the authorities will put in place to mitigate the noise problem arising from the works;*
- (b) whether it knows the average daily number of works vehicles entering and leaving the sites concerned during the construction*

period of the works concerned; and whether diversion of traffic is necessary to facilitate the construction works; if so, of the details; and

- (c) *whether it is necessary to relocate the bus terminus at Kowloon City Ferry Pier to facilitate the construction works; if so, which bus routes will be affected and when the diversion of the bus routes will be implemented?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Administration has all along been concerned about the impact of infrastructure projects on the surrounding environment and residents, and has been stepping up efforts in implementing effective measures to reduce the nuisances. In addition, if a project is a designated project under Schedule 2 or Schedule 3 of the Environmental Impact Assessment Ordinance (EIAO) (Cap. 499), the Administration would assess the possible impacts of the project on the environment and propose necessary mitigation measures in line with the requirements of the EIAO. The environmental impact assessment (EIA) report should be submitted to the Director of Environmental Protection (DEP) for approval.

As the question involves the KTD under the Development Bureau and the CKR and the SCL under the Transport and Housing Bureau, the co-ordinated reply from the two bureaux is set out below:

- (a) KTD has entered the implementation stage. The EIA report for the whole KTD prepared under Schedule 3 of the EIAO was approved on 4 March 2009. As most works of KTD will be carried out within the Kai Tak site, the report indicated that with the implementation of certain mitigation measures (such as using low-noise machinery and mobile noise barriers), noise impacts on To Kwa Wan and Ma Tau Kok would be minimal. Some projects under the KTD are designated projects under Schedule 2 of the EIAO. The Administration will implement the necessary mitigation measures in accordance with the EIAO requirements.

Still in the preliminary design stage, CKR and SCL are designated projects under Schedule 2 of the EIAO. In accordance with the

EIAO, the Highways Department (HyD) and the MTR Corporation Limited (MTRCL) are now conducting EIA studies, which will include the examination of necessary noise mitigation measures during construction, for the two projects separately. HyD and MTRCL will respectively submit the EIA reports to DEP later, and discuss with the concerned District Councils (DCs) and the local communities with a view to co-ordinating and improving the relevant project proposals and works arrangements.

The central section of CKR will be built in the form of a deep bored tunnel to avoid affecting the buildings at the ground level. The noise impact brought about would be limited. At the eastern end, as the tunnel is shallower and situated mainly in soil stratum, it will be constructed by the "cut-and-cover" method. For this section of the tunnel, HyD is now studying the feasibility of using the cut-and-cover method with the tunnel top part constructed first, so that the constructed tunnel top part will be able to screen out as much as possible the construction noise from constructing the remaining parts. As for SCL, most parts of the project will be constructed below ground. Except for the stations and the associated entrances and exits, the tunnelling method will be adopted for construction. In gist, we will work to minimize the site area of the cut-and-cover method to reduce the noise impact.

- (b) For KTD, the Administration will examine in detail the flow of works vehicles. As most works of KTD will be carried out in the old Kai Tak Airport, initial assessments indicate that the majority of works vehicles will route through main roads such as Price Edward Road East and Kai Fuk Road to gain access to the works sites. As such, the impact on the To Kwa Wan and Ma Tau Kok areas will be minimal.

As mentioned above, HyD is currently conducting preliminary designs and EIA studies for CKR and SCL, including a study on the flow of works vehicles. HyD will consider transporting works materials for the tunnels by sea with a view to reducing the number of works vehicles required.

During the construction of the above three infrastructure projects, it is inevitable that different temporary traffic arrangements (TTAs) will be implemented at different stages. The Administration will carry out traffic impact assessments before formulating the detailed arrangements of the TTAs and will maintain close liaison with the concerned DCs and the local communities so as to minimize the impact on the surrounding areas.

- (c) During the construction of the eastern end of CKR, the existing public transport interchange (PTI) near the Kowloon City Ferry Pier will be temporarily closed. A temporary PTI will be provided next to the current PTI for accommodating the existing bus routes. Upon the completion of the tunnel construction works at the eastern end, the PTI will be reinstated at its original location where the concerned bus routes will continue to operate.

According to the present project planning, KTD and SCL will not affect the PTI.

Assistance Provided for Street Sleepers

20. **MR CHEUNG KWOK-CHE** (in Chinese): *President, some local organizations have repeatedly relayed to me that the Government has underestimated the number of street sleepers in Hong Kong and the situation of insufficient residential places for them. In this connection, will the Government inform this Council:*

- (a) *how the authorities will improve the existing information system for collecting statistics on street sleepers in Hong Kong;*
- (b) *of the average number of registered street sleepers each month from February 2008 to January this year, and whether this number had risen as compared to that of the preceding 12 months;*
- (c) *whether it knows the specified time restriction on stay of the residential places currently provided to street sleepers by various non-governmental organizations (NGOs) (including the three street sleepers' shelters operated by Street Sleepers' Shelter Society*

Trustees Incorporated), and whether it has looked into the situation of street sleepers staying beyond the specified time restriction on stay; if it has, of the details;

- (d) of the time normally taken by the Social Welfare Department (SWD) to vet and approve street sleepers' applications for Comprehensive Social Security Assistance;*
- (e) whether there are street sleepers receiving assistance from charitable/trust funds administered by SWD (including Li Po Chun Charitable Trust Fund, Tang Shiu Kin & Ho Tim Charitable Fund, Kwan Fong Trust Fund for the Needy and Brewin Trust Fund); if so, of the details; and*
- (f) of the operations, in terms of funding, materials and the residential services provided, of the three Integrated Services Teams for Street Sleepers (ISTs) subvented by SWD last year?*

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

- (a) The SWD has set up a Street Sleepers Registry (SSR) to capture street sleepers' data. To ensure that the record is accurate, both SWD and services units of NGOs specialized in serving street sleepers (including the three ISTs and the Society for Community Organisation) have to register newly confirmed street sleeper cases with the SSR on a monthly basis; and de-register the case when they confirm that the street sleeper has given up street sleeping.
- (b) The average number of registered street sleepers per month for the period from February 2008 to January 2009 was 358, an increase of 23 over the average monthly figure in the preceding 12 months (335).
- (c) At present, there are seven street sleeper shelters/temporary shelters operated by NGOs (including the Street Sleepers' Shelter Society Trustee Incorporated) on a self-financing basis. The period of stay normally should not exceed six weeks. Since the shelters are operated on a self-financing basis, SWD does not have information

on street sleepers who continue to occupy shelter places beyond the time limit.

As regards the five urban hostels and the temporary shelter operated by NGOs subvented by SWD, the period of stay normally should not exceed six months. SWD is not aware of any street sleepers occupying these shelter places beyond the time limit.

- (d) Regardless of whether an applicant is a street sleeper, upon receipt of an application for Comprehensive Social Security Assistance, SWD will contact the applicant for an interview to verify the applicant's circumstances and information provided by the applicant. Under normal circumstances, and if the applicant can produce all the necessary information, the application process can be completed within four weeks.
- (e) If other resources are not available, SWD will, having regard to individual circumstances, provide temporary cash grants to individuals and families (including street sleepers) to help them tide over financial difficulties arising from emergencies. Funding for these cash grants comes from the allocations that SWD receive from the four charitable trust funds mentioned in the question. SWD does not keep statistics on the number of street sleepers among the beneficiaries.
- (f) In April 2004, SWD set up three ISTs for operation by St James' Settlement, Salvation Army and Christian Concern for Homeless Association to provide street sleepers throughout the territory with one-stop integrated services including day and late-night outreaching visits, emergency placement and/or short-term hostel placement, counseling service, employment assistance, personal care (for example, bathing, hair-cutting and meal service), emergency relief fund, arrangement of long-term accommodation, service referrals, and so on.

The operating funds of the three ISTs come from SWD's recurrent subvention which amounts to \$8.73 million in 2008-2009 (revised estimates). The subvention includes an emergency fund of \$50,000 for each IST which is to meet the urgent financial needs of street

sleepers. If necessary, SWD will consider increasing the provision for the emergency funds.

The three ISTs may use SWD's subvention to purchase materials for providing tangible assistance, such as basic necessities, dry rations, hot meal, and so on, to street sleepers according to their individual needs.

At present, the emergency shelter and short-term hostels operated by the three ISTs altogether provide 90 places of short-term accommodation and counseling services for street sleepers and other needy persons. Admission is by referral of SWD or NGOs only. For the period from April to December 2008, the average utilization rate of these shelter/hostels was 81%.

MOTIONS

PRESIDENT (in Cantonese): Motions. Three proposed resolutions under the Mutual Legal Assistance in Criminal Matters Ordinance.

First motion: Approving the Mutual Legal Assistance in Criminal Matters (Indonesia) Order.

PRESIDENT (in Cantonese): I now call upon the Secretary for Security to speak and move his motion.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion, as printed on the Agenda, on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) Order (the Order) be passed by this Council.

Hong Kong has been actively co-operating with other jurisdictions in combating serious crime, and is committed to concluding bilateral agreements

with partners who wish to provide closer co-operation with us in mutual legal assistance in criminal matters. These bilateral agreements ensure reciprocal assistance between the contracting parties, and are conducive to enhancing international co-operation in the fight against cross-border crime.

The Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance) provides the statutory framework for implementing agreements on mutual legal assistance signed between Hong Kong and other jurisdictions, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences. Such assistance includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of crime proceeds.

Pursuant to the Ordinance, the Chief Executive in Council has made the Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with Indonesia. By applying the Ordinance to the co-operation between Hong Kong and Indonesia, the Order allows Hong Kong to provide and obtain mutual legal assistance in accordance with the procedures set out in the Ordinance and the provisions under the agreement. As the legislation and the arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is often necessary for the implementing order of a bilateral agreement to modify certain provisions of the Ordinance to a limited extent in order to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong and the relevant contracting parties to discharge their obligations under the relevant bilateral agreement. The modifications made for the bilateral agreement between Hong Kong and Indonesia are specified in Schedule 2 to the Order. These modifications do not affect the substantial conformity of the Order with the provisions of the Ordinance.

The Subcommittee set up by the Legislative Council has completed its scrutiny of the three Orders in respect of the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Indonesia and similar bilateral agreements that Hong Kong has signed with Japan and Sri Lanka respectively. I would like to thank the Subcommittee Chairman, the Honourable James To, and other members of the Subcommittee for giving support to the Administration in the submission of the three Orders to this Council for approval.

When scrutinizing the Order, the Subcommittee noted that the Agreement between Hong Kong and Indonesia does not contain a provision that the Requested Party may refuse assistance in respect of offences punishable by death penalty. The Administration explained to the Subcommittee that in accordance with Article 6.1(e) of the Agreement, the Requested Party may refuse assistance in respect of offences punishable by death penalty on the ground that its essential interests would be impaired. Indeed, the bilateral agreements on mutual legal assistance signed between Hong Kong and other jurisdictions such as the United States, Singapore and Malaysia also adopt a similar approach.

The making of the Order will implement the bilateral agreement signed between Hong Kong and Indonesia on mutual legal assistance in criminal matters. This is most important to the strengthening of Hong Kong's co-operation with foreign jurisdictions in mutual legal assistance in criminal matters.

I now invite Members to approve the making of the Order. I will in a moment move the resolutions to make the Mutual Legal Assistance in Criminal Matters (Japan) Order and Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order.

Thank you, President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Indonesia) Order, made by the Chief Executive in Council on 11 November 2008, be approved."

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

MR JAMES TO (in Cantonese): President, I now speak for the Subcommittee on Mutual Legal Assistance in Criminal Matters (Indonesia) Order, Mutual Legal Assistance in Criminal Matters (Japan) Order and Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order (the Subcommittee).

President, the Subcommittee has made a detailed comparison of the provisions in these three Orders with similar provisions in model agreements scrutinized in the past. We found that the provisions of these three Orders are in general appropriate except the following. When scrutinizing the Mutual Legal Assistance in Criminal Matters (Indonesia) Order, we noted that offences punishable by death penalty were not listed in the Article providing for matters which assistance "shall be refused". The Secretary has indeed explained just now that the Government will prescribe in Article 6 (1) (e) of the Agreement that such offences are conditions which impair our essential interests. In other words, we may use these conditions as the ground for refusing assistance. Moreover, we were informed by the Administration that the Government of the Republic of Indonesia is aware of this understanding of the provision. The Subcommittee thus holds that this can theoretically address the problem. However, regarding whether in future the Government will include another reason in the Article providing for refusal of assistance, or resort to policy as the reason to list something as a condition which impairs our essential interests, I hold that if feasible, it is more appropriate to list offences punishable by death penalty under the part on refusal of assistance.

President, the Subcommittee supports the motion proposed by the Government.

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 Security to speak in reply.

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion on making the Mutual Legal Assistance in Criminal Matters (Indonesia) Order be passed.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Security 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.

PRESIDENT (in Cantonese): Second motion: Approving the Mutual Legal Assistance in Criminal Matters (Japan) Order.

I now call upon the Secretary for Security to speak and move his motion.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion, as printed on the Agenda, on the resolution to make the Mutual Legal Assistance in Criminal Matters (Japan) Order (the Japan Order) be passed.

In moving the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) Order just now, I explained the purpose and importance of concluding bilateral agreements on mutual legal assistance in criminal matters between Hong Kong and other jurisdictions, as well as the procedural arrangements for implementing such bilateral agreements through the making of orders on mutual legal assistance in criminal matters.

Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance), the Chief Executive in Council has made the Japan Order to implement the bilateral agreement on mutual legal assistance in criminal matters

signed between Hong Kong and Japan. As specified in Schedule 2 of the Japan Order, certain provisions of the Ordinance are modified to a limited extent to reflect the practices of Japan. Such modifications do not affect the substantial conformity of the Order with the provisions of the Ordinance.

During its scrutiny of the Japan Order, the Subcommittee set up by the Legislative Council noted the agreement between Hong Kong and Japan does not contain a provision that the requested party may refuse assistance in respect of offences punishable by death penalty. The Administration explained to the Subcommittee that in accordance with Article 3(1)(2) of the agreement, the requested party may refuse assistance in respect of offences punishable by death penalty on the ground that its essential interests would be impaired. Indeed, the bilateral agreement on mutual legal assistance signed between Hong Kong and Indonesia adopts the same approach.

Furthermore, the Subcommittee noted that the agreement between Hong Kong and Japan does not provide that a person who consents to give evidence is immune from liability to any civil lawsuit. According to our understanding, such immunity is not available under the law of Japan. Sections 17(1)(iv) and (v), 19 and 23(2)(b) of the Ordinance contain safeguards to protect the legal rights of a witness transferred to or from Hong Kong. In practice, the legal position of the witness is governed by the domestic law of the requesting party. Moreover, the transfer may take place only with the agreement of the person to be transferred. The bilateral agreements on mutual legal assistance signed between Hong Kong and other jurisdictions such as the United Kingdom, Denmark and Germany also do not provide that a person who consents to give evidence is immune from liability to any civil lawsuit.

I now invite Members to approve the making of the Japan Order.

Thank you, President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Japan) Order, made by the Chief Executive in Council on 11 November 2008, be approved."

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

MR JAMES TO (in Cantonese): Just as what I have said on the Mutual Legal Assistance in Criminal Matters (Indonesia) Order just now, the offences punishable by death penalty is not listed under the Article on refusal of assistance, but the requested party may refuse assistance relating to offences punishable by death penalty on the ground that its essential interests would be impaired. I will not repeat what I have said.

There is another point concerning the Mutual Legal Assistance in Criminal Matters (Japan) Order (Japan Order): if a person is requested by the Government of Japan to give evidence in Japan, he will not be immune from liability to any civil proceeding. President, regarding this issue, the Government ultimately said that if the witness is willing to go because he will go and give evidence only if he is willing to, and if he is unwilling to go, he cannot be forced to do so. However, regarding this issue, when the witness arrives in Japan, it is difficult for him to foresee whether there will be a civil proceeding waiting for him, or whether a civil proceeding will be incurred suddenly. Hence, this may undermine co-operations between Hong Kong and Japan in this regard. However, in this case, giving evidence is basically assisting the Government of Japan, if the Government of Japan truly cannot provide such immunity under its law (that is, if the Hong Kong Government wishes to obtain consent of a witness to give evidence in Japan without offering him immunity from civil proceedings), it will be more difficult to convince the witness to do so. This is certainly a consideration which the Government of Japan needs to take, but due to limitation of the law, we cannot come out with the best agreement in this situation.

President, we endorse the passage of the Japan Order and I wish to draw Members' attention that this view relating immunity to civil proceedings which also appears in the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order, so I will not repeat this view again later.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion on the Mutual Legal Assistance in Criminal Matters (Japan) Order be passed.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Security 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.

PRESIDENT (in Cantonese): Third motion: Approving the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order.

I now call upon the Secretary for Security to speak and move his motion.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion on the above resolution be passed. In moving the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) Order earlier, I have explained the purpose and importance of concluding bilateral agreements on mutual legal assistance in criminal matters between Hong Kong

and other jurisdictions, as well as the procedural arrangements for implementing such bilateral agreements through the making of orders on mutual legal assistance in criminal matters.

Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance), the Chief Executive in Council has made the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order (the Sri Lanka Order) to implement the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Sri Lanka. As specified in Schedule 2 of the Order, certain provisions of the Ordinance are modified to a limited extent to reflect the practices of Sri Lanka. Such modifications do not affect the substantial conformity of the Order with the provisions of the Ordinance.

During its scrutiny of the Sri Lanka Order, the Subcommittee set up by the Legislative Council has noted that the Agreement between Hong Kong and Sri Lanka does not provide that a person who consents to give evidence is immune from liability to any civil lawsuit. According to our understanding, such immunity is not available under the law of Sri Lanka. Sections 17(1)(iv) and (v), 19 and 23(2)(b) of the Ordinance contain safeguards to protect the legal rights of a witness transferred to or from Hong Kong. In practice, the legal position of the witness is governed by the domestic law of the requesting party. Moreover, the transfer may take place only with the agreement of the person to be transferred. The bilateral agreements on mutual legal assistance signed between Hong Kong and Japan and other jurisdictions such as the United Kingdom, Denmark and Germany also do not provide that a person who consents to give evidence is immune from liability to any civil lawsuit.

I implore Members to approve the making of the Sri Lanka Order.

Thank you, President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order, made by the Chief Executive in Council on 11 November 2008, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security 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 the Secretary for Security 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 the Interpretation and General Clauses Ordinance to extend the period for amending the three items of subsidiary legislation made under the Telecommunications Ordinance, which were laid on the table of this Council on 11 February 2009.

I now call upon Dr Samson TAM to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

DR SAMSON TAM (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

At the House Committee meeting held on 13 February 2009, Members resolved to form a subcommittee to study the subsidiary legislation to enable the release of spectrum for expansion of the second generation mobile service and mobile TV services.

The Subcommittee held its first meeting on 27 February 2009 and received views of deputations and continued discussion with the Government at its second meeting on 6 March. To render the Subcommittee time to complete the scrutiny, I move, on behalf of the Subcommittee, that the scrutiny period of the Notices be extended to 1 April 2009.

I urge Members to support the motion.

Dr Samson TAM moved the following motion:

"RESOLVED that in relation to the -

- (a) Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2009, published in the Gazette as Legal Notice No. 20 of 2009;
- (b) Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 21 of 2009; and
- (c) Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 22 of 2009,

and laid on the table of the Legislative Council on 11 February 2009, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 1 April 2009."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Samson TAM 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 Dr Samson TAM 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.

First motion: Promoting medical check-up for the whole community.

PRESIDENT (in Cantonese): Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr CHAN Kin-Por to speak and move his motion.

PROMOTING MEDICAL CHECK-UP FOR THE WHOLE COMMUNITY

MR CHAN KIN-POR (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

Today I move this motion for promoting medical check-up for the whole community and encouraging the public to have more physical exercise. There is indeed a common philosophy behind this proposal, that is, to build up a healthy society in which the public will be keen on doing physical exercises and concerned about their health. Consequently, everybody would be fit and in fine fettle to strive for his or her own happiness. Perhaps some people would regard this as too idealistic, but I firmly believe that if they are determined to head for that goal, there would be such a society.

I am very conscious of my health, it has been my belief that the greatest investment in life is health, and I live up to my belief. I jog regularly three times a week for over 30 minutes each time I take a lot of fruits and cereals, and try to go to bed before 11 pm each night. This healthy lifestyle makes me seldom take sick leave over the last 30 years or more. It has also reinforced my conviction that a healthy lifestyle would also suit other members of the Hong Kong public, including Mr WONG Yuk-man. Hence, after I joined the Council, I began to tidy up my thoughts for these recent years and make these as the topic of the first motion I propose as a Member of this Council.

I find it a pity that Hong Kong people have become less and less healthy over the recent years. Be it the grassroots or the middle class, the pressure in life coming from all sides have caused their health to deteriorate, and their health

consciousness is reduced. In fact, many people nowadays would work hard to earn money at the expense of their health before they are 50 years of age; but they would use up all their hard-earned money to pay for their health when they reach 50 years of age. Would this not be a real pity?

At the same time, population ageing in Hong Kong is becoming more and more serious. It is estimated that ratio of the elderly (65 years of age or above) would increase gradually from one elderly in every eight people in 2007 to one elderly in every four people in 2033. Under these circumstances, there would certainly be huge increases in health care expenses. Leaving aside the inflation factor, expenditure on public health care services would increase from around \$37.8 billion in 2004 to \$186.6 billion in 2033. The extent of increase in health care expenses is so great that it is indeed worrying. We have to do something for our future generations.

Today four Members have proposed amendments, among which the amendment of Dr LEUNG Ka-lau certainly draws my greatest attention. Since Dr LEUNG is an elite of the medical profession, his amendment certainly carries much insight, and actually, we have a common goal. Later, I will explain certain proposals on the check-up for the whole community and on encouraging the public to do more exercise. However, I would like to emphasize that the major direction of my proposals is a macro one which focuses on the interest of society as a whole and which calls for simplicity and feasibility. I am even of the view that there is no need for rigidly adhering to what the Government would do. In all, it is better for the Government to take the first step for gradually implementing the proposal of medical check-up for the whole community rather than doing nothing at all.

Let me first talk about the merits of medical check-up for the whole community. I know some medical professionals have some reservations about the proposal for they reckon that a great deal of resources would have to be spent and the result may not be totally reliable. They regard it would be better not to have medical check-ups rather than having them. However, I do not agree with the view. In fact, they are merely contemplating the issue from a point of view of medical technology without considering the overall macro effect on society. This is a typical example of thinking in terms of the part but not the whole.

I reckon that apart from bringing to the public the latest information on health, medical check-up for the whole community can also remind them to be conscious of their health. A lot of people in Hong Kong have been paying no heed to their health all along. In fact, it might not be that they do not treasure their health; it might be that they take it that they are in good health, so there is no need to have a medical check-up. In some other cases, it might be that they do not want to face the reality and so they adopt an avoiding attitude and think that there would not be any problem if they just do not bother about anything. However, after they go for a body check and find out that there are medical problems, they should certainly receive treatment as soon as possible. Even if there are no problems, when they see that the result is not good enough, they would often be prompted to change their lifestyle for the sake of improving their health, and would be willing to receive body checks in the future. Indeed, nobody would be unconcerned about his or her own health; they just need somebody to inform them of their health problems.

Another merit of medical check-up for the whole community is to enable the public to have a closer understanding of the knowledge on health. Though Hong Kong is a city rich in information, a lot of people still do not quite know much about basic health information. A body check enables them to understand more about their health condition and to get a good grasp of health information. Health care personnel can also point out their undesirable habits they have through a medical check-up. Meanwhile, once members of the public have gathered information about their own health condition, they can make use of the new and old data for drawing comparisons when they go for a body check in the future. They would then be able to know whether their health has deteriorated.

After consulting the views of various parties, I decide to propose a simple and feasible programme for medical check-up for the whole community, aiming at facilitating a final implementation by the Government. Currently, among the chronic diseases in Hong Kong, 80% of the patients suffer from hypertension, diabetes, and heart diseases. That being the case, in conducting medical check-ups in such a large-scale, I reckon that tests on blood pressure, blood sugar and cholesterol can first be performed, while other items can be studied in detail after the programme of medical check-up for the whole community has got started. Since public health care organizations may not have sufficient resources to cope with an exercise of such a large scale, I propose a practice similar to that of the elderly health care vouchers be adopted, whereby medical check-up vouchers would be distributed by the Government to the eligible persons to

undergo medical check-ups in private clinics. The Government would only be responsible for the funding and monitoring work.

Due to limited resources, those who are 40 years of age or above can be singled out as target persons for the medical check-up. According to information from the Statistics and Census Department, about 3.5 million people in Hong Kong are 40 years of age or above, with about 1 million among them being patients of chronic diseases. Many of them suffer from high blood pressure, diabetes, and heart diseases. As they are under treatment, they may not need to participate in the basic medical check-up programme, leaving the actual participants to be around 2.5 million. I have researched on the charges in the market for the relevant items, which are around \$250 per person, rendering the total expenditure to be about \$600 million. If this is to be implemented in three years, the annual expenditure would only be around \$200 million. Certainly, discussions on the charges have to be conducted with the service providers if the scheme is actually to be implemented.

The annual expenditure on treatment of high blood pressure, diabetes, and heart diseases is estimated to be as high as \$7 billion to \$8 billion. Besides, results from a research carried out by The Chinese University of Hong Kong and the United Christian Hospital reveal that in the year 2006, there might be an economic loss of over \$10 billion brought about by diabetes to the society, which includes hospitalization charges and medical expenses, direct and indirect expenditure relating to loss of productivity and early retirement. The medical check-up scheme can enable those with high risks to be aware of the problem as soon as possible, and to lower the incidence rate through having more sports and exercises as well as getting rid of their bad habits. Medical expenditure can be lowered greatly as a consequence.

The Administration may also take this as a trial scheme and conduct a systematic analysis on the data collected on completion of the scheme for assessing its effectiveness and to decide on the way forward, such as the timing for the second medical check-up, and whether the items for check-up are to be increased.

The second point I have to raise is about establishing an appropriate medical check-up programme for the high-risk groups. Suggestions like these have indeed aroused concern in the medical profession, including studies on resources and effectiveness. However, the groups involved are those who have

very serious diseases and if their illnesses could be detected at an early stage through medical check-ups, very often their lives could be saved. The Jockey Club Colorectal Cancer Education Centre of The Chinese University of Hong Kong conducted a colorectal cancer-screening programme last year. One thousand persons from 50 to 70 years of age who had been free of the symptoms all along were recruited. Results revealed that four persons were diagnosed with early stage colorectal cancer, 27 persons with advanced adenoma, and 151 persons with colorectal adenoma, which is "polyps" that may evolve into colorectal cancer. They were lucky to receive prompt treatments. Colorectal cancer is the second cancer killer in Hong Kong with new cases amount to 3 500 each year and a death toll of around 1 500. The Centre suggests it would be best for persons who reach 50 years of age to undergo regular medical check-up. Besides, breast cancer and cervical cancer could be detected at an early stage through medical check-ups, and the chances of curing are extremely high. In fact, the medical profession encourages persons of high risks to go for regular medical check-ups.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

Even though we can detect these diseases in time through medical check-ups, there is no long-term corresponding policy established by the Government. While we understand that the expenditure concerned may be huge, the relevant check-ups could indeed save a lot of lives. Hence, effective examinations are worth the efforts. I reckon that the Government and the various charitable organizations should seriously consider establishing a comprehensive medical check-up scheme for diseases that can be detected early.

Finally, I have to speak on the issue of body strengthening through sports and exercises. I have proposed many suggestions for medical check-up for the whole community. However, when members of the public find that their health indicators are not so good after having a medical check-up, apart from seeking medical consultation, they may work on improving their health through sports and exercises. A study named "The Health Benefits of Sport" conducted by the Hong Kong Sports Development Board and The Chinese University of Hong Kong points out that only 25% of the adults in Hong Kong have sufficient physical exercise, and that many do not have any sufficient understanding of the merits of physical exercises.

It is also suggested in the report that the Government should educate the public on the merits of physical exercise for health, and establish long-term strategy as to the means of encouraging the public to participate in sports and exercises.

A study announced by the U.S. Center for Disease Control and Prevention last year indicated that an effective programme on physical exercise for the whole community could lessen the incidence rate of various chronic diseases. For example, 476 cases of heart diseases and 207 cases of diabetes could be reduced at the most each year for every 100 000 people in the population.

In fact, large-scale public activities can indeed arouse the attention of the public, the most famous of which is certainly be the Standard Chartered Hong Kong Marathon which draws a lot of participants each year. Besides, the "Daily 8 000 step-by-step walk" campaign launched in 2003 by the Hong Kong Medical Association caused great enthusiasm for exercise at that time; however, nobody paid heed to it anymore soon after the enthusiasm subsided. Hence, I reckon that the Government should establish long-term policies for the public to join in and to share the joy of physical exercise. Naturally, we will become healthier and healthier.

The suggestions I propose above today are just made in the hope of attracting knowledgeable people from various fields to join in the discussion. The Government in the latest budget released has indicated clearly that it would reinforce primary health care work, and provide nursing support for chronic diseases such as diabetes, hypertension, and kidney diseases. Hence, it is believed that the views we raise today can assist the Government in doing the work well. I believe Hong Kong people can be made healthier through the two major directions of medical check-up and physical exercise. In this way, Hong Kong will also become a healthier society.

Deputy President, I move the motion above.

Mr CHAN Kin-por moved the following motion: (Translation)

"That, as the population of Hong Kong is ageing, which will exert great pressure on the healthcare system, yet the general public often neglect the importance of undergoing regular medical check-up and do not seek medical consultation until their clinical conditions have worsened, which

will not only affect their chance of being cured, but also substantially increase the public healthcare expenditure; this Council urges the Government to comprehensively plan afresh policies on prevention of non-communicable diseases and health promotion, including:

- (a) expeditiously studying the provision of regular basic medical check-ups for Hong Kong residents gradually and systematically, so as to prevent diseases through early diagnosis and treatment;
- (b) at the same time, formulating suitable medical check-up plans for different high-risk groups; and
- (c) promoting healthy living and health education to encourage the public on all fronts to do more exercise, so as to enable Hong Kong to develop into a genuinely healthy city."

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

DEPUTY PRESIDENT (in Cantonese): Four Members intend to move amendments to this motion. This Council will now proceed to a joint debate on the motion and the four amendments.

I will call upon Mr CHAN Hak-kan to speak first, to be followed by Mr WONG Kwok-hing, Dr LEUNG Ka-lau and Mr Albert CHAN; but no amendments are to be moved at this stage.

MR CHAN HAK-KAN (in Cantonese): Deputy President, the slogan "Annual check-up sets your mind at ease" proposed by the Family Planning Association has become deep-rooted in the minds of the public. This slogan would come to my mind once we talk about medical check-up. However, if we look into the matter in a more serious manner, how many people really understand that prevention is better than cure? Not many will really go for medical check-up and body examination.

In fact, there may be many reasons why members of the public do not go for medical check-up, such as the fear of illnesses and avoiding medical treatment, or regarding that they have no health problem and therefore have no need for medical check-up. However, I believe the financial element is one of the major factors since currently, medical check-up is very expensive. Deputy President, since I planned to go for medical check-up recently, I fetched some leaflets on this for perusal and came to know that the cheaper fees for medical check-up for the males are in the region of several thousand dollars, which is not easy to be afforded by the ordinary wage earners.

Therefore, only one more proposal is added in the amendment I propose today, that is, to urge the Government to conduct studies on the launching of medical check-up vouchers or to employ some other financial incentives to encourage the public to undergo medical check-up.

Apart from catering for the expensiveness of medical check-up, medical check-up vouchers can allow the Government to take the lead which is much required in creating incentives under the current bad economic situation when members of the public lack the awareness and habit of going for medical check-up in general and may be neglecting their health for the sake of saving up several hundred to a thousand dollars during this time in particular.

Deputy President, in fact, several years ago, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) proposed the launching of medical check-up vouchers with the concept of "money going with the patients" in a way similar to the elderly health care vouchers which came into operation this year. The medical check-up vouchers can be used as cash by the public when going for medical check-ups at public or private organizations. Since it would not be possible to let all the 7 million people in Hong Kong to undergo medical check-up at one time, we suggest the launching of these vouchers should be conducted in stages. We propose the population can be divided into three groups according to the year of birth, and that vouchers are to be distributed in three years. The first stage would be for those who are under 9 years of age and over 55 years of age; the second stage for those who are between 35 to 54 years of age; and the third stage for those who are between 10 to 34 years of age. The main objective of the whole scheme is to enhance the knowledge of the public on medical check-up, and to cultivate in them a habit of regular medical check-up.

We suggest the cash value of vouchers to be in the region of \$500 so that it would be sufficient to meet the need of the public for some basic examinations, and could subsidize them for certain examinations that are more comprehensive.

Deputy President, perhaps some people may wonder whether distributing medical check-up vouchers is equivalent to asking the Government to give out money and whether it might be better to save the money for future health care expenditure or other social welfare uses. However, we think that medical check-up vouchers are indeed beneficial to the whole society.

I had looked into some previous reports and surveys and found that in quoting a survey report it issued last year, the international financial magazine *Forbes* pointed out that an enterprise only needed to pay US\$400 more per year to provide for annual medical check-up for one executive, and it can lessen the financial loss caused by employees taking sick leave.

Another survey conducted by the University of Michigan Management Research Center of the United States has also found that medical claims from executives who go for regular medical check-up would be 20% less as compared with those who do not undergo regular medical check-up. Their frequency of absence is also 45% less in comparison. It can thus be seen that productivity of an enterprise could be enhanced and medical expenditure of a society could be lessened if employees are in good state of health.

In fact, the launching of medical check-up vouchers is in line with the Government's emphasis on reinforcing the concept of co-operation between public and private health care services, for if "money goes along with the patients", the public may choose to go for medical check-up in private hospitals or medical clinics with the medical check-up vouchers they possess, which means encouraging them to make use of the service provided by the private health care system.

Deputy President, many members of the public nowadays consume foods that are high in fats and cholesterol. They are also short of sleep and physical exercise, and the pressure of life is high for them as well. The risk of them contracting chronic diseases is relatively higher. Deputy President, I once heard you mention in an interview that you yourself were facing a similar kind of risk.

A recent survey by the Department of Health points out that 60% of the males who suffer from hypertension in fact do not know that they are having hypertension. The Queen Elizabeth Hospital had also conducted a similar survey last year and found that 38% of the hidden high blood pressure sufferers are with left ventricular hypertrophy. Ageing process of their cardiac blood vessels is thus speeded up. The chance of them having myocardial infarction is also increased.

Results from these surveys reveal precisely that we cannot indeed neglect any hidden illness just on reliance of our youth or the feeling of good health. Illness might have been worsened if medical consultation is sought only upon manifestation of the problem in the body.

Deputy President, fairly speaking, in fact, work has been done to a certain extent by the Government in promoting medical check-up among the public. Over these years, a series of medical check-up schemes have been set up to cater for people from various strata, for example, pregnant females and newborn babies may receive medical check-up at the maternal and child health centres; growth monitoring for babies and arrangement for children to receive examinations at student health service centres and dental health centres during schooling years are conducted by the Department of Health; specific health schemes are set up for cultivating correct attitudes in adolescents to face up challenges in life; and elderly health centres and outreaching services are set up to cater for the elderly.

Nevertheless, we can see that the above four stages of medical check-up or health care schemes in fact have not catered for the adult or the working population. If financial incentives could be provided by the Government to subsidize them for undergoing medical check-up, some of the insufficiencies of the people from these strata might be overcome.

Certainly, at the same time when regular medical check-up for the public is being promoted, we are also aware of the question of whether medical check-up packages launched by private medical organizations are in line with medical guidelines. Certain figures of the Consumer Council indicate that there has been a four-fold increase in complaints involving medical check-up services, with service quality and extra charges for doctors' explanation of the examination reports forming the bulk of the complaints.

Currently, low prices are employed as the selling point for some of the packages on medical check-up in the market. However, we all know that medical check-up is indeed highly personalized, different items of examination are needed to cater for different sexes, ages, occupations and lifestyles, and so on. Prices should not be the only factor for consideration. Hence, appropriate regulations should indeed be set up by the Government to protect the rights of the public, who should also be educated on the importance of seeking medical opinion before going for medical check-up instead of just relying on a promotion leaflet.

Finally, Deputy President, I wish to put forward the views of the Democratic Alliance for the Betterment and Progress of Hong Kong on the amendments of other Members. Though Mr WONG Kwok-hing's request for subsidizing the poor for medical check-up is of a relatively narrow scope as compared to our proposal for a subsidized scheme for the whole community, we would still render our support for it. Since reinforcing the service of elderly health centres has been an objective we have been striving for, we would also render our support for it.

We agree to the proposal for having a community-wide survey for common diseases such as colorectal cancer and breast cancer as mentioned by Dr LEUNG Ka-lau in his amendment. However, we have some reservations about his amendment for he has deleted other contents in the original motion.

Deputy President, I so submit.

MR WONG KWOK-HING (in Cantonese): Deputy President, today, with the purpose of making two appeals, I specifically come for my speech in the T-shirt commemorating the lately completed Hong Kong International Tai Chi Hand-Pushing Competition organized in Hong Kong for the first time by Hong Kong Wu Shu Union. The first appeal is for the SAR Government to step up its strength in promoting healthy living and to exert all its efforts to encourage the public for more physical exercise. Since the most important thing in health is self-reliance, my second appeal is for every member of the public to treasure himself or herself and be health conscious so that their health can be improved. As it goes with the saying "Water does not rot, and a door hinge is never worm-eaten", health depends on our concern for it and the sustained efforts we put into it.

Deputy President, as pointed out in my amendment that according to the "Hong Kong Population Projections 2004-2033" issued by the Census and Statistics Department of the Government, it is estimated that ageing of future population would sustain, with the ratio of those aged 65 and above rising to 27% in 2033. It is also mentioned in the Consultation Document on Health Care Reform issued early last year that population in Hong Kong would be ageing acutely from one elderly in every eight people in 2007 to one elderly in every four people in 2033, resulting in an increasing demand for health care services. In the Consultation Document, the Government keeps emphasizing that health care expenditure would be increasing rapidly, stating that there would be an increase in total health care expenditure from \$67.8 billion to \$315.2 billion during the period from 2004 to 2033. These figures are indeed very astonishing, so, as a logical move, the Government launched the so-called health care financing programme.

We query whether these figures from the Government are merely for the sake of scaring the public and whether they are just the pretext for the Government to fleece the public. Certainly, we understand that Hong Kong is facing the problem of population ageing, which is an undeniable fact, but in requesting the public to share the burden, has the Government at the same time fulfilled its own responsibility?

Included among the Government's proposals on health care reform is the reinforcement of primary health care services, which has also been the idea put forward by the Federation of Trade Unions (FTU) over the years. Strengthening primary health care services has the merit of providing a first layer in easing as much as possible the demand of the public for high-cost health care services. We have been of the opinion that there is a need for the Government to change from adopting a medical and health policy which emphasizes on treatment and rehabilitation to establishing a long-term strategy that promotes health and places illness prevention as the first priority. To adopt illness prevention and primary health care as the premises and to reinforce public awareness of the importance of health through strengthening health education to lessen public demand for hospitalization services is the primary care which we have often been proposing.

In fact, the concept of primary care had long before been raised by the Government in the Consultation Document on Promotion of Health in 1993; however, progress had been extremely slow since then. Knowledge of health care remains weak for the public. Many common diseases such as strokes in the

elderly and diabetes may indeed be prevented at an early stage through diet habits; regular medical check-up may also allow early treatment of coronary heart diseases and breast cancer. The proportion of the public getting ill would lessen when everyone knows how to take care of their own bodies and how to prevent diseases from occurring as early as possible. Currently, Hong Kong is in lack of an effective system of primary health care services. If primary health care could be reinforced as the gatekeeper for members of the public by the Government before they have to attend hospital, be hospitalized or require the services of other specialists, pressure on their demand for more expensive medical services such as hospitalization or specialist services would be lessened.

Deputy President, our health is subject to various degrees of threat due to continuous pollution of our societal environment and changes in our life and diet habits. In fact, many diseases can be prevented through healthy lifestyles and health care. Hence, in order to lessen the burden on public health care services, the Government should, through education, let the public learn about their own responsibility. The people can lead a healthy lifestyle and also they should know the concept of health care cost so that they can better treasure and make use of the resources. Deputy President, promoting medical check-up for the whole community can let the public and the sick to be aware of problems in their bodies and seek proper treatments before the problems become worse. Much medical cost could also be saved. Instead of seeking treatment only when conditions deteriorate, if it can be revealed from medical check-up that, for example, blood pressure, sugar in urine, and cholesterol are higher than the standard levels, improvement can be made in the first instance from diet and life habits.

We have been speaking for long, I believe nobody would have any objections about the merits of promoting regular medical check-up for the whole community, the question is whether everyone can afford the expenses of regular medical check-up. The workers' clinics run by the FTU have been providing affordable medical check-up services over the years, which are welcomed by the wage earners and their families. This precisely reflects that the public is aware of and understands that prevention is better than cure. It is believed that certain effects can be achieved if efforts are exerted by the Government on its promotion and subsidies be granted to the poorer members of the public for undergoing medical check-up. Apart from subsidizing the poor, there are in fact existing resources to be utilized by the Government for the elderly, they are the elderly health centres mentioned in my amendment. If appropriate co-ordination and

utilization can be made by the Government, they can also contribute towards the promotion of medical check-up for the whole community.

Deputy President, currently, there are a total of 18 elderly health centres in Hong Kong which mainly provide the elderly with services such as low-priced medical check-up, health assessment and health education, and so on. Membership of the centres is required and these centres have a total of 38 000 members each year. However, as at early 2008, around 23 000 elderly in Hong Kong are still on the waiting list to be registered as new members. Deputy President, do you have any idea how long the average waiting period is? The answer is 38.3 months on average, that is, over three years. It can be seen from the new budget that the Government is prepared to increase the number of registered members at the elderly health centres, but how much is added to the number of 38 000? The increase is only up to 385 000, only 500 more. Why is it said that it is only 500 more? Let us do some calculations. It takes 46 years for all the 23 000 elderly who are on the waiting list to be all registered. Therefore, Deputy President, they would get ill even when they are not ill in the first instance, and, after they become ill, they would wait till death. Would you regard it a joke that the elderly have to become members of elderly health centres before they can be entitled to their services? Therefore, if the Government really has a high regard for the health of the elderly — since the current budget has not been passed and it has room for amendment — instead of merely increasing just as few as 500 places for the elderly health centres, I hope the Secretary can fight for more resources from the Financial Secretary. The increase is indeed so meagre that it is a disgrace.

Deputy President, apart from promoting medical check-up for the whole community, promoting healthy living is equally important. As I said in the beginning, every member of the public has his or her own responsibility; hence, I hope that through today's motion debate, the Government can render its tremendous support and promote the programme. Apart from the Food and Health Bureau, other government departments have to be supportive as well, the Housing Department, for example, can increase the fitness facilities at their public housing estates to provide locations for those who have not been able to join the elderly health centres to stretch out and exercise a bit. This would enable them to be healthier and in doing so, the Housing Department will be doing the people some good service.

DR LEUNG KA-LAU (in Cantonese): Though the topic for today's motion is relatively serious, I hope to discuss it in a more relaxed manner.

First, I would like to thank all Members for their concern for medical health. However, it is rather difficult to have all the scientific arguments critically expressed in motion wordings that are so simple. Hence, after reading, I have decided that due to Members' concern, I would be in support of all amendments irrespective of the feasibility for the issues contained in the motion wordings, its merits or demerits. As for the amendment I propose, I would amend it accordingly if other amendments have been passed before mine.

Due to my experience and for the matter to be viewed from the medical professional perspective, those few amended items have been added in the manner as they are now. What is my point of view on this? First, I have to say that I am in support of the original motion and the amendments; however, in polishing the wordings, population ageing is different from medical check-up for the whole community. Though these two are both important subject matters on their own, they are totally unrelated and are entirely different.

Besides, I delete the first and the second paragraphs because I have query about "basic medical check-ups" when I read the content. In my early years of practice, some patients asked me to perform physical examination for them, to which I replied there was nothing as such, and neither was that mentioned in the books. We are particularly aware of this for we have been catering for special complaints from some patients. If a person who is completely free of physical discomfort or illness asks me to perform certain examinations for him, I would ask him on what he wants to be examined. If he has no idea about it, I would have no idea as to what kind of examination I am going to perform for him, as there are thousands of medical check-ups. A certain hospital for the rich in Hong Kong offers four different kinds of packages ranging from some \$4,000 to \$10,000. I really do not know what they are for.

Very often, in recruiting employees, some companies or the Government would request the new recruits to undergo medical check-up to prevent them or insurance companies from having to issue a huge sum of insurance compensation or having to let the newly recruited to take sick leave just in the first week after they are employed or when they are insured. However, only obvious problems

that can be detected by those medical check-ups which are effective only for some highly obvious symptoms.

If a patient approaches a public hospital and asks for medical check-up, we really do not know what kind of examination should be performed on him. Besides, major services in public hospitals are specialist services; the so-called basic medical check-up would not be conducted in general.

How about private doctors? If you go to a private doctor, would the doctor tell you that he does not know what you are talking about? He would not say so, for that is a commercial operation. What would the private doctor do? He would chat with you and ask what you are afraid of, and whether you are caught with sudden worries due to a recent death of any relative or friend who had been ill. Based on what you are afraid of, he would arrange examination for you accordingly. Another important factor for consideration is how much money you have in your pocket, since there are many examinations which could be performed. To quote an example, charges for nuclear magnetic resonance which would have you examined from head to toe are \$11,000. I believe this is not something affordable by all. If the patient has learned about friends dying recently of lung cancer or other kinds of cancer, the doctor would make suggestions according to how much he has in his pocket. If you can only afford several hundred to one thousand dollars, he would have blood tests for you to test the various so-called cancer indices; if you are in a better financial position, he would have you examined from head to toe. In fact, most of the time, decisions are based on financial positions.

What is our view on the matter from a medical perspective? Instead of being so "money-oriented" all the time, we have to be more professional and assess the cost effectiveness and that is, the worth of performing an examination. There are a lot of considerations for this. First, we would cater for certain kinds of diseases instead of conducting all kinds of examinations aimlessly. What are the diseases in question? First, diseases that are commonly seen. Since there are 7 million people in Hong Kong, if only seven persons suffer from the disease, it would be rather difficult to locate those seven persons even by a community-wide check-up. Hence, the first thing is to find out what common diseases these examinations should target at. The diseases I listed are most commonly seen, for, cancer is the number one cause of death in Hong Kong, leading to the death of 12 000 people every year. Among various kinds of cancer, colorectal cancer currently ranks second, and it would replace lung cancer

to rank first in the coming few years. Besides, liver cancer and breast cancer are also the most commonly seen causes of death. Ranking fourth at present are those cardiovascular and cerebrovascular diseases. Heart diseases and strokes share the common element of being caused by hypertension, diabetes, and cholesterol. Hence, among those most commonly seen diseases, it would be more worthy for examination targeted at detecting these diseases to be conducted.

Besides knowing the kind of diseases to look for, we have to find out the most effective means of examination, which means that it has to be cheap in price. This is very important. To spend \$11,000 on nuclear magnetic resonance examination would be unaffordable.

Second, it has to have a certain degree of accuracy on top of cheapness. It would also be a waste of money if only one out of 10 patients going for the examination could be successfully detected. Conversely speaking, what is another scenario for accuracy? An examination would also be rendered useless if, three out of 10 persons going for the examination have been found to have problems but are finally confirmed to have no problems. These people would then be scared for no reason.

Besides, the examination has to be safe. If one person out of 10 dies due to a particular examination, that means while only one life could be saved out of 100 examinations, the fact remains that nine persons who do not have any problem originally would die because of the examination. This would not worth the effort. In fact, I know one Member in this Council had his/her intestines pierced through during an examination, which is highly not worthwhile.

Another point is that a method for cure has to be available when the kind of disease has been detected by examination. If there are no means to cure even after the kind of disease has been successfully detected, the examination would only be fruitless and it will bring fears to the patient. For the time being, I would not be addressing on the issue of by whom the examination should be conducted, be it by private doctors and paid by the Government or otherwise. It would be most ideal if the Government is willing to provide the public with welfare benefits; but to the medical profession, even if that is not done by the Government, we would keep on appealing to the public through various channels that if they reckon life to be valuable and family to be treasured, they should go for a suitable examination once they have the time and the financial means for it. That is no hard and fast rule as to the kind of examination to be conducted, that

depends mainly on what you are afraid of. The cheapest would be fecal occult blood checks which cost as cheap as only "eight to 10 dollars". As for high blood pressure, in fact you can have it checked for free at many shopping arcades nowadays just by holding your hand out. Regarding some of the more expensive examinations, it is necessary for the Secretary to consider what consequence would be brought about if those are not done by the Government.

In fact, currently, in order to avoid troubles, doctors at public hospitals would perform all kinds of examinations for patients who approach them and fulfil endlessly their requests. To view it from a different perspective, a lot of resources at public hospitals would be wasted. If a patient who complains of eyesight blurriness pursues endlessly for his request is referred to eye clinic for consultation, he would be able to receive specialist treatment. If a community-wide check-up has not been conducted and referral to specialist out-patient clinic is made once the patient approaches a public hospital and complains of any discomfort, the patient would be using up consultation slots of a specialist clinic in this manner. In some other cases, it would also be extremely wasteful when doctors, on their own initiatives, refer patients complaining of chest pain to a specialist out-patient clinic where a whole set of blood test would be performed on them. As for the issue of having blood in one's faeces, in fact who has never have blood in his faeces? From my experience, 50 out of the 60 persons who are now sitting in this Council would have the experience of having blood in their faeces. Now, the practice in public hospitals is to allow all for colonoscopy examination when patients complain of blood in the faeces. I would like to propose to the Secretary that a proper community-wide check-up programme would be the solution for saving public hospitals a lot of resources and shortening the waiting time a great deal.

I so submit.

MR ALBERT CHAN (in Cantonese): Deputy President, the focus of the amendment I propose today is the provision of a free and comprehensive medical check-up for the grassroots.

The Hong Kong Government often boasts that public health care is comprehensive and advanced, and that annual expenditure for medical services is in the region of several tens of billion dollars. However, when we look comprehensively at the health care system and health care services at their

entirety, including health examinations, especially those on a comprehensive scale, performed by both public and private medical institutions, it could be said to be seriously flawed. Whether from the perspective of the system or people's awareness, this is indeed a serious problem. Many of the public may not be aware that they have contracted some hidden diseases due to the lack of comprehensive medical check-up, which makes their problems deteriorate. Some of them may discover they have cancer or other diseases only when they reach the terminal stage and are beyond cure, ending up by reaching the end of life. In fact, many of these problems could be avoided through systematic examination.

We can see that people of Hong Kong have interesting habits which we sometimes regard as perhaps rather pitiful. People of Hong Kong desire beauty but not life. Expenses on beauty, be it for men or women, easily exceed those on health and medical care, particularly in disease prevention. Another strange phenomenon is that people of Hong Kong are famous for purchasing tonic foods such as *cordyceps sinensis*, *ganoderma lucidum*, and so on. Some of them may be spending several tens of thousand dollars on these tonic foods. However, if asked whether they have taken medical check-up, it is my belief that though most of them may have spent several tens of thousand dollars on tonic foods, they may not have undergone a basic medical check-up for years. What is their basic health problem? Very often several tens of thousand dollars would have been spent on tonic foods before they have a clear idea about their own conditions.

Irrespective of whether knowledge, awareness, or cultural concepts are involved, more efforts can in fact be exerted by the Government in this regard, especially in education and medical check-up. If problems cannot be detected and treated in the early stage, finally they may not have the money for treatment when they get ill. When the illness deteriorates, very often fees in several hundred thousand dollars have to be spent on even a very small operation because patients have to queue for their turn for services under the public health care system. Very often, they would still be on the queue till they die. In previous Council meetings, I had queried about the queuing time for specialist out-patient services many times, which ranges from the shorter period of two to three years to the longer period of eight to 10 years. For cases concerning illnesses at the initial stage, patients have to wait the longest for a period of seven to eight years for follow-up; and quite a number of patients have to wait several years for their first-time consultation. Many residents in the districts whom we came across

were furious of and worried about the long queuing period for public medical services, but they found it unaffordable to approach private hospital for health examinations, especially those involving magnetic resonance or more advanced technologies. That would cost as much as several tens of thousand dollars.

Just now, some Members spoke on the idea of medical check-up vouchers to be launched by the Government, saying that medical check-up in the region of over \$200 could be obtained. However, I have no idea as to what can be achieved by these examinations. I have done some information research and have collected some data about the charges on medical check-up of several hospitals and some examination centres. The highest charges are up to \$8,400, even the cheapest are of \$530. The range of differences is quite large. For example, charges for medical check-up with the Hong Kong Adventist Hospital which includes dental examination, electrocardiogram, exercise electrocardiogram, the entire abdominal gynecological ultrasound examination for female or prostate cancer examination for male, lung and urinary system X-ray examinations, and comprehensive laboratory examination is \$4,288. Besides, the Hong Kong Adventist Hospital also provides a smaller scale standard medical check-up which is lower in charges — \$2,800 for male and \$3,000 for female. As for the Baptist Hospital, charges for standard examination are \$1,600, and that for executive medical check-up scheme is \$6,700 for male and \$8,400 for female. Charges for health examination provided by the United Christian Nethersole Community and Health Services range from \$530 to \$1,030 according to ages. The higher the age, the higher the charges will be. Charges for standard whole-body health examination provided by Ding Hong Laboratory X-ray Medical Centre are also \$950.

Therefore, many of the grass-roots people find it unaffordable to spend several thousand dollars on these health examinations. Sometimes, we would invite doctors to perform simple health examination on a voluntary basis for the elderly in the districts, such as measuring their blood pressure or asking them some questions; however, only 40 to 50 elderly persons at most can be served in one afternoon. According to our past experience, in carrying out simple free medical check-up in the districts, generally speaking, 10% of the elderly would have to be referred by doctors to public hospitals for further examinations. Even from such simple examination, it is found that 10% of the elderly have blood pressure problem or problems in other parts of their bodies.

Therefore, it is easily seen that due to the lack of systematic or professional health examination, even though the public, especially the elderly, have illness or potential physical problems, very often they have not been detected. Consequently, these people are not aware of the problems themselves. The proportion of them is not low. I hope that concern can be paid by the Secretary on the issue of the elderly, and measures such as establishing district medical services centers can be considered, particularly in the light of the high regard the Secretary has for the concept of family doctors. If health service organizations in each district can also have adequate manpower and resources to carry out medical check-ups, I believe people's health quality can be improved.

As for reasonable allocation of resources, since problems can be detected at an early stage, I believe pressure on medical services may be relatively reduced because if diseases can be prevented and treated at an early stage, pressure on specialist and emergency services can be reduced.

Deputy President, it is only after I have proposed the amendment that I find medical check-ups should include dental services as well. People in Hong Kong are poor in the concept of dental health, which is a very serious handicap, particularly so for the entire public health care services system which is in lack of dental examination and treatment.

It could be said the whole range of health care services is riddled with problems; further improvements and reinforcements are required in many areas. I believe this defect cannot be compensated by the Secretary's own subjective aspirations. The sum of \$50 billion was set aside by the Financial Secretary last year for health care financing, but I do not know till when that health care financing is going to be dragged, so I appeal to the Secretary and Members to exert pressure on the Financial Secretary for releasing the \$50 billion as soon as possible and have it invested in medical check-up or dental health, and provide a comprehensive services reform so that people of Hong Kong would not get ill or cannot get cured due to this defect and the lack of examination. I hope that all parties can exert pressure for reform to take place as early as possible — and not to wait for the reform on health care financing, which would probably still not materialize till we are in our grave. I urge that health care services be reformed as early as possible so that the people's livelihood can be improved. Thank you.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, disease prevention is an important part of public health protection. With an ageing population and changes in lifestyle, we expect a continuous increase in cases of non-communicable diseases (NCD). To enable effective prevention of diseases, a healthy lifestyle is particularly important. Therefore, the general public has the responsibility to be mindful of and maintain their own health, and the Government has all along been attaching much importance to disease prevention and control. As Mr CHAN Kin-por's motion has mentioned the Government's efforts in NCD prevention and health promotion, I will first give an introduction to the current situation of NCD in Hong Kong and the relevant government policies and objectives, and give a further response after listening to Members' views on the motion and the amendments.

According to the estimation of the World Health Organization (WHO), of the 58 million total deaths in the world in 2005, approximately over 60% were caused by NCD. Similarly, in Hong Kong, the proportion of deaths due to NCD has also increased to more than 60% in recent years. In 2007, the five major NCD, namely cancer, heart diseases, stroke, chronic lower respiratory diseases and diabetes, accounted for around three-fifths of all registered deaths in Hong Kong. With an ageing and growing population, the medical, social and financial burden of NCD on our society is expected to rise in the days ahead.

It is proposed in the motion debate today that regular basic medical check-ups should be provided for Hong Kong residents for the purpose of disease prevention. To enable the effective prevention of NCD, we must first understand the fundamental causes of these diseases. Researches indicate that lifestyle habits are closely related to health, and NCD are often the result of our unhealthy lifestyle, such as smoking, unhealthy diet and physical inactivity. For example, common NCD in Hong Kong, including cancer, cardiovascular diseases and diabetes, are related to the three behavioural risk factors of smoking, low level of physical activity and unhealthy diet. Smoking will also lead to chronic respiratory diseases, while alcoholism will increase the risk of cancer, cardiovascular diseases, injuries and stroke.

International and local surveys have found that these unhealthy lifestyle habits are still common. The WHO estimated that globally, there are over 1 billion smokers and over 1.6 billion overweight adults, and at least 60% of adults fail to meet the daily exercise standards recommended by the WHO. Locally, a survey conducted by the Department of Health (DH) in April 2008

found that almost 40% of adults were overweight or obese; about 80% of adults had inadequate fruit and vegetable intake; about 20% of adults had a low level of physical activity and about 10% of people smoked everyday. These lifestyle habits may lead to the development of biomedical risk factors, notably excessive body weight, hypertension, adverse blood sugar and lipid levels, which are the key risk factors for most NCD.

Therefore, to enable the effective prevention of NCD, priority has to be given to addressing such unhealthy behaviour. Actually, the WHO estimated that at least 80% of heart diseases and type 2 diabetes and one third of cancer cases could be avoided through developing healthy lifestyle habits, including healthy diet, regular physical activity and avoidance of tobacco use. Therefore, every individual should and can be responsible for his own health and actively change his undesirable lifestyle habits.

In order to exercise effective NCD prevention and control, the DH has all along been actively promoting healthy living in different approaches and through different means. Since 2005, the DH has set up the "behavioural risk factor surveillance system" to collect information on health-related behaviour pattern of the Hong Kong adult population through telephone surveys conducted periodically. Such information will be useful for understanding the trend of NCD-related risks for planning, implementing and evaluating health promotion programmes and NCD prevention and control.

To promote healthy living, the DH is proactively launching a number of major territory-wide health promotion and publicity campaigns in line with the "Global Strategy on Diet, Physical Activity and Health" advocated by the WHO to create an environment conducive to healthy living and encourage the public to develop proper lifestyle habits.

In promoting healthy eating habits, the DH is committed to raising public awareness and concern about healthy eating in collaboration with stakeholders through different large-scale campaigns, including "Two Plus Three Every Day", the "EatSmart@school.hk" Campaign and the "EatSmart@Restaurant.hk" Campaign, and creating an environment conducive to healthy eating in schools and the community to encourage students and the public to choose food which meets health promotion principles.

Moreover, in order to promote physical activities, the DH has, in collaboration with different government departments, non-governmental organizations and professional bodies, launched various activities, including the "Healthy Exercise For All Campaign", "Exercise Prescription Project" and "Stair Climbing to Health", to promote physical activity as part of healthy living. The DH also maintains close co-operation with district councils, community groups and members of the public at the district level to organize a number of community-based health promotion programmes.

Besides reducing the risk of NCD, a healthy lifestyle is also helpful to maintaining good physical condition and combating communicable diseases. In order to act before it is too late, we have encouraged children and target groups to receive free or subsidized vaccination through a series of vaccination programmes, including the childhood immunization programme, the Government Influenza Vaccination Programme and the Influenza Vaccination Subsidy Scheme, to reduce their risks of contracting the relevant diseases.

To further strengthen the prevention and control of diseases, the DH has prepared a document entitled "Promoting Health in Hong Kong: A Strategic Framework for Prevention and Control of Non-communicable Diseases" in 2008 — I have a copy of the paper in hand, and I believe it has been mentioned at previous meetings of the Panel on Food Safety and Environmental Hygiene and provided to Members. This framework illustrates the threat of NCD, outlines the principles and key elements for the prevention and control of NCD and summarizes the key considerations in drawing up the strategy. In formulating this framework, the DH has already taken into account inputs from experts of various disciplines and made reference to the WHO guiding principles in disease prevention and health promotion as well as the experience in other countries. Our objective is to develop a health promoting environment, promote community health, prevent NCD, slow down the deterioration of NCD in patients and provide quality care for NCD patients.

In order to co-ordinate and supervise the implementation of the strategy on NCD, a steering committee comprising representatives from various sectors, including the Hospital Authority, professional bodies, academics, the catering industry, the social welfare sector, district councils, employers and relevant government departments, has been set up in October 2008 to identify the priority

public health issues relating to NCD and monitor the development of the strategy and the overall implementation progress.

At the same time, in order to address the pressing problems of obesity and physical inactivity, the steering committee has set up a working group on diet and physical activity at the end of 2008. The working group is conducting an in-depth study on the issues concerned and will give advice to the steering committee on priority actions, research projects and action plans. Another working group under the steering committee will be set up in the second quarter of this year to deal with issues relating to injuries and excessive drinking.

We have pointed out in the consultation paper on health care reform "Your Health Your Life" published last year that one of our visions for the health care system of Hong Kong is to provide lifelong, comprehensive and holistic primary care to the public, with special emphasis on preventive care for the betterment of health. The promotion of primary care with emphasis on preventive care will be helpful to preventing and reducing NCD. The ideal primary care should be one in which family doctors and other health care professionals work together to conduct assessments based on individual and family risk factors to provide appropriate preventive check-ups and care and proper health education so as to improve the lifestyle habits of individuals and families from the root, thereby reducing the risk factors and incidence of diseases.

Deputy President, I so submit. I will give a further response after listening to Members' views on the motion and the amendments.

MR WONG YUNG-KAN (in Cantonese): Deputy President, various surveys conducted in the past by a good many medical institutions revealed that the number of Hong Kong people having chronic diseases had been surging continuously, with the trend of this group getting younger and younger. These medical institutions appealed to members of the public that they should have regular medical check-ups.

(THE PRESIDENT resumed the Chair)

Currently, Hong Kong has no medical check-up scheme to cater for the whole community, but specific health care schemes, including medical check-up services, are provided for specific age groups and genders. However, save for physical and dental examination services provided to babies, infants, pregnant women and school children by maternal and child health centres, only limited quota for medical check-ups is available for adult females and the elderly. There are loopholes in the services provided by the Government: save for cervical cancer examination for the women, the Government basically has not provided any specific medical check-up services for adults.

From time to time, cases of young and stout persons dying suddenly at work or during leisure time can be seen from news and media reports, and very often, they display no sign of any disease symptom. It is a pity that among these unfortunate people, some are from the disciplined services who had for long been undertaking physical training. It can thus be seen that hidden diseases are not merely a potential problem for the elderly; even the youngsters should not treat it lightly. However, generally speaking, the elderly is good at sensing their problems and they would go to hospital or clinic for medical check-up once something seems not to be in place. As for children, women, and adolescents in schools, there are reminders and arrangements provided to them by government organizations and schools. However, working young people would often go only after money and focus merely on recreation or dating after work. They take chances on signs of diseases and regard them as minor issues as they would like to display themselves as strong and fit. They do not believe that things would fall squarely to them, and regard that warning from the medical profession that all kind of high-risk diseases are proliferating in the younger generation does not concern them, and that they would not catch those diseases. They would not go for medical check-up or seek consultation unless "things close in", such as having a sudden shock. But it would often be too late by then.

An opinion poll conducted by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) in 2007 on young people's health awareness revealed that only 30% of the interviewees would undergo regular medical check-up. Among them, 15% indicated that the check-ups revealed problems in their bodies.

Of the over 60% remaining interviewees who did not undergo regular medical check-ups, nearly 40% regarded that they had no physical problem, and

that there was no need for them to consider regular check-ups. Thirty percent of the interviewees regarded the issue to be a monetary one, 25% regarded it to be of other factors, but less than 10% still regarded periodic check-ups to be a matter purely for the elderly.

In taking different age groups for comparison, that is, those aged between 13 to 23 being categorized as one group, those aged between 24 to 40 being in another group, and taking the percentages of each group for comparison, it was found that interviewees from the younger age group regarded that interviewees from the older age group had a lower percentage smoking; and the percentage of them taking regular check-ups, doing sufficient exercise and taking adequate fruits and vegetables is higher, reflecting a relatively higher sense of health awareness in people of this group. The reason for this is that there may be more student interviewees in the lower age group for whom the Government and society have placed more care in areas of resources allocation, publicity, and education. On the contrary, interviewees from the 24 to 40 age group are mostly working people who, faced with various restrictions from work and the low concern society places on their health awareness, find it hard to adhere strictly to the life habits as recommended in medical check-ups. Some young working people may have an incorrect attitude and think that as they are young, there is no need for them to be concerned about health issues.

The DAB notices that apart from wrongly taking that since they do not have any physical problem, there is no need for specifically setting a time for medical check-up, money is another crucial factor to interviewees who do not undergo regular medical check-ups. The DAB had in last year's policy address, proposed the granting of subsidies in form of cash coupons to the whole community for taking basic medical check-ups. This is to let the public cultivate gradually the habit of having regular check-ups. Upon the gradual expansion of the market, a larger variety of products on medical check-ups in more competitive prices can be provided for the public's selection. Besides, to ensure protection for the public, the Government should strengthen its publicity on the important message of regular medical check-ups, educate the public on how to choose appropriate medical check-up services, as well as monitor the quality of medical check-up services in the market.

President, I so submit.

DR SAMSON TAM (in Cantonese): President, looking through the record of the Legislative Council, I found that the motion "Preventing cancer" was passed in the Council meeting on 21 November 2007. Eight items in total were proposed in the motion and the amendments, one which urged the Government to conduct studies on providing financial incentives through medical check-ups and tax concession to encourage and assist the public for regular medical check-ups. However, the response of the then Secretary for Food and Health was, "At present, there is no acknowledgment from the medical profession for indistinctive regular medical check-ups blindly launching indistinctive regular medical check-ups for the whole community may result in bringing more harm than good."

Thereafter, in submitting the list of follow-up actions adopted by the Bureau in relation to the above motion on 21 January last year, the Food and Health Bureau reiterated that there was no acknowledgment from the medical profession for indistinctive regular medical check-ups, and emphasized once again that the Government did not encourage the public to undergo regular medical check-ups. Looking at the past record, I found it extremely strange and rather confusing because since we were small, our parents have taught us the necessity of regular medical check-ups. Now the Government even queried the effectiveness of medical check-ups and clearly expressed it would not encourage the public to go for regular medical check-ups. What is the Government's purpose and what are the factors for its consideration? I really do not understand. I believe many Members sitting here have heard their doctors mentioning the need for regular medical check-ups. Even though Members may not have heard them mention it, I believe they themselves have cultivated the habit of having medical check-ups.

Why would the Government object to the public going for medical check-ups? If it is because Hong Kong is in lack of a systematic standardized system for check-ups, I believe that is only a technical issue which should not become a hurdle if the Government is determined to have it resolved. However, I would find it totally unacceptable if the Government is afraid that once it encourages the public to undergo regular medical check-ups, it would have to shoulder huge expenses. Later, I hope the Secretary can respond as soon as possible and not to adopt the old tone anymore, or to give us the runaround. I hope the Secretary can take a practical step and truly inform us of the Government's concern.

President, from a medical point of view, regular medical check-ups can enable hidden diseases to be discovered and treatments to be sought as soon as possible for saving huge medical expenses in the future. Moreover, body functions can be monitored for immediate improvement so that we can learn more about our own bodies and obtain appropriate guidance for health maintenance. Therefore, looking from various perspectives, if employees can cultivate the habit of taking regular medical check-ups, lessen the chances of having diseases, and seek treatment as soon as possible, it would be a triple win situation for enterprises, employers, and employees.

Besides detecting hidden diseases as early as possible and obtaining treatment, the Secretary has also just mentioned the importance placed on prevention work. From overseas information that I read, it was stated in the example of diabetes that currently, there are 250 million patients suffering from diabetes worldwide, in which 23 million are from the United States, 20 million are from China, and nearly 8 million are from Japan. It is estimated that the number of this kind of patients would increase to 380 million in 20 years. In view of this, China's Ministry of Health had launched "China's incentive plan on the dissemination of health knowledge" in 2005 with the objective of popularizing health knowledge. The theme for 2008 is "Prevention and control of diabetes", which is the area at which China is currently directing its efforts. The Japanese Government had also formulated a national health policy first in 1978 and later in 1988. In 2000, it also launched the "Healthy Japan 21" scheme with the objective of building up a society that is vibrant and healthy within 10 years. It was further proposed in the health care system reform implemented since April last year that the number of people suffering from diseases caused by unhealthy life habits (such as diabetes) would be decreased gradually by 25% in 2015. Several European countries have also consecutively launched the salt reduction action several years ago. In contrast, what has been done by the Government of the Special Administrative Region in this aspect? When would we be able to witness a comprehensive and timely health policy that suits the needs of Hong Kong? I believe the people of Hong Kong have expectations of the Government; hence, the Secretary is duty-bound to address this squarely and shoulder the responsibility for the work to be performed and efforts to be exerted in this regard, particularly when the Chief Executive frequently reminds us of the ageing trend of our population.

President, I so submit.

MR WONG SING-CHI (in Cantonese): President, for many years in the past, primary health care services in Hong Kong has been neglected. Though people in Hong Kong live a long life, many of them are not in good health. A lot of them have chronic diseases which require long-term care involving huge amounts of manpower and medical technology. Health care expenditure is thus extremely high. Illnesses and disabilities that impose burden on health care services are brought about mostly by chronic diseases. Besides, the number of elderly who patronize mostly public health care services will rise abruptly in the near future. The average medical expenditure of the elderly is six times than that for the whole population. In face of the financial pressure on public health care services, the Government can only look for changes. In recent years, the Government has been looking for various health care financing programs.

Stepping up efforts on diseases prevention and health promotion are effective measures for reducing the burden on health care services in the long run. In the original motion, the Government is urged to formulate comprehensive policies on disease prevention and health promotion. The Government has to implement that as soon as possible.

Under the health care system in Hong Kong, services on a fair basis can still be provided by the public health care system in cases of emergencies and serious illnesses. However, there is a great difference in primary health care for the poor and the more affluent class. Taking dental examination as an example, according to surveys by the Census and Statistics Department, only 4.7% among the population with a household income of less than \$5,000 would have regular dental check-up, whereas it is 22.5% for the whole population. Therefore, the proportion of the poor going for dental check-ups is extremely low. The corresponding percentage for population with a monthly income of over \$40,000 is 37.6%, which means that they have regular check-ups. Surveys by the Department of Health also revealed that not only do the poor have no dental check-up, but also when dental problems exist, many members of the public cannot afford the treatment. Many of the elderly have tooth decay and serious tooth pain problem; most of their teeth fall off with only a few remaining, some even have no teeth. Some elderly service social workers told me that many elderly had malnutrition problem, which is initially considered to be a problem due to poverty — that they are reluctant to spend much on food for the sake of saving money. It was subsequently discovered that while it is true that elderly people are in poverty, dental problem is a more crucial factor in leading to malnutrition, for there are a lot of foods which the elderly cannot take in. This is

turn leads to other problems in the body and the digestive system. Therefore, we highly support the proposal in the amendment for extending health care to pre-school children, secondary students and the elderly.

There is a greater discrepancy between the poor and the affluent in other areas of medical check-ups. While the majority of the public would not go to private doctors for medical check-up, those who are in a better financial position can afford doing so through taking out insurance or medical insurance. Those with better financial means can take out insurance, but for the majority of the public who cannot afford medical check-up services in the private sector, they cannot afford medical check-ups at a private hospital because of their financial difficulties. Pinpointing the issue, elderly health centres have been set up by the Government to provide basic check-up services. But due to the disproportion in demand and supply, waiting period with the elderly health centres has been extremely long. The supply in fact cannot meet the demand for the service. The proposal in the amendment for subsidizing the grass-roots public for medical check-ups is therefore very important.

In fact, the discrepancy between the poor and the affluent, and the unfairness in our social system would finally be manifested in the health conditions of the public. The unfavourable living environment, community facilities and working conditions make it all the more difficult for the grass-roots people to maintain physical health, which renders it all the more necessary for medical check-ups to be conducted as early as possible and for conditions of their illnesses to be followed up.

However, because they have to earn a living, the grass-roots people often find that they neither have the time nor the means to take care of their own health. Results from surveys just publicized by the Census and Statistics Department show that within seven days prior to the statistical survey, among the work force working 50 hours or more within seven days, the proportion of those working in service industries and retail sales is the highest — that is, 60%; while the corresponding proportion for unskilled workers is 37.7%; and that for senior managers, executives, or professionals and auxiliary professionals is around 27.3%. Regarding working overtime on a long-term basis, surveys performed by non-governmental groups show that over 90% of the interviewees who need to work overtime regarded that it would affect their health; one third even regarded that it would seriously affect their health; over 40% needed to apply for sick leave

in the three months prior to the survey because of overtime work. All these show that overtime work deprives employees of their rest time, imposes heavy work pressure on them, and brings harm to their health.

Similarly, poverty also seriously affect the health of children. A survey conducted by the Boys and Girls Club Association found that the proportion of Hong Kong's poor children contracting diseases is higher than that of ordinary children. For example, the proportion of poor children having food poisoning or gastroenteritis reaches 19.4%; while the figure for ordinary children is only 13.9%. Population in newly developed-districts such as Tin Shui Wai and Tung Chung is younger and poorer. Public recreation facilities such as swimming pools and playgrounds for ball games have long been lacking. This also affects the health of children in the districts by subjecting their health development to negative factors. Therefore, poverty has a serious impact on the health of the public.

The impact of poverty and social injustice on the health of the public is indeed endless. Systematic surveys have been conducted by many countries to learn about the impact of income and education level on the health of the public. Though no comprehensive figures are available in Hong Kong in this aspect, it is extremely obvious that the health condition of the grass-roots people, especially the elderly, is particularly bad.

On the subject of strengthening the health condition of the public and reducing financial pressure on our health care system, apart from promoting medical check-ups, the Government should create better conditions in environmental hygiene, housing policy, community facilities and labour law in order to enable the public to lead a healthy life.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, last month, The Chinese University of Hong Kong (CUHK) issued a report on its colorectal cancer screening scheme. In the scheme, 1 000 people aged between 50-70 years of age with no symptom of colorectal cancer were recruited for colon test. Four persons were finally found to have early colorectal cancer, 178 others were found to have late adenomas and colorectal adenomas, which have the potential of

developing into colorectal cancer. Due to the early discovery, the adenomas could be removed before developing into cancer.

President, the effectiveness and importance of "early diagnosis" mentioned in the original motion has been fully manifested in the said scheme conducted by CUHK. However, under the present policy, not every member of the public can receive timely medical check-ups. Nor are the fees for medical check-up at private hospitals affordable to every member of the public. Regarding medical check-up at public hospitals, for cases with no special symptoms, very often members of the public have to wait for half to one year or even longer. In this manner, minor illnesses might become major ones; while major illnesses might not have been detected even until the terminal stage! It is pointed out by doctors that a good many people in Hong Kong, especially the elderly, only go for a medical check-up when physical problems occur, when the best opportunity for treatment may have been missed.

President, the Civic Party is therefore highly supportive of the principle of medical check-ups for the whole community behind the proposal in the original motion. However, for public funds to be utilized in the most appropriate areas, clear definitions on beneficiary target groups and the scope for basic medical check-ups have to be set.

President, my district offices at Lok Fu and Lam Tin provide regular blood pressure measuring or fat-testing services for the elderly. I am aware that many Members and social welfare organizations also offer similar simple medical check-ups with the hope that our friends can be aware of changes in their own physical conditions and seek immediate treatment once any unusual changes occur. However, this would not be sufficient as, for serious illnesses such as the colorectal cancer mentioned, no symptoms would be manifested in the initial stages. Successful detection of those illnesses can only be made through more detailed examination. I believe the Government has to shoulder the responsibility of performing medical check-ups for the elderly. The Civic Party proposes firstly at this stage for sufficient funding and resources to be provided to elderly services centres and public hospitals so that free basic medical check-ups which do not require a long waiting period can be provided to persons over 60 years of age on a regular basis. Included in this could be tests for hypertension, diabetes, cholesterol and fecal occult blood; eye examination, dental health care and so on, as proposed in Dr LEUNG Ka-lau's amendment.

President, to improve on the current long waiting period, the Government should actively promote co-operation between public and private medical institutions. Taking the example of magnetic resonance examination, while patronage for that is not sufficient in private hospitals; waiting period for the same examination in public hospitals is often up to one year. Instead of the private hospitals providing concessions to attract patronage for patients referred by public hospitals, why does the Government, not on its own initiative, subsidize patients to approach private hospitals for the same examination but paying the fees charged by public hospitals?

President, besides, under the current Cervical Screening Programme launched by the Department of Health, 70% of the female population have received the relevant examinations. Distinct effects have been achieved in raising society's awareness of and concern for cervical cancer. The Government should adopt this as the basis for establishing corresponding measures for different high-risk groups. For example, according to information from the Family Planning Association, among the hepatitis B carriers aged between 50 and 60, 25% would have the chance of having the disease developed into cirrhosis or even liver cancer. Those over 50 years of age have the greatest chance of getting colorectal cancer. Based on these data, the Government may provide free medical check-up services to the groups in need on a regular basis.

President, for the young and healthy generation, tax concessions and exemption may be launched by the Government in a manner similar to that provided for people who purchase medical insurance. On one hand, this can encourage our young people to prepare in advance for their future medical expenses; on the other hand, this can also encourage them to make use of the money spared from tax concessions and exemption for regular medical check-ups.

President, in fact, encouraging timely medical check-ups and assisting the needy ones are not the only crucial elements for ensuring the public to be in real health. Studies issued last year by the Hong Kong Thoracic Society pointed out that diseases of the respiratory tract have become the number one killer in Hong Kong in recent years. Hospitalization rate has increased with the bad quality of air. Is the Government's effort on monitoring air quality sufficient? In California of the United States, legislation had been enacted to totally ban food establishments to use food ingredients with trans fats. On the contrary, President, on the issue of legislation of food labels, I believe we still remember

the Government has been in a dilemma as far as its stance is concerned. At first, its stance was a progressive one, but was later changed to be a retrogressive one, which was rather disappointing. Has the Government done its job properly to ensure the safety of imported food? How can the people in Hong Kong live healthily if they cannot put their minds at ease even for the air they breathe and the food they eat?

President, finally, as the saying goes, "seek treatment for disease while it is in the early stage", the provision of free medical check-ups for the elderly and the high-risk groups, as well as treatment for them during the early stage could, on the one hand, lessen the chance of the diseases getting worse as far as the public is concerned; and on the other, reduce the huge hospitalization and prescription expenses brought about by the diseases deteriorating as far as the Government is concerned. This is still an economic way of dealing with the issue by having more to gain than to lose.

President, I so submit.

PROF PATRICK LAU (in Cantonese): President, as a lot of Members have stated the reasons for having regular medical check-ups, now, we certainly know that it is an ideal way for preventing diseases. Unfortunately, the culture in Hong Kong is that people will pray and worship the gods, which we have been practising a lot. However, up till now, medical check-ups have not been seen as the ideal trend of development, so very often, I read from newspapers tragedies of many sudden occurrences of diseases due to negligence of members of the public of their own physical conditions.

In fact, last week I raised a question on the installation of "heart rescue machine" — the automatic cardiac resuscitation machine — in public areas because many sufferers of abrupt cardiac arrest actually are not aware that they are heart disease patients. They have not experienced the onset of the disease and do not know that their physical conditions have reached the stage of having the possibility of the onset of the disease. Therefore, I believe that if we can successfully promote the culture of regular medical check-ups and coupled it with appropriate measures and incentives, the public can be assisted in cultivating the habit of having regular medical check-ups. These sudden occurrences of diseases may then be reduced largely.

No specification of diseases is included in the regular basic medical check-ups for Hong Kong residents proposed in the original motion. In any event, Hong Kong is different from some of the high-tax welfarist nations; the burden of providing check-up services for all kinds of diseases is not to be borne by the Government alone. Therefore, I agree to Members proposing amendments and hope the Government would assist the elderly and the grass-roots people. I would also like to thank Dr LEUNG for, based on his professional knowledge and experience, proposing an amendment for making us know more about diseases that are most commonly seen in Hong Kong and requiring prevention most. Only by this would we know what kinds of diseases we are going to be examined for.

I find the idea of promoting healthy living and health education raised just now by Mr CHAN and the Secretary highly agreeable. It is because when we suggest no smoking, no drinking and encourage the public to have more exercise, in essence, the most effective measure for preventing diseases is to have healthy habits. The Government indeed has the responsibility to, within the framework of our education system, cultivate in our next generation theory and practice of medical and health care, balanced diets, physical and mental health, first aid, and so on. Successful implementation of the above would enhance the quality of health for the whole Hong Kong community. Coupled with regular medical check-ups, the number of people getting ill would naturally decrease, thereby reducing the overall burden of medical expenses. This point has also been mentioned by many Members.

President, I would like in particular to raise some thoughts of a different nature. Another merit of promoting medical check-ups is that it would facilitate the development of "medical check-up tours" in Hong Kong. In fact, medical check-up tours have developed for long, just that previously these mainly involved spending a few days in extremely expensive places like Switzerland and Germany, which are something indeed not for the public. However, the situation has changed in recent years and I can see some former Members of this Council running business of this kind. It can be seen that currently in Hong Kong, some travel agencies have offered travel check-up packages to Thailand for two nights and three days, including return air tickets and medical check-up services in high-class hospital for less than HK\$5,000. This is indeed extremely attractive. Why is the development of medical check-up tours not being

considered in Hong Kong? This should indeed be considered since now is the time for our economy to be revived. I hope Mr Paul TSE would take note of this point in due course. At the same time when we promote tourism, we could promote the medical professionals in Hong Kong who have the experience for conducting matters in this aspect. Work opportunities would thus be increased. Currently, the Financial Secretary is studying how more jobs could be created. Resources earned should be injected back to our health care system to attain sustained effect in providing people of various classes with high-quality medical and check-up services. However, we have to make our urban environment good. Just now, Mr Alan LEONG mentioned important issues like air quality and pollutions in our environment, and so on. Most important of all is certainly the injection of more resources into training medical and nursing professionals and allocating lands for building hospitals. As far as tourism is concerned, private hospitals and training centers with the most advanced medical facilities should be available.

Finally, I would like to remind all Members that the work we are performing now is indeed highly risky and of huge pressure. We can all see that every time when Mr Albert CHAN speaks, his blood pressure would increase by several degrees. We should have medical check-ups in order to set an example for practising what we advocate. Medical check-up tours are also a good means to that end. Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, to seek medical consultation without being sick is a fantasy for the grass-roots people who have no surplus money. However, facts have shown that "prevention is better than cure", which has also been mentioned by various Members. Treatment can be more effective and economical if diseases can be detected early and treated as soon as possible.

History shows that people understand the above idea long ago, as manifested in the most famous story of the magic physician Bian Que and Qi Huan Gong (Duke Huan of Qi). At one time Bian Que saw Qi Huan Gong and told him, "You are ill. The problem is in your muscles. It will become extremely serious if it is not treated as soon as possible." Qi Huan Gong replied, "I am not ill." He told others, "In telling normal persons they are ill and curing them later, these doctors regard themselves as terrific." For a number of times,

Bian Que still wanted to tell Qi Huan Gong he was ill and have him treated as soon as possible. However, Qi Huan Gong did not believe him all along.

It was until the illness manifested itself, and to a very serious extent, did Qi Huan Gong think of Bian Que. However, Bian Que had escaped to the state of Qin at that time for he knew that the Duke's illness had gone beyond cure, and that no medicine could help. If he treated him, he would probably be executed, so he could only escape. Soon, the Duke passed away. The wonder physician Bian Que knew well the necessity of getting treatment for any illness in the initial stage before it become serious. Whenever possible, the patient should be cured before any illness manifests itself. This is the proper practice for physicians.

There are not many Bian Ques in our modern world, but certainly, we have a lot of very capable doctors who may not be called Bian Que. However, it is fortunate that currently, with the assistance of technology, traces of various illnesses can be detected at the initial stage for early treatment. Because of this, we are in support of the promotion of medical check-ups for the whole community.

Fees are indeed involved in medical check-ups, which many people may be reluctant to pay due to a lack of understanding of the function of medical check-ups. In fact, if medical check-ups are available, not only will treatment expenses for various diseases be reduced due to timely treatment; medical expenditure of the Government may also be reduced through the detection of the illnesses at the initial stage.

We all know that the Hospital Authority in Hong Kong, that is, public medical services, actually shoulders nearly 95% of hospitalization services in Hong Kong. These are the most expensive service. Hence, if illnesses can be treated at the initial stage before they become serious, much hospitalization expenses could be saved in the course of treatment. For certain chronic diseases such as those requiring dialysis, expenses for treatment are extremely high as they have to be conducted several times a week.

I believe the wording "survey" used in the amendment of Dr LEUNG Ka-lau may mean screening or screening examination, for a survey usually refers to a kind of academic study, that is, a study pinpointing a group of people on the

distribution of diseases in them. The target is a group of persons but not individuals. However, screening is for identifying individuals who have contracted diseases or have hidden illnesses at an early stage for clinical intervention.

We are in favour for certain basic tests to be conducted as per the screening proposed by Dr LEUNG to find out some of the most common problems of the public so that early treatment can be effected. However, as some parts of the original motion, such as the proposal for formulating appropriate health survey programmes for different high-risk groups, are quite meaningful, we have a different view for the deletion of these parts of the original motion in Dr LEUNG's amendment.

In fact, this is the current practice with the Hospital Authority. Let me raise a very simple example: according to current clinical evidence, it is easier for some psychiatric patients who are on certain psychiatric drugs to develop the tendency of body weight increase, blood sugar increase, and excess blood fat, which would lead to cardiovascular and cerebrovascular problems. Therefore, to prevent these problems from occurring, clinical guidelines for measuring data such as body weight and body height for these patients on a regular basis have been introduced. Besides, as mentioned also in the original motion are the prevention of non-communicable diseases and policies on health promotion. However, that are deleted in Dr LEUNG's amendment, which we regard as rather unfortunate.

We are of the view that Mr WONG Kwok-hing's amendment is worth supporting, for extra assistance should be granted by the Government to the elderly and grass-roots people. Medical check-up and body-checks are only fantasies for the elderly and grass-roots people who only manage to have their ends meet. Are health and disease prevention privileges and rights supposed to be enjoyed only by the affluent?

In fact, as doctors, we treat every person in front of us equal without differentiating them as poor or affluent. All we hope to see is that every patient be healthy again and can lead a normal life. *(The buzzer sounded)*

Therefore, we are in support of this amendment.

MR LEUNG YIU-CHUNG (in Cantonese): President, I believe promoting medical check-ups for the whole community and guiding Hong Kong into a city of health are a consensus for the public in Hong Kong. However, unfortunately, in promoting policies relating to the above, the Government has been for a long time going against the goal of a healthy community.

In fact, promoting medical check-ups for the whole community is just one-step as far as a healthy community is concerned; more importantly, we have to work on ways of attaining a healthy life and enabling every member of the public to be healthy instead. This is the most important premise. In fact, even with medical check-ups for the whole community, it would certainly be best for treatment to be conducted early if hidden diseases are detected, right? However, the crux of the issue is that causes leading to the diseases have not been addressed; the effect of medical check-ups alone on the effectiveness of solving the problem is minimal. I think that efforts of the Government in this aspect have been going against the target of good health or a healthy city, which I have just mentioned and now wish to elaborate more.

President, on what basis do I make such a statement? A report issued yesterday by the Census and Statistics Department points out that among the population in Hong Kong, there are at least 14 000 persons having to work six days or more in a week, that is to say, many people have to work up to seven days a week, and wholesale, retail, catering and hotel industries are the more seriously affected. President, though a five-day week is advocated by the Government, unfortunately, this arrangement is implemented only in government departments. Though this arrangement has been implemented in the Government for long, private organizations rarely follow suit.

President, why do I have to mention this? It is because more often than not, our health would indeed be affected by the long working hours. We all know that doctors keep on telling us that in order to prevent not to have too many diseases, we should have more rest, or not simply just more rest, but not to have too much pressure at work. We all know that diseases such as high blood pressure may also be caused by pressure at work, long working hours, and insufficient rest. Hence, to anticipate that we could progress towards good health or become a healthy city just by raising the proposal of medical check-ups is but one-sided. Other supportive measures have to be launched by the Government in order to attain this goal. The issue of regulating the long working-hours has been put forward by us for long, unfortunately, the

Government has been turning a deaf ear and a blind eye to the proposal, ignoring all voices and disregarding the issue.

If wage earners are required to keep on working long hours, I do not know whether the Government has considered the ultimate effect of huge capital requirement on the whole society caused by diseases so caused. If we are ill and have to seek medical consultation, there would be a continuous increase in health care expenditure. What do we achieve by this in the end? When employees frequently got sick, apart from an increase in health care expenditure, it would also result in a negative impact on the development of the whole economy. Hence, today, though I certainly thank Members for proposing this motion; I reckon that the motion can only solve part of the problem but not addressing the crux of the issue. We all know that from the problem cannot be solved if we do not regulate the working hours.

Therefore, I reckon that today's motion is not a matter purely for Secretary Dr CHOW, it is also a matter for the Secretary for Labour and Welfare. It would be better if all can get together for a joint discussion. Unfortunately, since only Secretary Dr CHOW is here with us today, he can only respond to issues relating to medical check-ups and ways of solving health problems through health care services. Nevertheless, the crux of the issue cannot be addressed in this way, which renders it to be ineffective. President, I reckon that since the crux of the issue cannot be addressed in that manner, we should not be too one-sided when discussing the issue today. No matter how important is the issue of working hours, it is not the only issue of impact; due to problems in the recent financial environment, I see that many organizations keep cutting the number of their staff. Cutting staff numbers is also another problem, as not only would the workload of those remaining staff be increased; their work pressure would also be increased. So what will happen? Our health would be adversely affected.

Therefore, under this situation, in our discussion of the motion today, I hope Members can press the Government for launching more supporting measures. Only then would our discussion be meaningful. If only some specific but no supporting measures are proposed, it may only result in having more medical check-ups, which may not even be addressing the symptoms, not to mention curing the root of the problem. It is because problems would keep on occurring, that is, though small problems can be treated upon medical check-up this year; what if more problems are found next year? That would be a recurrent

and meaningless situation. Hence, one important point emerges from today's motion: the crux of the problem cannot be addressed if we do not pay more concern to working hours, workload and pressure at work.

President, I so submit.

DR JOSEPH LEE (in Cantonese): I am grateful to the speech made just now by Mr LEUNG Yiu-chung, for he has indeed raised a matter of importance: whether promoting medical check-ups for the whole community would be equivalent to attaining good health in the whole community. The answer to this is "no" because there are many factors which determine good health. Friends from the Civic Party said that unsafe eating and drinking would also be unhealthy. Just now, Mr LEUNG Yiu-chung also doubted how we could be healthy under the financial tsunami when job security was by no means guaranteed. Pressure from work is also a factor. Factors such as whether our living environment is safe or whether the air we breathe in is fresh enough count as well. Besides, is it the case that we would be healthy when we have direct elections but unhealthy if otherwise? Such political matters are also a factor. These various factors we talk about determine precisely whether we would be healthy. Deduced from this is that health is not just a simple concept whereby having medical check-up will mean good health.

Over the past four and a half years, I have been reiterating many times in this Council that as an agent for health promotion, that person should not be focusing solely on physical health, psychological, social, and spiritual health is equally important as physical health. It is pointed out in today's original motion and all the amendments that we have to be physically healthy. I certainly would not oppose the saying that we can be healthy by undergoing appropriate medical check-ups, but the problem is, I believe the Secretary would also say so — probably the Secretary would not make such a statement, let me quote the former Secretary who may say, "Now that medical check-ups are proposed for the whole community, but where would the money come from? Will it fall from the sky?" Let me put this from conspiracy theory: the original motion is proposed by Mr CHAN Kin-por who represents the insurance constituency, he would certainly advocate medical check-ups for the whole community, as the Secretary would appeal to the public in due course to take out insurance, resulting in insurance for the whole community. Is that the case?

It was precisely pointed out in Dr LEUNG Ka-lau's amendment that from doctors' point of view, no illness means health. Right, since doctors are trained to cure illnesses, no illness certainly means health; but is it tantamount to real health? The notion of "no illness means health" seems too simplistic for health service providers like us, therefore, I fully comprehend the amendment proposed by Dr LEUNG Ka-lau, for the items he proposed basically concerned major diseases. However, he had missed out lung cancer, which is also very serious but it was not mentioned. Nevertheless, does it mean that we can attain health upon having medical check-ups for those diseases? Mr LEUNG Yiu-chung has stated clearly the causal relationship existing here. Why do those diseases set in? Would we be in good health upon the detection and treatment of the diseases? That is not the case. Would we have a healthy society? Are those of us sitting here in good health?

Therefore, it is my responsibility to make Honourable colleagues and society know that medical check-ups for the whole community is in fact health in the second tier. There are three tiers to health; the first tier is primary health. The Secretary is now sitting here. He is now promoting primary health through the health care reform he has mentioned. However, the approach he adopts is family medicine. He is promoting family medicine. This is to have everything put under the medical umbrella, that is, appeal to the public for medical consultation. It is an approach of "health equals no illness" if family medicine and seeing family doctors are to be adopted even in primary health care. This is something I do not find agreeable because, with the existence of other factors, the issue is not that simple.

It would be health in the second tier if we have already gone for medical check-up. That is, money is injected and the public would be in good health provided that resources are available. When it reaches the third tier, there would be fewer people going to the hospitals, therefore, resources can be reduced. The Secretary will certainly be glad since not so much money would need to be injected into the Hospital Authority (HA), or that funding granted to the HA may be used for other purposes. While I agree to this, the question is that I believe issues brought out in today's motion may not be that simple. Besides, if medical check-ups for the whole community are to be put into practice, should the elderly or the children be examined first? Should the teeth, the eyes, or some other parts of the body be examined first? In taking care of the people, priority certainly has to be given to the more needy ones. However, as pointed out in the Financial Secretary's budget this year, there exists an assumption that — the

middle class — to put it bluntly — has to "eat out of their own", that is, taking care of themselves with their own efforts. As stated by Dr LEUNG Ka-lau, they have to pay \$12,000 for one session of magnetic resonance imaging. Are we going to do that? Besides, most of our tax is paid by the middle class, they should be taken care of as well. Why is it that while medical check-up vouchers so mentioned by Mr CHAN Hak-kan should be issued to the public, no such vouchers are given to the middle class? Why is the middle class not involved? Why must we take care of the vulnerable groups?

A lot of these contentions are in fact issues of specific arrangements. However, even as means are available for resolving the issues after the debate, problems on social health still cannot be resolved. We are discussing the point that since health issues are so important and complicated, as the Secretary for Food and Health, the Secretary has the responsibility to promote the concept of health, and the health policy he promotes should be a whole-person health care policy comprising physical, psychological, social and spiritual health, but not simply the notion of health by merely taking medical check-up. Even if the Secretary promises in this Chamber today to contemplate ways on assisting the elderly, the vulnerable groups and the middle class, having medical check-ups does not mean that our society can become healthy.

As a health service provider from the medical and nursing profession, I would like to emphasize that currently in Hong Kong, policy on health still remains at the stage of "health equals no illness", in which there is no real promotion of physical, psychological, social, and spiritual health. I would still be glad if today's motion is passed. While I would still support it, we can only reach the second tier of health, that is, having screening to help reduce resources for hospitals in the third tier; but that does not mean that primary health can be achieved. Hence, through today's motion, I would like to point out that while it is important to have a healthy community, medical check-up is just one of the means for achieving the end; the Secretary has equal responsibility to promote psychological, social, and spiritual health.

As mentioned by Mr LEUNG Yiu-chung, I believe no Member of the Council works five days a week. President, surely, you do not work five days a week, do you? Given the unhealthy lifestyle of having lots of social functions to attend to on Saturdays and Sundays; how could we have a healthy social life? Do you have time to do something you like apart from dating and courtship? What about the other time of yours? These are unhealthy things in social life.

As for spiritual health, if you have religious belief, do you have time to satisfy your spiritual needs?

Therefore, while we are in support of today's motion, the important message is not to have a misconception that the whole community would become healthy just by merely taking medical check-ups. I have been promoting the concept of a healthy city over these four years with the vision of attaining a better primary health care environment for the people of Hong Kong. It is the Government's responsibility to, through injecting more education resources, strengthen public's understanding that health is not just a matter of medical check-ups and medical consultation. In fact, we have to be concerned about psychological, physical, social, and spiritual health.

I so submit. Thank you, President.

MR PAUL CHAN (in Cantonese): President, in the Report on First Stage Public Consultation on Healthcare Reform of last year issued by the Government this year, much about the importance of preventive care services is mentioned. I would like to quote some of the contents here.

Chapter Three of the Consultation Report is on "Public Responses to Healthcare Reform in General". In the views submitted by individuals or organizations on "The Vision for Reform", it was generally agreed that the Government should proceed along four directions, among which was to "Provide Better Care for the Community". They were of the view that there was a need for the Government to alter its health care strategy through strengthening the lifelong and holistic care for the whole community to reduce demand for future curative and in-patients services. In this regard, health promotion was one of the areas keenly supported by the public.

Chapter Four of the Report is on "Public Responses to Proposals on Service Reform". In the submissions by individuals or organizations pinpointing the item "Enhancing Primary Care", it was generally agreed that under the current system of primary health care, while much focus was placed on the provision of curative medical care, regard for concepts on preventive care such as health assessment, screening and surveillance, wellness promotion, health education, and promotion of healthy lifestyles, was not high enough. They

generally agreed that in the future primary health care system, more emphasis should be placed on preventive care.

Quoted in the Report were the findings from "Survey on Healthcare Service Reform 2008" conducted by the Social Sciences Research Centre, the University of Hong Kong in July last year, in which 83.2% of the interviewees expressed support for establishing "comprehensive primary care" and adopting the basic model of appropriate "preventive care" for different stages in life.

President, I quote these to show that there exists beyond doubt a mainstream notion in the community of "prevention is better than cure" and for the Government to inject more resources on the promotion of public health.

Besides, the section "Public Responses to Supplementary Financing Proposals" in Chapter Five of the Consultation Report, in which "voluntary private health insurance" is found, is another area worth noting. Quoted in the Report was the result from the "Opinion Poll on Healthcare Reform and Financing" conducted by Center for Social Policy Studies, Department of Applied Social Science, The Hong Kong Polytechnic University/Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong which revealed that over 71% of the interviewees were in support of voluntary insurance scheme. Many of them proposed for subsidies (such as tax concessions) to be granted for encouraging individuals or employers to purchase private health insurance.

In the budget proposals submitted to Mr John TSANG, the Financial Secretary, I had proposed tax deduction for salaries tax payers on medical insurance expenses, including those made for immediate family members whom they support. The objective underlying the proposal coincides with the survey result quoted in the Consultation Report which I have just mentioned. The proposal was made in the spirit of encouraging the public to prepare for their future medical and health provisions with a view to enabling those who have the means and the needy to select services under the private health care system. By letting the public be streamed to different health care systems on a voluntary basis can also improve on the imbalance between the public and private health care services.

To provide tax deduction in this regard and to pave way for future health care reform and financing are within the Government's current financial capability. The continuous increase in demand for health care services should not be left unattended by the Government without any resolution sought. This

will only result in a continuous surge in public health care expenses and reduction in service quality which affects the public.

Nevertheless, apart from offering tax deduction for expenses on medical insurance, the Government has to pay heed to the difficulty of cost control for health care services under the said model proposed. In this regard, there is a necessity for careful supervision by the Government to safeguard members of the public who purchase health insurance from having to shoulder any further the unbearable medical expenses.

Finally, I would like to raise another concern about the monitoring of medical groups. Though relevant topics had been discussed in the Panel on Health Services, it was only upon repeated urges from Members that there were requirements from the Government for qualified medical professionals to be appointed as medical directors for medical groups employing front-line doctors. However, this is not a sufficient practice. To ease the minds of service-users, the Government should formulate comprehensive strategies and measures for regulating and monitoring these medical groups.

President, I so submit.

MR ANDREW CHENG (in Cantonese): President, two major themes are included in the original motion proposed today by Mr CHAN Kin-por: the first one is the formulation of policies on prevention of non-communicable diseases and promoting health with the objective of making Hong Kong a healthy city; the second one is promoting medical check-ups.

Back in 1990, in a report entitled "Health for All The Way Ahead — Report of the Working Party on Primary Health Care", it had been pointed out by the British-Hong Kong Government that cost of health care services would increase continuously under a hospital-based health services system. Issues on the continuous surge of health care expenditure were put forward at the time when countries such as Canada and Australia repositioned their health care system on that which focused primary health care. It was also pointed out in the Report that (and I quote) "Hong Kong has not kept pace with this world trend in the delivery of medical services Government to make a clear commitment to adjusting the emphasis towards primary health care in Hong Kong's health care policy." (End of quote)

President, various suggestions had been made on health screening 20 years ago in this report of the Government. An example is "Apart from the Government, other parties have a role to play in promoting health screening. Employers should be encouraged to provide screening as part of the pre-employment medical check-up, and regular follow-up screening as part of employment benefits." Besides, in the report, doctors in private practice are encouraged to conduct expected treatment and perform random inspection for patients when they go for consultation, and to promote in them a sense of health awareness.

President, unfortunately, 20 years have passed and under the promotion by the Government of the Hong Kong Special Administrative Region, the various suggestions contained in the Report seem to have become empty talks. Progress on medical check-ups and other primary care services has been very slow and they do not get a high priority in Government's resources allocation. However, at the same time, President, medical services have been progressing towards areas of high technology in the past 20 years, such as internationally renowned cutting edge services like liver transplants. Why is there such a bias? A paragraph in the report 20 years ago provides the answer (and I quote) "It is always easier to refer to the availability of highly-specialized, life-saving treatment procedures as improvement in medical care than increased health awareness among the community. It is also more impressive to point to a new hospital or sophisticated medical equipment as evidence of achievement in health services than enhanced activities in disease prevention, health promotion, or education." President, in this report 20 years ago, we are informed that there should not be any tilting towards lofty aspirations — certainly, there is a need for developing medical technology that are of importance; but the foundation, infrastructure, or health care services and check-ups for the grass-roots people are not to be neglected — the price of not investing in primary health services is the continuous surge of health care expenditure, hence new financing proposals have to be sought by the Government for addressing the problem.

President, much of the demand for high technology services could be reduced if there is good groundwork for primary care. As in the example of liver disease, if members of the public are adequate in health knowledge, their life habits well cultivated with a high sense of awareness that the health of liver would be affected by strong liquor and polluted foods, there would be chances for them to have liver tests at an early stage, thereby reducing the waiting time of cases needing liver transplant.

Though it can be proved from a lot of medical researches that primary health can reduce expenditure on hospitalization, its effect cannot be witnessed within a short span of time. In the light of stopgap measures which all along have been adopted by our officials, we are extremely concerned as to whether priority would be granted for issues on primary health.

From our study on the budget last year, it is estimated that around \$1.5 billion would be needed for the seed money established for work on primary health, part of which is for the expenditure on reinforcing medical check-ups.

Therefore, President, the amendments proposed by Honourable colleagues today are what various political parties in the Council have been anticipating. An example is the proposal on greatly increasing the quota on primary health care services such as elderly health centres, and reducing the \$110 annual fees required by half. An annual increase in expenditure of \$150 million is needed for providing medical check-up and health assessment for more elderly people.

As for dental care, the Democratic Party is believed to be the first political party to have this subject brought up in this Council. Back in 2001, in a large-scale survey and study we conducted, it was found that dental problem of the Hong Kong elderly was extremely serious. On many occasions, we had also requested the Government to allocate funding for providing the poor elderly with dental care allowances.

We have also been fighting for the breast examination and Pap smear test proposed in Dr LEUNG Ka-lau's amendment, as well as requesting the Administration to extend the services of the maternal and child health centres, and to reduce the annual fees and fees for breast x-ray imaging so as to encourage more women to become members and to receive medical check-up.

One point I believe worth noting is the health promotion for men which has not been mentioned in today's amendments but has a bearing to the President, you and me. Perhaps because we have to take care and treasure the women around us, so health promotion for men is neglected. President, both you and I are relatively slim, but that does not mean that we are healthy; on the contrary, to be plump does not necessarily mean to be unhealthy. However, those who are plump would often focus on how to lose weight; those who are slim, especially the men, would often overlook the issue. Hence, we have to attach importance to taking annual regular check-ups as far as possible.

Therefore, President, though not much time is left for me to speak, I hope Members can support the original motion and amendments. Members who sit here are busy and diligent; however, do not forget health and medical check-ups are the blocks for building up a healthy society as well.

Thank you, President.

MR VINCENT FANG (in Cantonese): I believe we would not find the slogan "annual check-up sets your mind at ease" unfamiliar. However, awareness of medical check-up among the Hong Kong public is indeed not high. Survey conducted by an insurance company last year showed that less than 15% of the respondents had regular medical check-up, which was far behind the situation in other advanced countries and places.

In fact, not only can regular medical check-up set the minds at ease, it can also save a lot of lives. Take the number four cancer killer in Hong Kong, stomach cancer, as an example. Among patients who started to receive treatment early, 90% can survive for five years or more; however, among patients with advanced stomach cancer, only 20% can survive for more than five years. This manifests completely the importance of getting treatment before conditions of diseases deteriorate.

Reports issued by the World Health Organization point out that each year, in 1 000 new cancer cases worldwide, at least one-third could be prevented through effective measures, among which is medical check-up that enables early discovery for conditions of diseases which can be brought under control.

Currently, the first five "killers" of non-communicable diseases in Hong Kong, which include cancer, heart disease, pneumonia, stroke, and chronic disease of the lower respiratory tract, they could be detected early through various medical check-ups; the death rate of which could also be reduced by early treatment. Hence, the Liberal Party regards that the Government should encourage the public to go for medical check-ups by giving appropriate support, so that public health can be enhanced and the long-term goal of reducing health care expenditure be attained.

Providing financial incentive is the most direct means for encouraging the public to go for medical check-ups, especially when the capacity of public

hospitals is overloaded. Hence, a more feasible measure would be more utilization of private health care services. Earlier on, the Liberal Party had proposed to the Government for the provision of substantial tax concessions in the sum of \$3,000 deduction for medical check-ups with the objective of encouraging the public to participate in medical check-up schemes available on the market. Another feasible measure would be distributing medical check-up vouchers.

As for people from high-risk groups such as the elderly and patients with chronic illnesses and hereditary diseases, the Liberal Party is of the view that priority should be given to the development of health screening programmes, such as assisting the elderly who are prone to contracting diseases, to make arrangements for regular check-ups, hence enhancing their disease combating abilities, or even discovering the diseases early. These would bring along positive effects.

Though free check-up services are provided for the elderly in the 18 elderly health centres in Hong Kong, many elderly people complained to us that they had to wait for several months or even three to five years for the service. In view of this, we urge the Government to allocate more resources as soon as possible for stepping up check-up services of this kind.

Apart from check-up services, the elderly health care vouchers valued at \$250 currently enjoyed by the elderly should be largely increased to \$1,000 per year so that the elderly can get protected and health care expenditure for them can be reduced.

At the same time when medical check-ups for the public are actively promoted, the Government should also instil in the public a correct concept for medical check-up, since some items such as x-ray examination, may not be suitable for all. If conducted inappropriately, people's health may be affected instead. The most ideal way is certainly for the public to be encouraged to establish stable relationships with doctors and for family doctors to follow up their conditions on a long-term basis.

President, all of us would probably agree that a strong physique is the best means to resist diseases. In light of this, the Liberal Party urges the Government to encourage the public to do more exercises by all means. As the East Asian

Games is to be held in Hong Kong in December this year, the Government should make good use of this sports fever for stepping up publicity on the merits of exercising.

On the amendments, the Liberal Party is concerned that Mr Albert CHAN's proposal for "providing free and comprehensive medical check-up services to the grassroots" because it may impose immediate burden on the Government. It is also not comprehensive enough as it only pinpoints the grassroots. Hence, while we find the other amendments agreeable, we have reservations about the amendment proposed by Mr CHAN. We hope that the Government can put the suggestions contained in other amendments into practice on a gradual basis.

The Liberal Party is in entire agreement with the notion of preventing diseases from occurring, and treating diseases before their conditions deteriorate. It would be extremely undesirable for the Government to — as stated by the Financial Secretary in the budget this year — to wait and see for several more months before deciding whether measures on boosting the economy are to be launched. It is because I am concerned that Hong Kong would be beyond cure at that time and it would be too late for any curative measures to be adopted.

President, I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, Members would agree with the principle and spirit of today's motion, which is, prevention is better than cure. Concerning proposals on how best to protect health, as I listened to Members' speeches earlier, I noted that although Dr Joseph LEE did not go into the specifics, he raised a question. He asked whether it was adequate to define public health as the perceivable physical health. And I wish to expound on this.

Since the onset of the financial turmoil, we have often seen family tragedies such as people with emotional disorder triggered by sudden loss of job throwing their children from height. These patients may even hurt their family in extreme cases. I remember a few incidents that took place in Mong Kok earlier where some innocent passer-by was killed by flower pots dropped onto the street. I asked a few psychiatrist friends whether such cases worth our following up, and they all gave me the same advice that I need not mention the resources allocated in this regard in Hong Kong because the Government will not make

much effort to follow up the issue. They have continuously raised this issue for decades but their views were not taken.

Regarding the health issue of community-wide medical check-up today, I think that the sentiments in Hong Kong society are more serious than the physical health. If people with symptoms of emotional disorder fail to get treatment, they may not only die of this illness, but also hurt their families or even innocent people or colleagues. Dr LEUNG Ka-lau has listed a number of illnesses in his amendment. Although I am not from the medical sector, my first reaction was why heart disease and emotional disorder were not included. Hence, basically, I have reservation about the amendment, but I agree that, in principle, today's motion is set in the right direction and I will support it.

Among the several amendments, I hold that the amendment proposed by Mr WONG Kwok-hing is comparatively more feasible and pragmatic in the light of its short and long-term directions. The amendment emphasizes first and foremost catering the elderly's health care needs. Mr Albert CHAN, however, proposes the provision of free and comprehensive medical check-up services to the grassroots, with which I also agree in principle. However, regarding this point, as taxpayers, we hope very much that in promoting the direction of community-wide medical check-up, Members will not purely resort to tax increase. In a recent discussion on social welfare with Members, they unreservedly supported a tax increase. But a tax increase will increase the burden of another group of taxpayers, that is, the middle class. I believe that providing more welfare benefits without increasing tax is a knotty issue for the Government.

The health care financing scheme, which was discussed last year, the year before last or even in past years, seems to have foundered. The Government may need to reconsider other macro proposals, in a bid to make the health care scheme cover people from more strata. Among the numerous strata in society..... I hold that on the premise of not increasing tax, proposals like "such means as medical check-up vouchers or other financial incentives" made by Mr CHAN Hak-kan as well as tax reduction mentioned by some Members merit the Government's consideration. However, such means may reduce government revenue and medical check-up vouchers will increase expenditure. I therefore hold that the Government has to target the medical check-up vouchers at the

elderly and the poor at the grassroots. I also hope that the Government will seriously examine public-private partnership on medical check-up services.

Last but not least, as today's motion is proposed by Mr CHAN Kin-por who represents the insurance sector, I wish to express some views on behalf of the insurance policy holders to the insurance sector. In Hong Kong, most people, in particular the middle class, have already bought medical insurance. However, I have received many complaints concerning the content or terms of the insurance policy, especially those large-scale medical insurance schemes. An example is that when the policy holder goes for a medical check-up, he thinks that senile diseases such as diabetes are covered by his insurance policy, but in fact, diabetes is not covered. As such, he cannot use the service when the need arises. Hence, regarding today's motion, we will support it in principle, but I hope that the problem of resources will be considered when community-wide medical check-up is taken forward by various parties, and that people can truly benefit from it when it is actually implemented.

MR PAUL TSE (in Cantonese): President, while I support the original motion and the amendments, I wish to supplement Prof Patrick LAU's remark just now concerning tourism.

If we can urge the people of Hong Kong to be more concerned about the practice of medical check-up and acquire such a habit, it will naturally bring about two benefits. The first is that we will have more facilities specializing in complete body check-ups and annual check-ups; unlike at present, people can only go to hospitals or certain clinics for medical check-ups. When such facilities become more available, the service will also improve. Secondly, if medical check-up becomes popular, it will be like undergoing medical check-ups in Thailand, which is regarded by many Hong Kong people as cheap, nice and well-done; then, why can Hong Kong not become a market for body check-up, which is equally cheap, nice and well-done?

I think Hong Kong is more suitable than Thailand to be a medical check-up centre for the whole community in four aspects. First of all, I believe our medical standard is very high. Our professional level as well as requirements and standards of our health care facilities are very high. Secondly, Hong Kong has a sound legal system. There will be appropriate compensation and regulation in case of any negligence or unsound check-up or practice. Thirdly, it

is the language. Apart from catering the needs of local citizens, Hong Kong can also cater the needs of the huge mainland market; mainland tourists can use Cantonese or Putonghua at their wish here. This is different from Hong Kong people going to Thailand for medical check-ups. Everything in Thailand is fine except the language barrier. This is the only drawback. Fourthly, Hong Kong has always been a place for shopping to tourists. Our service attitude is far better than other places. We are hospitable and the service-oriented spirit is given a full play here. Hong Kong excels in this regard.

If medical check-up for the whole community is to be taken forward, I think that the Government has to review the policy in several respects concurrently.

First, the boundary control and border-crossings of Hong Kong have been gradually relaxed. Our present admission policy for Shenzhen residents or long-time Shenzhen residents from other provinces will also be gradually relaxed. I hope that the Government can offer further relaxation in this regard; and with respect to medical check-ups, it should allow Hong Kong-bound mainlanders living outside Guangdong province to enjoy special arrangements or be issued some special permits, so that it will be more convenient for them to undergo medical check-ups in Hong Kong.

Secondly, it is the land policy. There are now 10 sites in Hong Kong applicable for hotel development, but the terms are very unfavourable to a commercial hotel. Can the Government further relax these terms and make appropriate adjustments, such that these relatively distant and secluded sites will be suitable for developing convalescent homes of specialized medical tourism? The places for check-ups we see in Thailand are not hospitals, nor are they all white in colour and filled with the smell of medicine, but rather, they look like a hotel or place for relaxation. We can have further discussion on this to see how to do a better job on the complementary facilities.

Thirdly, regarding medical professionals in Hong Kong, we can consider gradually relaxing the threshold to allow mainland medical professionals to come to Hong Kong, on the premise that our local labour market will not be jeopardized. Particularly, there is a large market for talents in areas of massage, Chinese medicine and acupuncture. By gradually attracting mainland medical talents to work in Hong Kong, our cost can be lowered. Coupled with the fact that many local talents have been attracted to work overseas, such as Canada,

Australia, the United States and the United Kingdom, there is the need to fill this "vacuum". We can conduct reviews in this regard.

To sum up, on the premise of not jeopardizing Hong Kong and affecting our health care burden, we can enhance the medical check-up system and trend in Hong Kong, strengthen such facilities and operate under the user-pay principle. While tourists visiting Hong Kong will pay for their check-ups, they will also give a boost to Hong Kong's tourism industry. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, it is really strange that the issue of promoting medical check-up for the whole community has to be discussed here.

First, I wish to quote from an article written by Dr Fernando CHEUNG, an ex-colleague, and this article was published today in *Ming Pao*. Let me quote several lines from it. He wrote in Chinese, "Hong Kong's social welfare expenditure has all along accounted for a pitifully small proportion. In a seminar organized by the Civic Exchange, Tony LATTEr, the former Deputy Chief Executive of the Hong Kong Monetary Authority, quoted some research data relating to the expenses on medical, health care and other welfare measures in various countries. The findings suggest that the public expenditure concerned in Hong Kong only represents 4.3% of the GDP while the figures in this regard for France, Germany, Britain (that is, the sovereign state and colonial ruler of Hong Kong in the past) and Japan (which is the closest to Hong Kong with economic development comparable to ours) are 29.2%, 26.7%, 21.3% and 18.6% respectively. Even when it comes to such a conservative country as the United States, the figure in this regard also reaches 15.9%."

This explains the crux of the matter. The figure of 4.9% is a single-digit figure while all the figures read out by me just now are in double digits. The figure for Hong Kong is not even comparable to the unit digits of those for the countries concerned. This is a remark that I always carry on my lips. Today, we earnestly give advice to the Government and despite the fact that I always ask Secretary Dr York CHOW questions in this regard, he still refuses to read out the figure. Although I ask him the proportion of the relevant expenditure to the GDP, he never reads out the figure but replies that it is contained in the report, further adding that he will only quote the figure but will not read it out. Secretary Dr York CHOW always says to me that the proportion of medical and

welfare expenses taken on by the Government to the total public expenditure as found in the budget is comparable to those of other developed countries. I have spared no efforts in this regard, but all to no avail. What is the problem that we are facing at present? The answer is that the rich people who are too fat to put on their socks and always talk nonsense or those who have lost a good half of their assets in the financial tsunami but do not turn a hair and do not even feel a sense of guilt in deceiving small investors, they are making too much money. Tax rates in Hong Kong are indeed not comparable to the unit digits of those in other countries because in the countries I have mentioned just now, tax rates are probably higher than 30% while those in Hong Kong only stand at some 10%. Sometimes, tax reduction is also given in Hong Kong.

This John TSANG, who always accuses other people of being naïve and trying to draw public attention by way of exaggerated behaviour, is actually the person who is naïve and he is doing precisely that. He even proposed to reduce the tax payable by the rich. He always says, "Even a clever housewife cannot cook without rice. 'Long Hair', will you tell me where will the money come from? In the days of TUNG Chee-hwa, when you were sitting up there instead of down here, you had heard Dr YEOH Eng-kiong ask on many occasions where the money came from. Will it descend from the sky? Or, will it grow on trees?"

Today, there are students present in this Chamber. Students, bear this in mind: Never believe what the Government says. Now that our medical and social welfare services are by no means satisfactory, Members have to discuss here the promotion of medical check-up for the whole community. Why are we not discussing a universal health care service that covers every aspect? The expenses on medical check-up for the whole community account for a portion of the expenditure on universal health care protection. Prevention is better than cure and for that reason, the first priority should be attached to detection, that is, to detect whether members of the public have any health problems, then this is to be followed by medical treatment, right? Hey, we are still discussing today — the Secretary has almost fallen asleep. Take a look at him and you will see that. Secretary, perhaps you would like to have a cup of coffee, right? Are you very busy? Even if you are, you ought to listen to me when I speak, man! Although my words may sound offensive to the ears, they are the truth. Secretary, let me tell you this: Do not fall asleep again!

PRESIDENT (in Cantonese): Mr LEUNG, please face the chair when you speak.

MR LEUNG KWOK-HUNG (in Cantonese): President, will you please remind the Secretary not to fall asleep? How can he keep on sleeping this? Although I am lecturing him, he should have dozed off. President, as I have already reminded him, I hope you can also do the same.

The thrust of the matter lies in this. Members of this Council belong to various factions and members of the Democratic Alliance for the Betterment and Progress of Hong Kong have already clapped their hands and given a round of applause to John TSANG. Running counter to everything, they still have the boldness to make four assertions and no matter what, they insist on lending their support to the Government and the Financial Secretary, right? What the Financial Secretary said sounded pleasing to the ears in that \$50 billion would be earmarked as fiscal reserve for the "mandatory health care fund", thereby tempting the Hong Kong people to agree with his plan. He added that the sum of \$50 billion would not be utilized and in saying that such a plan would be implemented soon, he was acting like a scam artist because what he said seems to suggest that if you agree with him, he will then offer the \$50 billion — hey, buddy, Secretary, please wake up.

President, will you please remind him not to fall asleep again? This sum of \$50 billion should be immediately spent on improving the present situation. If medical check-ups for the whole community are to be promoted, this amount is sufficient to provide medical check-ups for 12 million people, buddy, right? For that reason, he always talks about something like macroscopic and microscopic perspectives, as well as being pragmatic and idealistic. When I discuss the relevant matters with him from a macroscopic perspective, he lacks policy. In fact, the Government is not upholding the principle of taking from the excessive and giving to the deficient. On the contrary, what it is doing is the other way round, right? Although tax reduction amounting to some \$5 billion has been introduced, only \$1 billion or so has been allocated to creating jobs. This morning, I raised the issue of falsifying accounts with the President, but the President spared him — if the President had not said that this question had been raised, I would have asked follow-up questions.

To put it simply, today's meeting serves as a lesson to those students who are present in this Chamber. The Government is vested with a public power and

if that is the case, it should distribute wealth, allocate and reallocate resources for our society in a fair manner and it will definitely impose taxation. The tax rates in Hong Kong are so low that they are considered one of the lowest tax rates in the world. For that reason, many people are of the view that they can get some advantage from it and that is why they all swarm to Hong Kong, in order to fall in for a slice of the pie. In Hong Kong, be it the elderly, young people or people of an age comparable to mine, they may not even have the most minimal protection in terms of medical welfare. If we can enjoy universal retirement protection and comprehensive social security, it can be said that the amount of money needed for this purpose will actually be very very small, right?

Therefore, Members, I know the Secretary will wake up immediately because he has been scolded in this manner today. I wish to ask the Secretary, or invite the President to ask the Secretary on my behalf whether or not he will give an answer to these questions later in the meeting: Why is our Government so incompetent? Why is our taxation unfair enough to be considered a disgrace in the world? I invite him to answer these questions. If he does not do so, I will put the questions to John TSANG, whose popularity rating is having a nose dive — the drop is because he is naïve and he always tries to attract public attention by way of exaggerated behaviour.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr CHAN Kin-por, you may now speak on the four amendments. You may speak up to five minutes.

MR CHAN KIN-POR (in Cantonese): President, I am grateful to the four Members for proposing their amendments. They have put forward a lot of views on the motion debated today and have greatly enriched the entire debate.

In the amendment proposed by Mr CHAN Hak-kan, the concept of medical check-up vouchers or other financial incentives is added and in many ways, this is

similar to the medical check-up vouchers proposed by me, so I will support his amendment.

The amendment proposed by Mr WONG Kwok-hing adds the proposal of offering subsidies to the poor to undergo medical check-ups and increasing the quotas at elderly health centres, whereas Mr Albert CHAN's amendment also proposes the offer of free medical check-up services to the grassroots. In fact, in principle, the amendments proposed by these two Members are not at odds with my original motion. My proposal also seeks to provide free medical check-ups to all participants gradually. Of course, I am worried that the Government may refuse to introduce this kind of measures on the ground that the expenditure involved is substantial but still, I will support the amendments proposed by these two Members.

As regards Dr LEUNG Ka-lau's amendment, although he deleted words such as "the population is ageing" and requested the immediate launch of a screening programme for a number of common diseases, as well as setting down a series of check-ups that should be introduced immediately, in fact, he also supports the promotion of exercise and health education, only that he has moved my passage deleted by him to the beginning. In fact, if Members look carefully, they will find that he also supports my proposals. Since his direction is the same as mine, I will also support the amendment proposed by Dr LEUNG. Thank you, President.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I would like to thank those Members who have expressed valuable views on the motion and the amendments. I now wish to give a concise response to the main issues raised by Members.

Just now some Members also assumed that my concept of health is the same as what they have mentioned, that health means no disease. However, if they have already noted what I said at the beginning in this Chamber, and I have to reiterate now, that to enable effective prevention of non-communicable diseases (NCD), a healthy lifestyle is of paramount importance, and this has already encompassed physical health, mental health, spiritual health and social health, including that with respect to interpersonal relationships.

We hope that through health education and the development of a health promoting environment targeted at major behavioural risks and causes of diseases in the community, the lifestyle habits of the general public will be improved before the development of diseases, thereby achieving better health for the public as a whole.

Some Members pointed out that I once indicated that I do not agree with the so-called "indiscriminate" medical check-ups and screening for the whole community, which is true. Therefore, I have to explain the correct concept of medical check-up.

As far as I understand, the public in general thinks that regular medical check-ups will enable early detection of diseases, which will in turn enable early control of the conditions, thereby reducing the health care burden. Although it appears that more check-ups and tests should be able to nip the problem at the bud, as a matter of fact, the medical profession at present does not agree with indiscriminate regular medical check-ups. I also understand that medical check-ups have limitations in themselves, and not all tests are completely accurate, basically no test is. If there were tests which were completely accurate, I believe we did not have to spend so much time to decide which tests should be provided to the public. The test results may mistakenly show that certain diseases are present, that is, "false positive", thereby causing anxiety and unnecessary follow-up examinations and medical intervention, resulting in a waste of personal and social resources. If the tests themselves are inaccurate and the results fail to show any abnormalities, while certain diseases are actually present, that is, "false negative", the patient may overlook the early symptoms of the diseases as a result, thereby leading to delay in seeking treatment.

Let me take colorectal cancer and breast cancer as examples. Local studies have found that the sensitivity value of the so-called "screening" of the fecal occult blood test as a screening test for detecting all colorectal tumours is only 19%. As regards breast cancer, local studies have found that screening by mammography is not a cost-effective public health strategy in Hong Kong. Therefore, there is yet adequate scientific justification for full-scale implementation of colorectal cancer and breast cancer screening in Hong Kong. The Cancer Expert Working Group on Cancer Prevention and Screening under the Cancer Co-ordinating Committee is now conducting a detailed study on the

prevention and screening of colorectal cancer and breast cancer. It is hoped that recommendations will be put forward upon the completion of the study.

From a medical perspective, medical check-ups should be undertaken upon the recommendation of the family doctor, who will recommend the appropriate medical check-ups to individuals in need of such in the light of special circumstances, having regard to the specific circumstances of the individual, such as medical records, high-risk factors, personal lifestyle, family history and so on. These medical check-ups should be target-specific and should provide well-defined results, and they should be able to accurately and reliably identify changes in health conditions for focused treatment. Indiscriminate regular medical check-ups implemented blindly without taking into account the specific risks of disease of individuals may not be effective and may even give rise to other problems.

From the perspective of public health, the effectiveness of tests for different NCD varies among different segments of the population. As such, in deciding whether or not to introduce a universal screening programme for a specific disease, we must first consider the prevalence of the disease in Hong Kong, the accuracy and safety of the test, the feasibility of implementing the screening programme, public acceptability as well as the effectiveness of the programme in reducing the incidence and mortality rates of that disease. Implementing indiscriminate medical check-ups for the whole community is not the most effective way of disease prevention.

Besides the "Strategic Framework for Prevention and Control of Non-communicable Diseases" mentioned in my previous speech, the Department of Health (DH) has also put in place related health services to cater for the needs of different population groups, with a wide range of targeted programmes on health promotion and disease prevention for different age groups, including family health services, student health services and elderly health services. Besides, the Hospital Authority (HA) also takes proactive measures to promote preventive education on NCD in collaboration with various community partners through publicity and other diversified programmes. When a patient is found to belong to a certain group of high risk individuals, for example, when there is a family history of hereditary cancer or diseases such as heart diseases, hypertension and diabetes, the HA will provide him with the relevant check-ups to enable early detection and treatment.

At present, the 31 maternal and child health centres under the DH provide a comprehensive range of health promotion and disease prevention services for children from birth to five years and women aged 65 or below. These services include physical examination for newborn babies and free immunization for infectious diseases and health and development surveillance, including optometric screening, for children. Every year, as much as 90% of newborns participate in the child health service provided by maternal and child health centres. Besides, we also provide health education, counselling, physical check-ups and appropriate screening tests, including cervical cancer tests, for women in order to encourage the relevant group of women to undergo cervical smear on a regular basis.

These services are regularly reviewed in the light of new scientific data in order to protect the health of the public. For example, starting from 1 September 2009, the pneumococcal conjugate vaccine will be included in the Childhood Immunisation Programme. At the same time, we will also provide free pneumococcal vaccination for children aged below two years in order to reduce their risks of invasive pneumococcal diseases. These targeted public health measures can ensure the proper use of public resources and provide the greatest health protection to the public.

Besides, the Student Health Service Centres under the DH, which cater for the needs of students at different developmental stages, provide physical examination, health assessment, individual counselling and health education to students. Moreover, the Adolescent Health Programme provides outreaching services for secondary schools to promote the psychosocial health of adolescents. As regards the optometric and vision examination mentioned by Dr LEUNG Ka-lau in his amendment, besides the vision screening test for pre-school children mentioned by me just now, the student health services currently provided by the DH for Primary One to Secondary Seven students also include vision examination. Students found to have vision problems may choose to go to the Special Assessment Centres under the DH or private optometrists for a more thorough examination.

Mr WONG Kwok-hing's amendment mentioned enhancing the services of elderly health centres (EHCs). EHCs under the DH provide a comprehensive primary care programme encompassing health assessment, physical check-ups and curative treatment for EHC members who have reached the age of 65 with a view to improving their ability to take care of themselves and encouraging their

development of proper lifestyle habits. EHCs also provide individual counselling and health education for elders with health risk factors such as overweight, lack of physical activity or unhealthy diet.

At present, services of EHCs are heavily subsidized by the Government, and with an ageing population, there is an ever increasing demand for primary care services for the elderly. Just the 18 EHCs alone are unable to meet the health care needs of all the elders. Actually, EHCs are not the only providers of primary care services for elders. The HA, community service organizations and other private health care providers also provide relevant out-patient and health education services.

To encourage elders to make better use of primary care services close to their homes so that they can have easier access to health care services and continuity of care provided by their chosen health care providers, we have launched the Elderly Health Care Voucher Pilot Scheme for three years starting from 1 January this year to enable elders aged 70 or above to use private primary care services, including preventive care services and physical check-ups, with government subsidies. According to our preliminary survey, 20% of elders will use these vouchers for preventive services.

Besides, Dr LEUNG Ka-lau hopes that the Government will extend dental care to pre-school children, secondary students and the elderly. "Prevention" has all along been the prime objective of the Government's policy on oral health and dental care. We seek to raise public awareness of oral health and facilitate the development of proper oral health habits through prevention, publicity and education. The Government is currently focusing on the provision of emergency dental services for the public, while general dental services for the public are provided by the private sector. As to how further improvement can be made to the public dental services, such as whether or not a government-subsided dental care scheme should be set up for secondary school students, I hold an open attitude towards this issue. However, we have to consider views from all sectors thoroughly, and we also need more information and data to assess the actual needs in society and the factors involved in various proposals, including the supply of professionals, financial resources, support facilities and the effectiveness of the proposed schemes.

Based on the World Health Organization's idea of a healthy city and with the support of the relevant government departments and different sectors of the

community, the 18 districts over the territory have launched their own "Healthy City" Projects. The DH, in collaboration with different district offices, has provided support to these "Healthy City" Projects. During the development of the Projects, the DH, which played the role of an adviser and partner, provided professional advice on public health and health promotion through participating in organizations and discussions of different scales, offered technical support in health promotion and education programmes of the community, and provided assistance to enable various "Healthy City" Projects to deal with the specific health problems in the local community. Besides, HA hospitals also worked with community organizations to participate actively in these "Healthy City" Projects.

To improve the health of the public, we also actively promote a smoke-free culture. Now, a total smoking ban has been imposed on all restaurants, indoor public places and outdoor public places such as parks and beaches. Starting from July this year, the smoking ban will also be implemented on premises such as bars, massage establishments, mahjong clubs and nightclubs. Starting from the end of this year, we will gradually designate public transport interchanges as statutory no-smoking areas by phases. Besides, we plan to introduce a fixed penalty system in the second quarter of this year to enhance enforcement actions and efficiency.

At the same time, in order to help smokers cease smoking early, the DH and the HA have strengthened smoking cessation services. At present, the DH has set up smoking cessation clinics and hotlines to provide users with booking and enquiry services; public hospitals and general out-patient clinics have also set up Smoking Counselling and Cessation Centres, two of which operate round the clock and 27 of which operate during specified periods of time. We have also provided subsidies to the Tung Wah Group of Hospitals to set up the Integrated Centre on Smoking Cessation to provide free medication and counselling services for people who intend to cease smoking. We will continue to make proactive publicity efforts to raise public awareness of the hazards of smoking and step up smoking cessation promotion with a view to turning Hong Kong into a smoke-free city.

In the long-run, sound primary care services can bring about better health benefits for the public so as to contain the growth of overall health care demand and expenditure. As I said at the beginning of the motion debate, we hope to enhance existing primary care services to provide continuous, comprehensive and

holistic health care services for individuals while at the same time place emphasis on preventive care, promote and protect the physical and psychological well-being of the public and improve their quality of life.

To promote primary care services, especially preventive care services, we have also proposed in the consultation paper on health care reform to develop, in conjunction with the medical profession, basic models of primary care services with emphasis on preventive care for different age, gender or disease groups. Through developing and promoting the basic models among the public and health care providers, coupled with other reforms of primary care services, we hope to bring about a paradigm shift in the existing service delivery model which only focuses on the curing of episodic illnesses, and put a much greater emphasis on preventive care instead. This proposal has received general support from the public during the first stage of public consultation on health care reform.

In October last year, the Working Group on Primary Care (the Working Group), comprising health care practitioners from the public and private sectors and representatives of patients groups, was set up to examine the implementation of proposals relating to enhancing primary care services put forward in the consultation paper on health care reform and to formulate implementation plans for such proposals. The Working Group has set up a task force to develop basic models for primary care services with emphasis on preventive care for different age and gender groups, covering assessment of health risks, surveillance and screening of health problems, health education and healthy lifestyle promotion, primary preventive care and curative services, for reference by health care practitioners and the public. As the formulation of the basic models for primary care services is very complicated, the Working Group will first develop the basic models for common diseases such as hypertension and diabetes and expand the models to cover other diseases.

Besides, the Working Group will also develop clinical protocols for individuals of different groups based on the basic models for primary care services for use by health care practitioners involved in delivering primary care services. It will also actively explore ways to incorporate preventive care elements in the primary care services provided by the public sector, step up the promotion of a healthy lifestyle and strengthen the public health function of disease prevention.

The amendments of Mr CHAN Hak-kan and Mr WONG Kwok-hing mention subsidizing medical check-ups. Actually, in order to encourage the provision and use of comprehensive and quality primary care services, we have also mentioned in the consultation paper on health care reform that the Government is prepared to consider providing subsidies for individuals to receive preventive care in the form of health care voucher. The Elderly Health Care Voucher Pilot Scheme and the Influenza Vaccination Subsidy Scheme already launched are the two new pilot schemes under this model. The Working Group has also conducted an in-depth study on the mode of subsidization, and further developed the relevant system and formulated implementation details in the light of the experience of the two pilot schemes.

For disease prevention to be effective, the most basic and important way is for members of the public to maintain personal and environmental hygiene, keep a balanced diet, do a moderate amount of exercise, lead a regular life, develop healthy lifestyle habits and avoid smoking and excessive alcohol consumption so as to enhance their immunity and reduce the risk of NCD. Thorough body check-ups may not be completely effective as different groups have different health problems and risks. As such, the public should always communicate their health problems to their family doctors, who will then decide which check-up is necessary having regard to factors such as their health records and family history.

Finally, I hope my remarks today can enable Members and the public to have a better understanding of ways to prevent NCD and the Government's policy and approach to implementing NCD prevention and control measures. I have to reiterate that promoting a healthy lifestyle and improving the health of the public is our major mission as well as the responsibility of every member of the public. I would also like to appeal to members of the community for collaborated efforts to create an environment conducive to healthy living and the maintenance of personal and family health and achieve effective disease prevention.

President, I have a special feeling during the debate today. I find that many Members have transcended party differences and raised issues of mutual concern relating to health in their remarks. I hope this healthy atmosphere can be maintained, even in the next topic or other topics in future.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr CHAN Hak-kan to move his amendment to the motion.

MR CHAN HAK-KAN (in Cantonese): President, I move that Mr CHAN Kin-por's motion be amended.

Mr CHAN Hak-kan moved the following amendment: (Translation)

"To delete "as the population of Hong Kong is ageing" after "That," and substitute with "with the ageing of the Hong Kong population"; to delete "great" after "which will exert" and substitute with "even greater"; to delete "gradually and" after "Hong Kong residents"; and to add "through such means as medical check-up vouchers or other financial incentives" after "systematically"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Hak-kan to Mr CHAN Kin-por's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, as Mr CHAN Hak-kan's amendment has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members. When you move your revised amendment, you may speak up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

MR WONG KWOK-HING (in Cantonese): President, I move that Mr CHAN Kin-por's motion as amended by Mr CHAN Hak-kan be further amended by my revised amendment. Since I have made everything very clear when giving my speech, I have nothing to add.

Mr WONG Kwok-hing moved the following further amendment to the motion as amended by Mr CHAN Hak-kan: (Translation)

"To add "and subsidizing the poor to undergo medical check-ups," after "financial incentives,"; to delete "and" after "high-risk groups,"; and to add "increasing the quotas at the elderly health centres to provide medical check-up, health assessment, counselling and health education services to more elderly persons at low fees, so that elderly patients can receive appropriate treatment expeditiously; and (d)" after "(c)."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr WONG Kwok-hing's amendment to Mr CHAN Kin-por's motion as amended by Mr CHAN Hak-kan be passed.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Members have been informed that Mr Albert CHAN will withdraw his amendment if Mr WONG Kwok-hing's amendment is passed. As this is the case now, Mr Albert CHAN has therefore withdrawn his amendment.

PRESIDENT (in Cantonese): Dr LEUNG Ka-lau, as the amendments by Mr CHAN Hak-kan and Mr WONG Kwok-hing have been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members. When you move your revised amendment, you may speak up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

DR LEUNG KA-LAU (in Cantonese): President, I move that Mr CHAN Kin-por's motion as amended by Mr CHAN Hak-kan and Mr WONG Kwok-hing be further amended by my revised amendment.

Basically, I support Mr CHAN Kin-por's motion. I amend his motion because I can anticipate the Secretary's views and I want to respond to them. In general, the contents of my amendment are in line with what the Secretary sees it has taken into consideration various factors such as prevalence, accuracy, low cost, safety, the reduction of incidence and death rates, as well as false positives and false negatives. Thank you, President.

Dr LEUNG Ka-lau moved the following further amendment to the motion as amended by Mr CHAN Hak-kan and Mr WONG Kwok-hing: (Translation)

"To add "; and (e) immediately launching a screening programme for common diseases, including high blood pressure, diabetic and cholesterol tests, fecal occult blood test, breast examination and Pap smear test,

Hepatitis B test and optometry examination, and extending dental care to pre-school children, secondary students and the elderly" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Dr LEUNG Ka-lau's amendment to Mr CHAN Kin-por's motion as amended by Mr CHAN Hak-kan and Mr WONG Kwok-hing be passed.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Mr CHAN Kin-por, you may now reply and you have 3 minutes 30 seconds. This debate will come to a close after Mr CHAN Kin-por has replied.

MR CHAN KIN-POR (in Cantonese): First, I have to thank those Members who have spoken. In fact, our goal is very much the same, which is to promote the trend of medical check-up for the whole community and doing more exercise, so as to foster a healthy society and reduce increasing public health care expenditure.

The message conveyed by the motion debate today is very clear. However, I find it very disappointing that the Government thinks that regular

medical check-ups for all should not be offered. As I pointed out in my speech earlier on, we should not consider this issue just from the medical or the technical angle involved. We should consider it from the angle of the social effect. If universal medical check-ups can encourage members of the public to care about their own health and if medical check-ups can become a social trend and there is greater awareness of the need to exercise, so that the public will pursue a healthy lifestyle, the tangible and intangible benefits created by this kind of social effect will be immeasurable.

In addition, I also wish to respond to Dr Joseph LEE, who said that universal medical check-ups may involve the interests of the insurance sector. I wish to respond that whether universal medical check-ups will benefit the insurance sector is something that we really cannot say for sure. However, I sincerely believe that the public will surely stand to benefit the most from universal medical check-ups, in particular, universal check-ups subsidized by the Government.

As regards the views concerning the insurance sector voiced by Dr Priscilla LEUNG, I will discuss this with her on some other occasion and hopefully, I can address her doubts. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHAN Kin-por, as amended by Mr CHAN Hak-kan, Mr WONG Kwok-hing and Dr LEUNG Ka-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.

PRESIDENT (in Cantonese): Second Motion. Reviewing the Interception of Communications and Surveillance Ordinance.

I now call upon Ms Cyd HO to speak and move her motion.

REVIEWING THE INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE ORDINANCE

MS CYD HO (in Cantonese): I move that the motion as printed on the Agenda be passed.

In June 2008, the Commissioner on Interception of Communications and Surveillance submitted the second report to the Chief Executive, but the Chief Executive only made public the report in February this year. This has aroused much controversy in the community. The power of the Commissioner is conferred by the Interception of Communications and Surveillance Ordinance and is thus very limited. The Commissioner is denied access to many figures related to the monitoring of bugging and surveillance operation owing to legal constraints, nor can the Commissioner publish such figures. Despite the limited scope, many problems are identified. Worse still, we notice that law-enforcement agencies have not acted co-operatively, they respond perfunctorily and disdainfully, and disregard the concerns raised by the Commissioner in the report. We fully realize that the Ordinance is inadequate in protecting the freedom of communication of Hong Kong residents enshrined in Article 30 of the Basic Law.

It is palpable that the Ordinance allows the executive to expand its power and ensure that protection is provided by all means to safeguard its power tightly. It is in no way sincere in fulfilling its obligation to protect the freedom of communication of the public. In fact, in June 1997, on the eve of the handover of the sovereignty of Hong Kong to China, Mr James TO proposed a Private Member's Bill, the Interception of Communications Bill. Though the Bill was

passed, the authorities did not sign to bring it into force and kept saying that there were many loopholes in it. Nevertheless, public consultation has never been conducted, nor has a legislative timetable been laid down to amend the Bill. As a result, in 2005, two covert surveillance operations carried out by the Independent Commission Against Corruption (ICAC) were ruled inconsistent with Article 30 of the Basic Law. However, the Chief Executive attempted to override legislation with administrative power by issuing an Executive Order. I have to thank Mr LEUNG Kwok-hung and Mr KOO Sze-yiu for initiating a judicial review against such practice in June 2006. The Court of First Instance ruled that the Executive Order issued by the Chief Executive was invalid and the executive had no choice but to legislate immediately. Since the arrangement for temporary validity would lapse on 8 August 2006, the Legislative Council only had five months to deal with the legislation work, which would be hasty, to meet the expiry date of the temporary arrangement.

Over these past eight years, we all see what attitude the executive had adopted. First, it procrastinated in signing the Private Member's Bill of Mr James TO. Second, it made no amendment to and conducted no consultation on the Bill. What provoked greater anger was that it continued to wiretap and acted unconstitutionally. It only introduced legislation hastily when the Court handed down the judgment to the executive and it could dodge the issue no more.

However, as in the case of the legislating on Article 23 of the Basic Law and the anti-terrorism bill, this Ordinance was supported by the royalists in the Legislative Council, while amendments proposed by Members who are concerned with public interest and who have been working with all their heart and might to examine the Bill, were negated. As a result, the expansion of power of the executive was supported by the so-called legal justification, while the privacy of the public was given no protection.

President, why do I have to retell these episodes in history? I want to state that even when the executive has enacted the relevant legislation, it aims only at safeguarding its power but not protecting the privacy of the public. Therefore, today the Ordinance must be reviewed immediately and no delays must be made.

Now the Commissioner has issued the full-year report for 2007 and brought forward four non-compliance cases, all from the ICAC. These

non-compliance cases are about the non-preservation of the summaries, destruction of information, difference in interpretation of legal provisions by panel Judges and law-enforcement agencies, and legal professional privilege, and so on. These situations were discussed repeatedly and thoroughly when the Bill was scrutinized in 2006, and amendments had been proposed by Members. Members of the democratic camp had made strenuous effort in examining the provisions and proposed corresponding amendments to the Bill to address those foreseeable problems. Regrettably, President, none of the amendments were passed, all of them were negated.

Though the intensive scrutiny at the time was focused on 69 provisions, there were 450 amendments in total including the amendments proposed by the Government. It spoke volume that the loopholes found in the Bill had reached an alarming level. Surely, all the 189 amendments proposed by the Government were passed easily. But for the some 200 amendments proposed by Members, none of them was successfully passed. Why would this happen? Were the amendments proposed by Members fell short of the required standard? I would like to quote from the Official Record of Proceedings at the time to illustrate that the royalist camp was determined to prevent the passage of those amendments. On the fourth day of the meeting which the Bill was scrutinized, Mr LAU Kong-wah said, "..... if the majority of the amendments some are indeed very carefully written, are endorsed, the capacity of law-enforcement officers would be greatly undermined. I was asked by the media what would happen if those amendments were endorsed. I replied that there would be big troubles once they were endorsed. So, over these past 30 days or so, disregarding whether we were said to be the royalist camp or a force supporting the Government and law and order in Hong Kong, or a force supporting stability in law and order in Hong Kong, we have maintained our stance firmly, not budging an inch and not allowing one single amendment to get passed. Our purpose is to stop the opposition camp from doing anything to disrupt law and order." This is a paragraph quoted from the Official Record of Proceedings of the Legislative Council.

President, it was exactly because the royalist camp had adopted this attitude of refusing to discuss issues that all the amendments of the democratic camp were negated. Worse still, these amendments were said to be disrupting law and order. What was the consequence? Since those amendments were negated, the monitoring power of panel Judges and the Commissioner is undermined,

which has resulted in the present problems of non-compliance. Those amendments were negated for no reasons and without any justification. They were opposed purely because they were proposed by the democratic camp. It was spine-chilling that such barbaric behaviour was found in the legislature. Acts like "hurling bananas" and sweeping things off the table, which lasted only a few minutes and were only directed against one or two officials. But the attitude the royalist camp adopted in scrutinizing legislation, which aimed only to stifle the democratic camp at the expense of the interest of the public, would affect the public at large, and the impact was far-reaching. This behaviour of taking advantage of one's power to act in a domineering manner should be condemned by society.

President, given the limited resources and powers of the Commissioner, the problems reflected in the report are also very limited. For instance, certain figures reflecting the monitoring work, which should be disclosed for Members' reference, cannot be included in the report due to restrictions in law. Actually, the provisions related to the powers of and the resources available to the Commissioner should all be reviewed. The problems highlighted in the report are only the tip of the iceberg. Given the time constraint, I would only bring up two issues for discussion here. I believe Honourable colleagues from the democratic camp will give detailed supplementary information later.

I would cite the destruction of records as an example. In the Commissioner's report, two types of situations were mentioned. When the Commissioner issued a letter to the ICAC to request for information for thorough examination, the information was destroyed immediately on the second or third day by the ICAC, and the Commissioner had no way to conduct the investigation. When the Commissioner criticized the ICAC for the above actions, the relevant departments dared to query whether the Commissioner was asking them not to comply with the laws. Actually, concerning the duration of preservation of information, there was indirect discussion during the scrutiny of the Bill, for the issue was brought up when we examined the provisions relating to the duration for accepting complaints or for the Commissioner not to conduct further examination. The relevant duration was set at one year, but Dr Margaret NG said that one year was inadequate and should be extended to five years. If the duration is set at one year, there may be other directives issued during the period, which will enable law-enforcement agencies to destroy the relevant information within a short period according to those directives, and the Commissioner will

have no way to follow up. This is exactly the situation now. When proceedings are yet to start, and the Commissioner only hopes to conduct an in-depth investigation, but no evidence can be obtained.

I have to put forth the second point. Panel Judges, law-enforcement agencies and the executive make different interpretations to the provisions. One major point stated in the report of the Commissioner is about legal professional privilege. The case indicated that panel Judges and law-enforcement agencies had different understandings about the revocation of authorizations, which had led to a possibly unconstitutional and unauthorized wiretapping operation involving non-compliance. The panel Judges considered that if there were material changes in the circumstances disclosed by the law-enforcement agency concerned when applying for the warrant, the original conditions based on which the authorization was granted could no longer be met and the authorization should thus be terminated. However, the law-enforcement agency held a different view and had consulted the Policy Bureau and the Department of Justice, and they also held a different view. Under the existing administrative structure, the incident is only regarded as a dispute among different departments of the executive, for panel Judges are no authentic judicial organ, but only a panel composed of Judges enlisted by the executive from the judiciary, which is indeed part of the executive. In case of disputes between the two departments, society can only make comments and no conclusion can be reached.

Concerning this point, it was brought up repeatedly for discussion during the scrutiny of the Bill, and it was proposed that applications for authorization should be handled by the judiciary. If the judiciary is to exercise checks and balances on the executive, the separation of powers among the executive, the legislature and the judiciary can be realized. This may prevent the executive from taking advantage of the situation, trying to confuse the public by enlisting people from the judiciary to continue with its covert surveillance operations.

President, the abuse of power by the executive is considered unacceptable even if it only lasts one day, for it will seriously undermine the rights of the public. I hope that we can propose amendments as soon as possible to review this Ordinance, so that the privacy of the public enshrined in Article 30 of the Basic Law will be effectively protected.

Thank you, President.

Ms Cyd HO moved the following motion: (Translation)

"That, as the report released by the Commissioner on Interception of Communications and Surveillance in June 2008 has revealed that currently there are many malpractices in the enforcement actions of the law enforcement agencies, this Council urges the Government to immediately review the Interception of Communications and Surveillance Ordinance."

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

PRESIDENT (in Cantonese): Three Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the three amendments.

I will call upon Mr LAU Kong-wah to speak first, to be followed by Mr James TO and Mr LEUNG Kwok-hung; but no amendments are to be moved at this stage.

MR LAU KONG-WAH (in Cantonese): President, I think Ms Cyd HO has chosen the right timing to propose this motion today, for the Commissioner on Interception of Communications and Surveillance has published the second report recently, giving his comments and criticisms on the interception of communications and surveillance work carried out by disciplined forces. This issue has been discussed twice in the relevant panel of this Council. However, I think the whole Council debate held today will be conducive to the review to be conducted by law-enforcement agencies and the Legislative Council in future.

Why do I want to amend Ms Cyd HO's motion? In fact, my amendment, which is positive, is made with every good intention. Ms Cyd HO proposed that a review should be conducted immediately. According to her earlier remarks, "the Ordinance must be reviewed immediately, and no delays must be made." I think it is right that reviews must be carried out if there are problems, but I propose an amendment because in the course of the scrutiny of the Bill, the Government Actually, during the scrutiny, there have been discussions on

when reviews should be conducted. Eventually, it was concluded that a review should be conducted after the second full-year report was issued. When will the second full-year report be issued? It will be this year. In June 2009, the Commissioner will submit another report to the Chief Executive. So, in respect of the timing for the review, be it be carried out in March or June or after June this year, it is only a matter of a few months, the difference is indeed not much.

I think that since the Government has honoured its words in the past, we hope it will fulfil its promise. However, does it mean that nothing will be done at this stage? The Government agreed that some preparation work should be carried out. Besides, as I stated in my amendment, it is hoped that immediate measures should be adopted if possible, including the work on certain codes of practice. If certain codes of practice are found to be impracticable and require amendment, the amendments should be made immediately instead of pending the review of the entire Ordinance. For instance, concerning the information Justice WOO considered should be preserved, the disciplined forces should preserve such information and immediate destruction should be prohibited. Indeed, the code of practice was amended accordingly last year, for the amendment was deemed necessary. In relation to the code of practice, the Commissioner mentioned cases about the omission of the number of surveillance devices in the relevant application forms, which prevented him from knowing the number of telescopes or devices involved in the application when he checked the forms, and such omission would make effective monitoring impossible. In that case, I think the code of practice, as well as the relevant application forms, should be amended as soon as possible to ensure smooth operation. Therefore, I propose in my amendment that the code of practice should be amended expeditiously at an appropriate time. However, as for the review of the entire Ordinance, I think we should follow the promise made previously. I think it is appropriate that a review be carried out in June this year right after the submission of the report.

Ms Cyd HO mentioned the scrutiny stage earlier. She is definitely referring to the scrutiny of the relevant Bill a few years ago. With regard to the relevant provisions, I adopt the following attitude. I think that law-enforcement agencies need to carry out interception or surveillance work, which is a very significant means, to arrest the bad elements, but a balance has to be struck. The balance is that privacy should not be infringed. At the same time, there should be an organization responsible for monitoring and carrying out checks and balances. In fact, the Ordinance is able to reflect this point. For any amendment proposed that may affect this balance or result in a loss of balance, I

will consider the amendment unacceptable. Definitely, during the review, we will come back to the discussion of this issue, and further examination may be carried out by the time.

President, two reports have been submitted by the Commissioner. In the first report, one significant issue reported is the different opinions held by law-enforcement agencies and the panel Judges. In the latest report, it is the difference in views held by law-enforcement agencies and the Commissioner. One is the applicant for permission while the other is the authority granting approval. One is the agency responsible for monitoring while the other is the subject to be monitored. I think their difference in opinion is obvious in the course of implementing the new law. Take the practice that the information should be "destroyed as soon as reasonably practicable" as an example. This is in fact stipulated unequivocally in the provisions. When the Commissioner raises such a request, law-enforcement agencies should by all means cope with the request and should not act passively. This point has been indicated in the report. However, in the second and third cases set out in the latest report, the record Justice WOO requested to be preserved was destroyed the day after he had made such a request. It seemed too much of a coincidence. When officers from the Independent Commission Against Corruption (ICAC) attended the two meetings of the Panel of this Council, they failed to give a detailed account of the situation, we therefore requested the submission of a report giving a chronological account of the incident.

But there is another issue which is more to be regretted, for Justice WOO said in the report that individual officers of certain law-enforcement agencies were not frank and forthcoming. This is a cause of concern to me, for credibility has all along been the emphasis of the ICAC and the focus of its education work, if the ICAC fails to be frank and maintain its credibility, I believe it is useless no matter how many cases it may crack. I think officers of law-enforcement agencies should have a clear mind about this. In the past, law-enforcement agencies were not subject to the regulation of any ordinance nor external supervision. But since a new ordinance has already come into effect and a new commissioner has assumed office, law-enforcement agencies should face this new world. In this new world, procedures have been laid down for application, and they are subject to external supervision, which is a process involving accountability. When they come to the Legislative Council, this is also a process which involves accountability. In other words, on one hand, law-enforcement agencies have to arrest the bad elements. This is a matter of

efficiency, but on the other hand, they should not overlook the aspirations of the public. An appropriate balance is maintained in the Ordinance.

Disciplined forces may have to uphold the principle of justice in law enforcement, but society must exercise self-control. Law-enforcement officers are indeed holding justice in the left hand and self-control in the right hand. This can be likened to the accelerator and the brake of a car, and it is extremely dangerous if a car is only installed with an accelerator but not a brake. Therefore, I think that law-enforcement officers should have the power to enforce laws, but they should at the same time take on the obligation to be law-abiding and follow the regulations. Members of the disciplined forces need to learn how to exercise their power under control, which is of utmost importance. With regard to a sensitive ordinance like this, which aims to maintain the balance between privacy and law enforcement, its credibility must be maintained in future.

President, I would like to present my views on other amendments proposed today. First, I think that since it is still the adaptation period, problems may arise in the course of law enforcement, and it may be inappropriate to consider everything suspicious and should be started all over again just because of these problems. Take Mr James TO's proposal on the establishment of an independent organization responsible for interception and surveillance work as an example. I will surely listen to his proposal later. Initially, he proposed that certain staff members under Justice WOO should be identified to take up the work, but it is contradictory to the monitoring role of Justice WOO and may not necessarily bring any merits. However, should people from outside the disciplined forces be identified to undertake the job? Who should be responsible for monitoring them? Should non-civil servants be identified to undertake the job, or should the work be contracted out? However, there are still concerns about the quality and stability of these personnel. The same group of people is involved even if the job is contracted out. If officers of the ICAC or police officers are interrogated today about the work they are handling, the same questions will be asked for that group of people. If so, who will do the monitoring work? I would like to listen to his proposal later.

As for the amendment proposed by LEUNG Kwok-hung, it is said that there is no relevant legislation regulating this aspect, but this is not the fact. In fact, under section 59 of the existing Ordinance, it is stipulated that certain

intelligence protected by legal professional privilege should not be preserved or used. But how about other aspects? I would like to listen to the views of Mr LEUNG Kwok-hung later. If information related to other crimes is obtained in the course of interception, should the information not be used? During an investigation of a certain case related to the triad society, if information relating to drug trafficking is found, should the information not be used? I think these issues have to be clarified. Otherwise, it will be quite dangerous.

Lastly, in my point of view, no matter what kind of review is to be conducted, I hope law-enforcement officers will keep up with their hard work and deliver their duties properly. The two reports indicated that 973 persons have been arrested as a result of those operations, which means the public is protected to some extent by the arrangement.

MR JAMES TO (in Cantonese): President, since many Members from the Democratic Alliance for the Betterment and Progress of Hong Kong may speak later, I think it would be more than fair to him for me to respond to Mr LAU Kong-wah's remarks.

Members may have heard Ms Cyd HO say earlier that a few years ago, someone said — this remark is perhaps still ringing in our ears — "not allowing one single amendment to get passed", "we have maintained our stance firmly not allowing (those people) to disrupt law and order". Just now, I imitated the gesture and expression presented by Mr LAU Kong-wah at the time. However, I may not have acted as determined as he did at the time.

Mr LAU Kong-wah said earlier that since law-enforcement agencies were responsible for arresting the bad elements, it was necessary to confer them with more power. He queried what would happen if the balance was tilted and those provisions were passed. As dozens of provisions were negated, I can hardly give a detailed account of all of them. I would like to talk about a provision on unlawful wiretapping by law-enforcement agencies. At that time, we proposed that such act should be criminalized and claims for compensation could be made via civil proceedings. Mr LAU Kong-wah said at the time that none of the amendments proposed should be allowed to pass! Not a single amendment! What would happen then? Should bad guys be arrested by bad guys? Or should bad guys be arrested by good guys? If law-enforcement agencies carry

out unlawful wiretapping, it is a criminal act. Why could the relevant provision not be passed?

President, Justice WOO has certainly identified many problems in the Ordinance. It is because "not a single amendment" proposed by me at the time got passed that matters have come to this. Certainly, this is not the sole reason. Let me cite a few examples to illustrate this. President, the provision I mentioned earlier is on criminalization. But there was another amendment dealing with the situation mentioned in one of the examples earlier. It was proposed that the information concerned should be preserved for a longer period, until the completion of the vetting or after all the court proceedings. This arrangement would provide a means for retrieving the relevant information in the event of power abuse.

In addition, one of the amendments I proposed at that time was about whether information obtained through unlawful wiretapping should be protected. As mentioned in Mr LEUNG Kwok-hung's amendment, part of the operation involves unlawful wiretapping while part of it is lawful. However, they will not use the original tapes, it should be digital recording instead, for tapes are no longer used these days, and extract the main points under the pretext of "intelligence". During the debate, I brought this point in particular to the attention of the Government.

Intelligence records will not put down what A and B said, nor will the conversation be recorded actually sentence by sentence. Intelligence records should read like the following: According to our intelligence, A is homosexual; B has an affair with two women; C has done some peculiar thing; D knows the Chief Executive, they are close friends and often dine together. The information may not necessarily involve criminal acts, but it is not as Mr LAU Kong-wah has said that the authorities may suddenly hear information about a kidnap and discover that some people are kidnapping another person at the time.

So, what should we do? Under such circumstances, should we not state clearly how a mechanism should be established to monitor the situation? Regrettably, in the course of scrutiny, the Government said that such a mechanism was unnecessary and a review would be conducted. But so far, has any review been conducted? It has been a few years since then. Members must bear in mind that the collection of such information has been undergoing

since the earliest days and information is being collected everyday. My question is: Under the system, who is responsible for examining such information and decides whether or not the information should be preserved? How long should the information be preserved according to the procedure? When should the information be destroyed? According to my understanding, the information will never be destroyed. The Secretary may perhaps come forward to explain this.

I would like to make a proposal today. As we notice from the report submitted by Justice WOO that the wiretapping operations carried out involve the information of many people, including the information of lawyers and their clients protected by legal professional privilege. Besides, those wiretapping operations were unlawful. How should we address this problem? Surely, some people may say, "the situation has now improved, particularly when Justice WOO is here." But what if Justice WOO is no longer responsible for the job? Those people will say, "they should have learned a lesson from the incident, and they will preserve the information so that Justice WOO may listen to it."

I can tell Members that after this incident, I believe, reports of non-compliance will rarely be made, and it will be highly unlikely that Justice WOO will have the opportunity to listen to the information obtained from unlawful wiretapping. Certain law-enforcement agencies are used to such practice, for they have been doing so for decades. They are used to listening to conversation between lawyers and their clients, including the defence tactics and the legal views of the lawyers, and this will continue even if the client has been arrested. These acts are of grave concern to the entire sector, which is not only my personal point of view.

Has the Secretary read reports on the grave concern expressed by the President of the Law Society of Hong Kong and colleagues from the legal sector, including barristers? Two days before this debate is held, that is on 9 March, the Law Society wrote a long article in response to this debate. It was pointed out that the article was written particularly for the motion to be debated today. The Law Society seldom takes such timely action to express its views on a particular motion. Many of their concerns are detailed in the article. Why? For such practices are tantamount to "white terror", which is a known issue to the entire sector. I have to name the ICAC in particular, for they are used to such practice, which has seeped into every nook and cranny. They pay no regard to Justice WOO. But they got into troubles this time as Justice WOO was really cross and

determined to persevere and battle for every inch. That was how they got into trouble.

They are used to such practice. They just do it as usual. They just do the bugging at will. If anyone does come forward to investigate into the case, they will just destroy the information. This situation is not unique to the several cases discovered by Justice WOO. Earlier on, a number of important legal proceedings in the past suffered the same fate. Even when the client, that is, the defendant, wrote to the Chief Executive and the Commissioner of the ICAC stating that the records were related to the case and had a bearing on his defence, the information was destroyed immediately. When Justice WOO wrote to the Commissioner of the ICAC, subordinates of the Commissioner claimed that it was due to misinterpretation and they did not know why the incident happened. No matter what, all the information was destroyed the next day. Now, when they have to come forward to give an explanation, they will say it is mere coincidence. But does it sound convincing?

How can the problem be dealt with once and for all? The answer is the establishment of a team of independent officers responsible for surveillance. Under the existing arrangement, officers responsible for surveillance have a sense of loyalty to their own forces and colleagues, they are inextricably related. Besides, the relationship between the existing surveillance team and the investigation team is too close. After hearing the tapes, they will inform the other side of the defence tactics they have heard, for they may just destroy the information afterwards, they will not report the case, nor will they say that it is related to legal professional privilege. For these reasons, the most effective solution is to employ persons who have no relationship with any member of the department to which the investigation team belongs, so that when any recording related to information protected by legal professional privilege is heard, even if that is heard unintentionally, the case will be reported to Justice WOO.

If so, how should the team be structured? In my motion, I use the word "consider" in relation to this issue, for this involves the structural design. However, in principle, if the officers concerned lacks the required independence, and they remain staff members of the ICAC or the Police Force, the problem is only swept under the carpet and it will remain unsolved forever.

President, a more important problem is that under the existing system, "public safety" has been made one of the principles for allowing wiretapping.

However, the definition concerned is ambiguous, the money spent is grouped under the item "Rewards and Special Services" where the transparency is very low — this has been an area of dispute between the Government and me for more than a decade. However, overall figures indicating the number of cases classified under the category of "public safety", as well as the highest and lowest number of cases involving interception of communications, are not made public. Therefore, I think the people of Hong Kong are still living under white terror. Under the existing system, the Government may continue conducting surveillance of a political nature on the grounds of public safety.

President, we need a total reform. Amendments to the code of practice as Mr LAU Kong-wah has proposed will not work. His proposal is like burning daylight, which is redundant. Surely, the Government will be able to meet his request and fulfil its promise. But it is indeed unnecessary for us to ask the Government to do something it will do in any case. By scolding the Government gently, he is indeed giving the Government a tremendous lift in disguise.

MR LEUNG KWOK-HUNG (in Cantonese): President, history always makes mockery of us. I would like to thank Dr Margaret NG for providing me with a record of proceedings on 5 August 2006 of this Council. On that day, Members had discussed the Interception of Communications and Surveillance Ordinance mentioned today.

President, at that time, Mr LAU Kong-wah was not yet appointed as an Executive Council Member, but his performance was even better than yours. Were you already an Executive Council Member at that time? I cannot remember. At that time, LAU Kong-wah said that he would not allow us to pass even one single amendment and we were called the opposition camp — this is the term most frequently used by you people — do Members think that this person is crazy?

Why should none of the amendments be passed? He had his logic. He said that according to our arguments, we would let go all scoundrels and could never arrest them. In fact, this sentence is absolutely senseless. Even when there is no such ordinance and the Government is allowed to intercept communications deliberately, we can still arrest those people. And now, only some restrictions are imposed. President, you had also made a speech on that

day, saying that we tried to embarrass the Government on purpose. I will not embarrass you on purpose, nor will I embarrass anyone on purpose. In fact, there is a situation called "inviting humiliation" in this world, which means someone brings disgrace to himself.

On that day, what were we talking about? I would like to express my gratitude to Dr Margaret NG. I have thanked many Honourable Members today. And I would like to thank Dr Fernando CHEUNG for writing such a good article so that I can quote it. Dr Margaret NG has cited a sunset clause — I always make it wrong as I do not know whether it is "the sunset" or "the setting sun" in Chinese. It does not matter — the sunset clause, I have mentioned it in Chinese for dozens of times but still make it wrong every time. This clause says that the Government has made the legislation hastily, as the Government is always acting in an unconstitutional manner and it relies on Donald TSANG who allows law-enforcement agencies, such as the Independent Commission Against Corruption (ICAC), to speed up the handling of cases at the cost of the privacy of the public. His honour — not you, though you both surnamed TSANG, what I refer to is Donald TSANG — he has invented the concept of legislation by the executive, which is, frankly speaking, the most ridiculous thing in the world. The Hong Kong British Government should, of course, be blamed, and he is part of its left-over evils. Since the Chief Executive had talked nonsense, there were bound to be mistakes. And with the loss in three lawsuits, the ordinance was enacted hastily.

They blamed Members from the so-called opposition camp for hindering the legislative attempt. I remember this. President, I think you should remember this as well. We still had to hold meeting on 5 August that year. Some of us should have started their vacation already on 5 August. As the Government had performed poorly and the Chief Executive had taken the lead to violate the constitution, we then enact the law hastily, and the ordinance so drafted was controversial as well. Frankly speaking, Dr Margaret NG was very nice with the Government and had not pushed it at all. She only requested it to conduct a review two years later, and therefore proposed the sunset clause, with a view to requiring that the Government should take up the responsibility. In fact, this is a deal in which the Government wanted to enact the law hastily, whilst we could not convince it regarding many clauses. However, we thought that we should not hold any idea of being antagonistic with the Government for the time being. As for matters which we could not convince it or it could not see what

we wanted, we should allow it to give us chances for proposing amendments two years later according to the actual situation. As such, we had let go the Government. Today is the chance we have two years later. But what is the result? Even for Justice WOO Kwok-hing, who wanted to get something from the ICAC, the ICAC has made things difficult for him, saying, "Sorry, it has been deleted."

The first point which should be clarified is that, if there is no such sunset clause to restrict the Government, it will only become nastier rather than being embarrassed. Am I right? If there is such clause, we should have done something according to the sunset clause. What I mean is, if information is written as intelligence, it can be possessed permanently for other purposes (as intelligence can be exchanged), then there would not be such a thing as judicial privilege? Judicial privilege is another thing. Judicial privilege is a capital crime, as under the principle of the common law, dialogues between a lawyer and his client should not be intercepted. At present, the Government should not distort such a concept. What I mean is deliberately wiretapping the wrong things, but for wiretapping the wrong things unintentionally, will it be written out as intelligence? How will the intelligence be handled? Will it be sent to the Eastweek Magazine to fix you, President? If you have a scandal or something you do not consider as a scandal, and someone sends it to the Eastweek Magazine for writing a report of 16 pages, it is really a big deal. President, I am concerned about your interest, as you may not be in favour or supported for a long period of time.

Therefore, we have to protect everyone in Hong Kong. In fact, we are not talking nonsense. For those who have some knowledge about history President, I know you are also very familiar with the history of the Communist Party of Russia. As BERIA was in charge of the intelligence agency, he was very powerful and influential. If he had not been cajoled by KHRUSHCHEV and others to a meeting and be shot to death, Russia may still be under the rule of the Communist Party. There is another person who was not a communist, he is HOOVER. He was in charge of the FBI, who could access the information to threaten the president. Buddy, if businessmen or HOOVER were ambitious, they could take advantage of this loophole and use the intelligence I mentioned which is not necessary to be kept to blackmail, fix and purge others. There are of course such things in our country. Chairman MAO did not remember the business of the Central Committee, as he always went back on his promises. He

therefore asked YANG Shangkun, the secretary of his office, to record everything for him. One day, he noticed that he was audio-recorded for certain things. Poor YANG Shangkun. He immediately became a time bomb next to Chairman MAO. It would not do even with the consent of Chairman MAO. It would not do once he knew certain intimate things of his were recorded, as allegedly, Chairman MAO had done something on the train which he should not have done.

As we can see, in both ancient and modern times, such as the Guards in Embroidered Coats and the Minister of the Army in the Ming Dynasty, all got intelligence in this way. YU Qian was also killed because of this as many spies were around at that time. Buddy, is there anything wrong in what I have mentioned today? If information is obtained illegally and irrelevant, why should it be regarded as intelligence permanently? If in future Mrs IP is found not obedient, she has to be fixed. This will not do and it is not allowed. We have to put a regime under restraints. A regime which condones the acts of someone could make that person go against it. A collective tyranny will not do. If it is a collective tyranny, a soft one, which condones or trains someone to go against the regime, fatal consequences will result. HITLER is one of the examples. The Gang of Four is another example. With the Gang of Four, spies were all around, who got some letters of forced confession and steal things from the Courts. Now, we cannot steal things from the Courts. But we can obtain intelligence by another illegal means. It is, in fact, another approach under which we will not be arrested. However, if someone has slyly recorded LAU Kong-wah's activities and then threatened him to vote in a certain way; or as I know some inside stories of the appointed Members of the Executive Council, I then blackmail them, can I do so? "Uncle Fat" (Mr LAU Wong-fat), it is not allowed.

Therefore, the rationale is very simple. We just speak for everyone, but why we are being accused of trying to embarrass the Government? President, it is what you said at that time. I was enraged. But it has past and I am not angry any more. However, LAU Kong-wah is still here. Today, he still adamantly insists that what I have mentioned will not do. Buddy, put simply, what is the state? It is a state apparatus, which should, first of all, obey the ruling class. If the ruling class does not rule properly, social stratification may result. It will then counteract this state apparatus and take control of it, and impose tyranny on all the people.

Hong Kong may not be up to this stage today, but we connive at our state apparatus, including the ICAC and the police to act unscrupulously. First of all, I have to make it clear that what I am referring to are not those practitioners but their senior management, who are anxious to accomplish achievements and cling onto the rich and powerful. There is legislation to allow them to keep some unnecessary intelligence. This is similar to "putting a rat in the rice container", which will bring trouble to ourselves. President, will you do so? I will not. Why will the Democratic Alliance for the Betterment and Progress of Hong Kong "put a rat in the rice container", which is not tagged as "always full", but is tagged with "human rights, privacy, freedom and the rule of law"? Frankly speaking, a rat came out and made two bites, saying that not even a single amendment should be passed. This is equivalent to "putting a rat in the rice container", leading to the present situation. Therefore, I have no alternative but to bring up past events here, and I hope that the President would not mind my doing so.

SECRETARY FOR SECURITY (in Cantonese): President, more than two years ago, the Interception of Communications and Surveillance Ordinance (the Ordinance) was finally enacted after some 100 hours of discussions in the Bills Committee and 50 hours of Second Reading debate in the Legislative Council. Today, the motion proposed by Ms Cyd HO on the Ordinance gives us a chance to discuss this subject of public concern again.

Before Members debate the original motion of Ms Cyd HO, and the amendments proposed by Mr LAU Kong-wah, Mr James TO and Mr LEUNG Kwok-hung, let me first expound the purpose of enacting the Ordinance, the comprehensive protection and checks and balances laid down in the Ordinance in the course of interception of communications or covert surveillance operations by the law-enforcement agencies (LEAs), as well as how the Ordinance has been implemented since its enactment in August 2006, with a view to providing the basis for Members' discussions later on.

As I pointed out time and again during discussions of the Ordinance, interception of communications and covert surveillance operations were indispensable investigation tools of the LEAs. The Ordinance has provided for a stringent and reliable regulatory regime for the interception of communications and specified kinds of covert surveillance operations by public officers, to ensure that the LEAs can pay attention to and protect the privacy and other rights of the public while they combat crimes and protect public security effectively. In fact,

the Ordinance has taken on board the valuable views expressed by Members from different parties and groups in the course of the Bills Committee's discussions.

The mechanism established under the Ordinance exercises stringent control and monitoring at various stages of covert operations conducted by the LEAs. First of all, before the LEAs carry out the relevant operations, they must first be given authorization by an authorizing authority (a panel Judge or a designated senior LEA officer). The applications for authorization must comply with the strict conditions specified under section 3 of the Ordinance; that is, authorization should only be given by an authorizing authority under these conditions: the operation must be conducted for the purposes of preventing or detecting serious crime or the protection of public safety. The tests of proportionality and necessity must be met; including the requirement that the purpose of the operation cannot reasonably be fulfilled by other less intrusive means.

In the event that the LEAs detect in the course of their operations that the conditions for the continuance of a prescribed authorization cannot be met, they must expeditiously discontinue the operations and report to the authorizing authority which will then revoke the authorization.

The Commissioner on Interception of Communications and Surveillance (the Commissioner) is an independent supervisory authority established under the Ordinance to monitor LEAs' compliance with the relevant requirements of the Ordinance. The Commissioner requires the LEAs to submit reports on a regular basis, and he will conduct visits to the LEAs to check if they have complied with the requirements. The Commissioner will thoroughly investigate any non-compliance cases of the LEAs, and he will propose to the LEAs and the Security Bureau specific improvements on the basis of the investigation results obtained. The Commissioner should submit annual reports to the Chief Executive, assessing whether the LEAs have complied with the relevant requirements of the Ordinance. The annual reports would be tabled in the Legislative Council to facilitate understanding by the Legislative Council and the public of how the Ordinance has been implemented. This arrangement would greatly enhance the transparency of the regulatory mechanism established under the Ordinance. Moreover, the Commissioner will examine, in response to applications made by the public, if any covert operations have been conducted without authorization. If that is the case, the Commissioner may order the payment of compensation by the Government.

The Ordinance also specifies that the LEAs should establish effective internal supervisory mechanisms to closely supervise whether departmental officers have complied with the relevant requirements of the Ordinance. Department heads must conduct regular reviews; if any non-compliance is found in the course of reviews, or departmental officers have learned about any non-compliance through other channels, they must immediately notify the Commissioner and submit comprehensive reports. Departments must also keep all the relevant information to facilitate investigation by the Commissioner. Furthermore, the heads of the LEAs must appoint a responsible officer for reviewing authorized departmental officers' performance of their functions in accordance with the Ordinance.

In addition, the Ordinance provides for multiple privacy protection measures. These measures include requiring the LEAs to ensure that the covert operation products must be handled by specified arrangements, to avoid as far as possible the disclosure or duplication of operation products, or their being obtained without authorization or by accident, and to ensure the prompt destruction of products by LEAs obtained from covert operations. The Ordinance also ensures sufficient safeguards for any information which may be subject to legal professional privilege obtained in the course of covert operations.

To further ensure the proper compliance of the LEAs with the requirements of the Ordinance, the Secretary for Security has issued the code of practice (the code) for the purpose of providing practical guidance to the LEAs in respect of matters specified under the Ordinance. The LEA officers must comply with the provisions of the code. In case of contravention, disciplinary actions will be taken against the officers concerned.

The abovementioned regulatory and monitoring arrangements show sufficiently that the Ordinance provides an effective check and balance mechanism for interception of communications and covert surveillance operations conducted by the LEAs.

The regulatory regime established under the Ordinance is very stringent, and it is comparable to similar regimes in other advanced common law countries. In performing his monitoring functions, the Commissioner has given full play to his check and balance functions. As such, when the LEAs conduct interception

of communications and covert surveillance operations, they act carefully and prudently, and comply strictly with the relevant requirements of the Ordinance.

It can be seen from the annual reports of the Commissioner in 2006 and 2007 that the implementation of the Ordinance since August 2006 has generally been smooth. It is stated in the original motion proposed by Ms Cyd HO that there are currently many malpractices in the enforcement actions of the LEAs under the Ordinance but I do not agree with this point of view. Actually, what happened in the course of implementation of the Ordinance has deepened the understanding of the requirements of the Ordinance and its operation by parties concerned. Regarding the deficiencies in terms of provisions and procedures, the Security Bureau and the LEAs have taken pragmatic measures to make improvements. In the monitoring process, the Commissioner and the LEAs have found individual cases of non-compliance with the relevant requirements of the Ordinance but there are very few such cases. Some cases of non-compliance involve technical errors (for example, one or two minutes' gap between the expiry of an authorization and the renewal of an authorization), and some have emerged because individual officers failed to thoroughly understand or be familiar with the relevant requirements of the Ordinance. The Commissioner also thinks that there is no or no sufficient evidence of any wilful or deliberate flouting of the requirements of the Ordinance.

I must emphasize that the LEAs attach great importance to cases of non-compliance with the requirements of the Ordinance. Apart from taking suitable disciplinary actions against the officers concerned, procedural improvements have been made to prevent recurrence of similar cases as far as possible.

President, it has been two years or so since the commencement of the Ordinance and the overall implementation process has been smooth. We will continue to make concerted efforts with the panel Judges and the Commissioner with a view to further perfecting the operation of the regime. After the Commissioner has submitted an annual report in 2008, we will have a more precise grasp of the operation of the mechanism established under the Ordinance within the first two full years, and we will then conduct a comprehensive review of the Ordinance. This was a pledge I explicitly made during the Second Reading debate of the Interception of Communications and Surveillance Bill a few years ago. I will certainly observe the pledge and this motion debate gives us a very good opportunity to listen to the views of Members present on the

Ordinance since its commencement. We will take the views of Members into careful consideration when we conduct a comprehensive review of the law.

I so submit, President. I will give a response after listening to Members' opinions.

DR MARGARET NG (in Cantonese): President, when I listened to the speech made by the Secretary for Security just now, I felt I was back in 2006, as he had given us the same comments in his opening remarks at that time. Those remarks were very grandiose in principle. However, in scrutinizing the provisions clause by clause, we then discovered that they could not be implemented. We found loopholes here and there, which explained why we had proposed so many amendments. We hoped that with the passage of these amendments, the ordinance so passed would, at least, be safer. Unfortunately, all our amendments were negated. This is the marked-up copy of the amendments I proposed at that time.

President, I made a comment in the end, expressing that I was so worried why such an ordinance should be enacted. Our freedom and privacy of communication is safeguarded under Article 30 of the Basic Law. This ordinance concerning covert surveillance has, in fact, infringed the right of the public. However, there had never been any extensive and genuine public consultation on this ordinance, but we just endorsed it with no other alternative. I think this absolutely goes against the principle. In fact, we should conduct a public consultation at the outset and draft the ordinance properly, so that public views could be fully reflected. As such, I proposed to include the "sunset clause". At that time, I proposed that a number of provisions in this ordinance, including how to grant authorization, would cease to have effect automatically on 8 August 2008. The ordinance can continue to have effect upon endorsement, provided that the Secretary conducts a review before that date. This is a mechanism which can genuinely force the authorities to conduct a review. But the Secretary refused to adopt it and he only made a commitment. In fact, it is almost time now. Has he honoured his commitment? Or does he just keep on delaying it? When the time comes, it will be up to him entirely as to what should be reviewed and what should not. This explains why some people are not willing to be regulated by law and just make commitments, as they can dishonour them by resorting to political forces by that time.

President, I had proposed more than 100 amendments at that time, and it is not necessary for me to talk about them one by one now. However, among the loopholes pointed out by me at that time, it has been verified that many of them do give rise to troubles today. And now, I would like to say a few words on some major areas.

The first area is about criminal liability. The Bill at that time did not stipulate any criminal liability. Even when law-enforcement officers contravene the legislation deliberately and intercept communications illegally, they will just face internal disciplinary hearings under most serious circumstances. Moreover, such hearings will only be held with the prior consent of their superiors. Even if he has deliberately acted against the authorization or intercepted communication which is subject to legal professional privilege without authorization, there is no criminal liability at all. Although the public's privacy is infringed and they have suffered from losses brought about by the interception of communication by law-enforcement officers, they have no right even to make any claim of civil liability. At that time, I proposed to include this criminal liability, but the Secretary had objected to it, saying that this ordinance would only be applicable to law-enforcement officers. Therefore, if only law-enforcement officers were subject to criminal liability while others were not, this would be unfair to the officers. He put up such an argument and objected to my amendment on this account.

Second, I proposed at that time to enhance the actual powers of the Commissioner, so that he could conduct surveillance effectively. The criminal liability proposed by me was, if the Commissioner had reasonable doubt that law-enforcement officers had intercepted communication illegally or provided false information to panel Judges, he could request the authorities to conduct an investigation and submit a report to the Commissioner to state whether any disciplinary action should be taken. Moreover, the Commissioner also had the power to conduct investigations independently and refer his findings to the Director of Public Prosecutions, so as to enable the Commissioner to conduct surveillance in a more practical way.

The third area is about professional privilege. At that time, I proposed clause 30A to tighten the interception of communication which might infringe professional privilege, and as mentioned by Members earlier, information relating

to covert surveillance should be destroyed. However, it is still a question whether intelligence generated from such information can be kept permanently.

President, I am very grateful to the Law Society for giving us opinions which are thoroughly considered once they know we have this motion debate today. The Law Society has very strong views regarding criminal liability and professional privilege in particular. The fourth amendment I proposed at that time was to explain that when applying for authorization, law-enforcement officers had to provide detailed, specific and transparent information to panel Judges, so as to enable them to consider the authorization on the basis of such information. Moreover, I had also made it very clear in the debate that the effect of that move was to make the authorization cease to have effect automatically in case the information was found to be false or the situation had changed later. *(The buzzer sounded)* Regarding this point, Members can check the record as a very clear explanation had been given at that time. And so there should be no doubt on this point today. In case there is any change in the facts or the conditions, the authorization will cease to have effect automatically.

President, we see today that law-enforcement agencies have placed their interpretation of the law in a position overriding the law itself. We still have another provision, stating that wiretapping should be terminated upon the arrest made. This is also one of the original amendments, which had been negated as well. The whole Ordinance has not mentioned the right to privacy of communication under Article 30 of the Basic Law. I consider that it should be included. It was negated at that time, and it is now an opportune time to conduct a review.

Thank you, President.

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

MR RONNY TONG (in Cantonese): President, I notice from the screen that no Member is prepared to speak. Frankly speaking, I really feel helpless and I am deeply saddened.

President, this is a very serious question, though it may not be as important as that on medical check-up we have discussed earlier. However, I believe

humans are different from animals in the sense that we respect our rights. Therefore, I am really very disappointed to see no Honourable colleague is in the queue for discussion of this question.

President, on the subject of interception of communications, although the Government's attitude in enacting the legislation cannot be regarded as acting against the public's wishes, it can be regarded as putting the cart before the horse. Why is it so? President, as stipulated in Article 30 of the Basic Law: "The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences." Law-enforcement officers are responsible for detecting criminals. As compared to the right of the general residents, this provision is to protect law-enforcement officers rather than the public.

Moreover, President, as stipulated in Article 35 of the Basic Law: "Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers and protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel." However, President, although this provision is made, without the authorization by panel Judges, there are still many cases in which Hong Kong residents' right to confidential legal advice is infringed. However, as this ordinance is in place, the requirement under the Basic Law that Hong Kong residents shall have the right to institute legal proceedings in the Courts against these acts will exist in name only or even be ignored. Is this ordinance sensible, reasonable, lawful and constitutional? The answer is very obvious.

President, we adhere to this system which would rather show leniency than wrong the innocent. Even if just one single innocent person is falsely accused, this system is a failure. By the same token, even the basic right of just one single innocent Hong Kong resident is infringed, this system is also a failure. Therefore, after reading the two reports released by the Commissioner recently, the most recent one in particular, we are very, very disappointed as some irregularities have in fact been included. Most importantly, in some cases

mentioned by me earlier, law-enforcement agencies have turned a blind eye to the right of privacy of confidential communication and the right to legal advice as enshrined in the Basic Law. Why are we now under such a situation that I consider unacceptable? President, this is attributed to the fact that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Liberal Party had ignored the requirement of basic human rights two years ago. They acted, primarily out of political considerations, in a completely irresponsible way and in such an unwise way as criticized by an Honourable colleague earlier, hence resulting in such an outcome.

Today, I notice that Mr LAU Kong-wah is not in the Chamber and I wonder where he has gone. It seems that he is a bit penitent. But I do not know whether such penitence is just a trick or a pretense, or he really thinks that he has done something wrong. Were it not for what he had done, we would not have what we got today. Had he not insisted on refusing the passage of even one single amendment, fewer or even no irregularities would be identified today.

President, why do some Honourable colleagues find the DAB's act on that day unwise? If we read through the 200-odd amendments, including those moved by Dr Margaret NG, I find one of the objections most senseless as even the amendment for improving English grammar was negated. President, do you find it an unwise move? Very regrettably, President, as for the marathon debate on that day, it was only reported in newspapers whether Dr Margaret NG — Mr James TO in fact, had ever been to the washroom. President, this is another pathetic point.

President, as time is running out, let me go through my points quickly. In fact, there are three aspects that we have to review. First, the report released this time has revealed that law-enforcement agencies have a culture that they are very reluctant to be subject to checks and balances by law. They regard the rule of law or protection of privileges under the constitution as a kind of tool which will weaken the power of law enforcement. President, the report has also reflected that in the process of requesting documents from law-enforcement agencies, the Commissioner has been obstructed several times, including those required documents have been destroyed or sanitized. Some law-enforcement officers even consider the Commissioner's job as a kind of distrust in their professionalism, resulting in certain officers being not so frank and forthcoming to him. This is how the Commissioner describes their attitude. President, such

attitude is in no way acceptable. If our law-enforcement officers do not respect the constitution, legal procedures and the law itself, are we not beyond redemption?

President, the second point I want to make is that in this process, there are, in fact, a lot of controversial issues. Take the decision of the revocation of authorization as an example. During the period of the revocation of the order, shall law-enforcement officers be allowed to conduct illegal wiretapping and interception of communications? If so, will it facilitate their abuse of power? Regarding the problems mentioned above, if we do not address them, there is indeed no reason for this ordinance to exist.

President, the third point is that we rely on law-enforcement officers to take the initiative to co-operate with us. This is a system under the ordinance, which is a system of being true to ourselves. If we do not respect the rule of law, the legal procedures and the constitution, such a system of being true to ourselves will not work.

PRESIDENT (in Cantonese): Mr Albert HO, have you pressed the "Request to speak" button?

MR ALBERT HO (in Cantonese): Yes.

PRESIDENT (in Cantonese): You may have pressed Mr Fred LI's button wrongly.

MR ALBERT HO (in Cantonese): Really? I am sorry. *(Laughter)*

PRESIDENT (in Cantonese): It does not matter. Mr Albert HO, you may speak now.

MR ALBERT HO (in Cantonese): President, I am still not familiar with it.

This is the second report released by the Commissioner on Interception of Communications and Surveillance (the Commissioner), which has aroused grave concern and strong reactions in our community. It is because the report has revealed that some law-enforcement officers under the Independent Commission Against Corruption (ICAC) have, surprisingly, adopted an attitude which we consider is a contempt for panel Judges who are responsible for granting authorization or even the Commissioner. This is not only an attitude of being not forthcoming or reluctant to co-operate, but also a kind of contempt. More seriously, in certain aspects, this has revealed the low awareness of the rule of law on the part of law-enforcement officers. Why do I say so? I am particularly concerned about the so-called divergence in the legal point of view.

According to this report, panel Judges make it very clear that in case authorization is granted on the basis of some conditions, but it is found during the interception of communications that such conditions cannot be executed or do not exist, or cannot be met, such approval should be regarded as automatically revoked. This is a very clear legal advice given by panel Judges, which has also been recognized by the Commissioner. However, the ICAC officers do not accept this view, thinking that even though they can apply afresh for an authorization, the original one does exist. I think the ICAC officers just hold on to their own views and ignore those put up by panel Judges.

This has revealed a very fundamental problem. If the whole system is based on the judicial When making the law, we originally proposed that there should be a system of judicial authorization. In other words, such authorization should be granted by Judges in the Court. If such a system is in place, it will never be a situation under which applicants and approving Judges have different opinions. It is because under judicial authorization, judgments made and conditions set by Judges are binding. However, under this system, as what I had pointed out in previous debates, Judges had been included under the executive authorities and become part of the authorization mechanism within the executive system. Therefore, in the eyes of public officers and executive authorities, Judges are no longer Judges, but just someone who are authorized with special power in law or responsible for exercising that power. Such mentality does not only exist in the ICAC or law-enforcement agencies, but more regrettably, also in the Security Bureau and Department of Justice. And it is so absurd that law-enforcement officers just hold on to their own views and do not

accept the legal advice given by panel Judges. Such mentality is supported by the security authorities and lawyers in the Department of Justice. They allege that panel Judges have made a wrong interpretation of this law.

However, we should bear in mind that all panel Judges are Judges of the Court of First Instance of the High Court and the Commissioner, Justice WOO Kwok-hing, is the Judge of the Court of Appeal. Law-enforcement officers dare to say that the legal point of view of Judges of this calibre is wrong and refuse to accept their opinions. Do Members think it very ridiculous? We can see why we queried about the whole system at the very beginning, as the matter of our concern did arise. Therefore, we consider that we should adopt the system of judicial authorization from the outset. Admittedly, Judges may also be wrong. However, we can challenge the mistakes made by Judges through appeal procedures or judicial reviews, rather than relying on law-enforcement agencies who just hold on to their own views.

Of course, some Honourable colleagues have also pointed out in these few cases, we suspect that the ICAC has destroyed some information, which is privileged, so as to evade further investigation by the Commissioner. The ICAC has made tremendous efforts. The Government, of course, supports it. The Secretary also supports it, saying that it is only an inadvertent act and the ICAC has not evaded from being investigated at that time. However, we find that many officers have adopted an attitude which is not so forthcoming. Is this really an inadvertent act? Is such argument convincing? Therefore, we stress time and again that we must face up to such attitude. We consider if the basis of the whole system does not include a system of judicial authorization, it is fundamentally a mistake.

Being criticized by public opinion, the Secretary for Security and the Commissioner of the ICAC advise that they have made proactive responses and amended their codes of practice immediately. However, I consider that it is inevitable for us to conduct a comprehensive review of this law and all the codes expeditiously. This is what we must do without delay.

Lastly, I want to say that the Democratic Party and many people in our community are very grateful to Commissioner WOO Kwok-hing for being impartial, not yielding to pressure and highly responsible in drafting this report. As we all know, this job is not only cumbersome and difficult, but also unable to please people. The Commissioner has to deal with some law-enforcement

officers who are not forthcoming and reluctant to co-operate. However, when answering questions at the press conference, we can see that the Commissioner has endeavoured to avoid assuming some acts as done out of improper motives. In view of his integrity and professional spirit, I think he should be praised.

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

MS EMILY LAU (in Cantonese): President, I speak in support of Ms Cyd HO's motion. Although only a few Members have responded today, the Secretary should not be too delighted. It is probably because many Members do not have time to read the report, and the contents of the report are also very complicated. These Honourable colleagues have really done what is right; they should not make casual comments before reading the report because this subject matter is very serious. President, to be frank, if political figures or singers in the future are wiretapped, I believe it will be very sensational and the incident may be in the headlines for several months. However, the Secretary may wait and see.

President, this report by Mr Justice WOO is about what happened in 2007. How many cases at that time involved wiretapping or interceptions? President, there were 1 556 cases, that is, more than four cases a day on average. That is to say someone may be eavesdropping on what I am saying now. Evidently, the situation is not at all simple.

Among the some 1 500 cases, only 31 cases have been rejected. President, of all these cases, 798 have occurred for the first time, that is, there are more than 700 recurring cases. That is why we asked the Secretary on that day, in comparison with other places, were some 1 500 cases a considerable number or not? I have not got an answer so far. The Secretary replied that an investigation would be made but he should find out first if there were other places like Hong Kong that had highly transparent and such a large number of relevant systems before finding an answer. I will see if the Secretary would be able to give us an answer later. It would surely be excellent if we rank first in the world, but we have to see the result first.

President, in the parliamentary assemblies of some civilized countries in the world, these matters are monitored by some special committees. As regards issues not for public discussion such as intelligence and defence, these

committees can summon all intelligence officials to give explanations behind closed doors. The Legislative Council Secretariat has already conducted a study in this connection. We asked the Administration to make a law and set up a committee in the Legislative Council but it is not ready to do so because it thinks that having this legislation is already enough, which is truly laughable. So, I would like to consider if other places have a similarly large number of cases like Hong Kong, that is, four to five cases every day.

Mr Albert HO has just praised Mr Justice WOO for making perfectly right comments. President, this shows that we focus on the issues rather than the persons. In the past, we frequently criticized Mr Justice WOO, especially when he handled election matters, but Mr Justice PANG is now even more outrageous. *(Laughter)* We are going to notice that; if Mr Justice WOO does something well, we will praise him, but those who do things well may not be able to continue to hold the offices. President, Anna WU did a good job before but she could not continue to work with the Equal Opportunities Commission; I am not sure why she has become an Executive Council Member now. WONG Fook-hum worked with the Independent Police Complaints Council in the past; similarly, he cannot continue to hold the office. When he subsequently attended a meeting of the Legislative Council, we all heard his complaints about the difficult time he had when he held the office. Alas, poor him! So we hope I am not sure when Mr Justice WOO would be sacked, that is, if he does his job well. Hence, all of us have said, "praising him may cause him harm". Anyway, we focus on the issues rather than the persons.

President, Mr Justice WOO has mentioned in the report something that we are highly concerned about. He said that there was no reported case of journalistic material. I was happy to hear that and I have great confidence in Mr Justice WOO. During our last discussion, we asked if there would be political surveillance. President, your Honour may also be a target but we have not touched upon that point this time. I hope Mr Justice WOO would listen to what we are saying. I would like to tell Mr Justice WOO that I hope the matter would be mentioned in the future reports because it is stated very clearly here that its scope should be determined by the Commissioner. He told the community that there was no reported case of journalistic material, and that was our concern. But, is there political surveillance? I hope Mr Justice WOO would let us know.

Many Members have just referred to the four ICAC cases which are really horrifying. How has the Secretary responded? He has said, "We also agree

that a small number of individual officers have not performed so well, and the law-enforcement agencies have taken follow-up actions." In what areas have follow-up actions been taken? President, it is said that three persons were admonished, and one person was admonished and warned; is that enough? Quite a few Members have just referred to the submission from the Law Society. President, your Honour may have read the submission in which it is repeatedly stated that, owing to the seriousness of the cases involving infringement of individuals' privacy, such acts should be criminalized no matter if they constitute non-compliance with the Ordinance or the code of practice (the code). President, I hope the Administration would get a clearer look at the matter.

On 3 March, the Commissioner spoke here, and what he said was ridiculous. President, he said, "We are very sorry that the four ICAC officers had acted inappropriately in the incidents." According to him, at the initial stage of the implementation of the Ordinance, it was complicated and not easy to implement the details. Wow, if any ordinance is implemented on the basis of this criterion, members of the public will ask the officers not to arrest them for the Ordinance is complicated and not easily understandable at the initial stage of implementation. Can they just get away with it? Wow, is that not very dangerous? How could that happen?

What are the views of the Law Society on this? According to the Law Society, it is inconceivable — I suppose the Chinese term should be translated this way, President, your English standard is higher than mine — that these people would fail to understand the Ordinance. He said that the code was 40 to 50 pages long. Yet, if the ICAC officers failed to understand the contents, should they not check with their supervisors instead of making conjectures on their own and then said that they did not understand? Therefore, this was obviously ridiculous.

Furthermore, according to the Law Society, a review should be expeditiously conducted, and Mr LAU Kong-wah has also said that a review should be conducted as soon as possible. Nevertheless, President, you will be scared if you take a look at the schedule of the review. The report in 2007 was submitted to the Chief Executive on 30 June 2008 but only released to the public on 16 February 2009; there was a lapse of eight months. If the same timetable applies, the report in 2008 would be submitted to the Chief Executive on 30 June this year but only released to the public on 16 February next year. So, why has the Secretary told the Commissioner and the Commissioner has written in the

report that, according to the Administration, a comprehensive review of the Ordinance will be conducted in 2009. Can the things be done together at that time? Can a review be conducted in 2009? If a report is only submitted in mid-2009 and released to the public eight months later, that is, in February or March next year, a review may not be conducted by the end of next year.

Hence, President, a lot of problems have already appeared before our eyes, and I think that a review should be conducted as quickly as possible. The Law Society has also expressed its views on the Ordinance and the code. Some parts of the code deal with matters related to the Ordinance; if the Ordinance is not amended, the code cannot be amended. If the Secretary tells us so this year — as you have told the Commissioner — that a review will be conducted immediately this year, I will believe it. Otherwise, you would be lying to the Commissioner and the community. *(The buzzer sounded)*

MS AUDREY EU (in Cantonese): President, the Law Reform Commission published a report in 1996 in which it was stated that the law-enforcement agencies had extremely wide powers of interception under section 33 of the Telecommunication Ordinance, which were not compatible with the Hong Kong Bill of Rights and the International Covenant on Civil and Political Rights. It was also stated that the Government would most probably lose the case if a judicial review was filed. The then Legislative Council passed the Interception of Communications Ordinance in June 1997 before the reunification, but the Chief Executive has still not ratified it after eight years.

In 2005, although the Court had ruled on two occasions that the covert surveillance operations by the Independent Commission Against Corruption (ICAC) had contravened Article 30 of the Basic Law, the Government was still not ready to table a legislative proposal before the Legislative Council. Moreover, it also made a very wrong decision at the time and issued an administrative order, that is, The Law Enforcement (Covert Surveillance Procedures) Order. Back then, quite a few people from the legal sector including me expounded clearly to the Government that it was absolutely incorrect to do that, and it should table a legislative proposal before the Legislative Council as soon as possible.

The matter was put off until 9 February 2006 when the Court of First Instance made a judgment on the case of *LEUNG Kwok-hung & KOO Sze-yiu v*

the Chief Executive of the Hong Kong Special Administrative Region. It was ruled that section 33 of the Telecommunications Ordinance had violated the Basic Law. However, as the Government was not ready to enact legislation, an appeal to the Court of Final Appeal was finally filed.

The Court of Final Appeal made a judgment on 12 July 2006 and ruled that the relevant ordinance was unconstitutional. Then the Government requested the Court to announce that the implementation of the relevant ordinance would be postponed for six months. As a result, the Legislative Council had to work in a hurry within the short duration left and pass the Interception of Communications and Surveillance Ordinance within a prescribed time limit.

The procrastination by the Government is the major cause of these problems today. As Mr Ronny TONG has just said, the stand of the Liberal Party and the Democratic Alliance for the Betterment and Progress of Hong Kong at the moment was that they were not ready to endorse any of the amendments. Dr Margaret NG has just given many specific examples within her limited speaking time and expressed that, had the amendment she proposed been passed, some of our dispute would not have appeared today.

Therefore, President, I am going to settle old scores with LAU Kong-wah today. I have looked up the Hansard of the Legislative Council meeting for what he said on that day. He said, and I quote, "I have full confidence to recommend this Bill to all Hong Kong people", end of quote. Why have I read it out in particular? It is because he has proposed an amendment today asking for a review to be conducted expeditiously. So, I must read out what he said in the Chamber on that day. He said that he had full confidence to recommend this Bill to all Hong Kong people. He also said that some Members in the opposition camp, that is us, expressed their political stance on that day so as to put up a big show later.

About the amendments, Dr Margaret NG has just given examples to illustrate that all the amendments she proposed back then were negated. And, LAU Kong-wah said at the time that, if the majority of the amendments were endorsed, the capacity of law-enforcement officers would be greatly undermined. He was asked by the media what would happen if those amendments were endorsed, and he replied that there would be big troubles once they were

endorsed. Hence, he said, "we have maintained our stance firmly, not budging an inch and not allowing one single amendment to get passed. Our purpose is to stop the opposition camp from doing anything to disrupt law and order". These were the remarks he made then. Furthermore, he said that Members in the opposition camp were playing delaying tactics in the hope of going beyond 8 August, that is, the deadline for passing that Bill, so as to embarrass the Government.

On that day, we debated the sunset clause in this Chamber, and many Members from the democratic camp remarked that many problems would arise if the Bill was passed in such a hurry. That was why the sunset clause should be added to facilitate the conducting of a review within two years. Yet, LAU Kong-wah said, "Chairman, I now speak on the sunset clause which is about conducting a review. Dr Fernando CHEUNG asked in his speech earlier why even the proposal of conducting a review two years later could not be accepted". He said that Dr Fernando CHEUNG "got it wrong again, or perhaps he does not listen at all". He added that "a review will be conducted in 2009 and that it will be a comprehensive and practical review. Mr James TO's amendment proposes that the review should be conducted two years later, while the Government's proposal is three years, would that not be accepted?". He said that a review was often conducted three years later, and conducting a review three years later was the consistent stance taken by the Government. Putting it another way, a review would only be conducted after Mr Justice WOO had completed two full-year reports, that is, the reports in 2007 and 2008. In that case, a review would actually be conducted three to four years later instead of two years later. Let us think: we are only discussing the Annual Report 2007 in 2009, and we are expecting the Annual Report 2008 before a review would be conducted.

As a matter of fact, Mr Justice WOO already mentioned this Bill in the first report in 2006 — sorry, it is not a Bill — he considered that there were eight points in the Ordinance which should be amended. Also, he stated in the report in 2007 that there were eight points in the Ordinance to be reviewed. It was because many people, including the Law Society and the Bar Association that Honourable colleagues had referred to when they spoke a while ago, thought that the operation of the Ordinance would arouse concern and a review should be expeditiously conducted. That explained why LAU Kong-wah is overruling today what he had said yesterday, asking the Government to "expeditiously adopt measures" to "comprehensively review" and "make appropriate

amendments". I have read out what he said then, hoping that he would take this as a lesson instead of saying that we are playing delaying tactics or are being unreasonable whenever we propose amendments.

President,

PRESIDENT (in Cantonese): Mr LAU Kong-wah, do you wish to raise a point of order?

MR LAU KONG-WAH (in Cantonese): President, I seek elucidation on this point.

PRESIDENT (in Cantonese): Mr LAU, just a moment. Ms Audrey EU, have you finished speaking?

MS AUDREY EU (in Cantonese): President, the remaining part of my speech is that, I support the original motion and the amendments, hoping that the Government would expeditiously review the Ordinance and rectify the relevant loopholes. In particular, we can see from the two reports by Mr Justice WOO that the implementation of the Ordinance includes grey areas and some areas that make us feel disturbed.

PRESIDENT (in Cantonese): Mr LAU Kong-wah has sought elucidation.

MR LAU KONG-WAH (in Cantonese): President, Ms Audrey EU has just said that I am overruling today what I had said yesterday, which is actually not the case. When I made my remarks during the scrutiny of the Bill, I asked for a substantive review to be conducted in 2009; Ms Audrey EU has just read out what I said. Today, I am asking for the same thing in this amendment and I have not overruled what I had said yesterday. Actually, I hold a consistent stance in this connection.

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

MR PAUL CHAN (in Cantonese): President, the Annual Report 2007 to the Chief Executive by the Commissioner on the Interception of Communications and Surveillance (the Commissioner Report) was tabled in the Legislative Council by the Government in mid February. The four cases revealed made us feel puzzled, they involved inadvertent obtaining of information which may subject to legal professional privilege (LPP). The Independent Commission Against Corruption (ICAC) in which the public has faith and which has good reputation is the department concerned, and it is startling and distressing to know that.

Based on the four cases mentioned in the Commissioner's Report, it was found that the Commissioner on the Interception of Communications and Surveillance (the Commissioner) and the law-enforcement agencies (LEAs) were sticking to their views as to how certain legal provisions should be interpreted, or the procedures that should be taken under certain circumstances. However, it is most worrying that the front-line law-enforcement officers failed to fully understand how the provisions of the Interception of Communications and Surveillance Ordinance (the Ordinance) are put to work and even disregard the requests made by the Commissioner in person.

Please allow me to refer to LPP Case 2 mentioned in the Commissioner Report and express my views on it. The Commissioner has pointed out in his report that the ICAC Responsible Officer got the impression that the Commissioner was satisfied with the REP-11 report after the information on the interception case was obtained in November 2007. He later thought that the Commissioner had requested for records to be kept on all cases where LPP information had been obtained inadvertently. As stated in the Commissioner Report, the ICAC Responsible Officer misunderstood the Commissioner's request. That was unimaginable because the Ordinance had already been implemented for more than a year by that time, and the front-line law-enforcement officers should have some understanding of the Ordinance and the departments should have provided suitable training on that.

Though it is stated in the Commissioner's Report that there was no or no sufficient evidence of any wilful or deliberate flouting of the requirements of the Ordinance, one point in the Report deserves careful attention. According to the

Commissioner, certain LEAs were not as frank and forthcoming as he would have liked. That was demonstrated in the four cases in question.

Precisely because the four cases were revealed in the Commissioner's Report, the ICAC submitted a paper to the Panel on Security of the Legislative Council earlier on, stating that the management had taken improvement measures. For example, it had adopted new procedures and conducted reviews from time to time. It also organized training courses to facilitate fuller understanding of the provisions of the Ordinance by the officers concerned.

As I have noticed, improvement measures have really been taken. But, how they are to be implemented, especially the attitudes of individual officers in handling cases, would have to be further reported by the department to the Legislative Council and examined by the Commissioner in the future reports.

I agree that, while conducting a review of the Ordinance, the Government should comprehensively review the relevant code of practice as well, and make its best efforts to improve the attitude of law-enforcement officers in taking law-enforcement actions and enhance their understanding of the Ordinance.

President, these are my remarks.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Cyd HO, you may now speak on the three amendments. You may speak up to five minutes.

MS CYD HO (in Cantonese): Today, I am grateful to the three Members who have proposed amendments to my motion. But I appeal to Members to support the amendments by Mr James TO and Mr LEUNG Kwok-hung and oppose Mr LAU Kong-wah's amendment. Why? Although I thank Mr LAU for his show of goodwill, yet his goodwill is long overdue. He should have shown his goodwill in 2006 during the scrutiny of the relevant Bill. Moreover, his goodwill is far from sufficient because, in a nutshell, there are two salient points in his amendment. First, regarding the timing, he advocates that a review and

appropriate amendments be made after the submission of the second full-year report. But this is in fact too late. I hope Members will not be misled by Mr LAU Kong-wah because there are not just a few months in between. He asked earlier, "Why can we not wait for a few months? It is now March and the report will be submitted by the end of June." But this is wrong and a mere trick.

Of course, the earlier the submission of the report by the Commissioner to the Chief Executive the better. However, the 2007 annual report, after submitted by the Commissioner to the Chief Executive in June, has been put aside for a total of seven months and 10 days before its publication on 10 February this year and tabled before this Council. Also, we have to bear in mind one thing. In last year's policy address, the Chief Executive said that he would dedicate his effort to addressing the impact of the financial tsunami. Hence, all other matters would have to be put aside, including the consultation on political reform. Under such circumstances, will the Chief Executive sit on the report recently submitted to him? If we, in a wishful thinking, expect that a review will be conducted after the submission and publication of the second report, this will in fact give the Chief Executive a laxity to sit on the report for as long as he likes, thus rendering the review a distant and forlorn hope. So, I wish that the Secretary, in his response later, will tell us specifically how long the Chief Executive will sit on the report this time and whether the report will be published upon its receipt.

Another reason why we cannot afford to wait is that the term of office of the Commissioner is only three years. Soon after the passage of the legislation, that is, the second half of 2006, Mr Justice WOO Kwok-hing was appointed as Commissioner on Interception of Communications and Surveillance. If the report is to be submitted in June 2009, it is actually also the time when the Commissioner's term of office will expire soon. As Ms Emily LAU has said earlier, those who have done a good job and spoken up for the people will not be appointed again. If the report by Justice WOO is published after being shelved for seven months and Justice WOO is not re-appointed, things will get derailed because the former Commissioner will not be in a position to discuss the report any more. But by that time, Justice WOO may criticize the authorities in a more severe and straightforward manner like many ex-government officials who are no longer subject to any constraints due their office, instead of being as polite as he is and giving the Secretary a leeway to say that "the Commissioner also considers it in order". There will be no such a leeway. Hence, the problem of timing is one of the reasons why I appeal to Members to oppose Mr LAU's amendment.

Another reason is: Mr LAU Kong-wah considers that amendments to the code of practice will suffice. Although this Chamber is a very solemn place, I wish to poke fun of Dr Margaret NG. In 2006 after more than 50 hours of debate during which even her tongue got tired, she made a Freudian slip of tongue, saying "特務守則" (code for secret agents) instead of "實務守則" (code of practice) from the bottom of her heart. *(Laughter)*

If the law is totally devoid of policy objectives for protecting the people's access to legal advice in respect of their privacy and freedom of communication under Article 30 of the Basic Law, then regardless of what amendment is made to the code of practice, it will tend to be a code for secret agents rather than a code of practice for the protection of the people's rights. As Members have said earlier, if there is no criminal liability for breach of the law, there will be no compromise. Mr LAU Kong-wah hopes that the law-enforcement officers will exercise self-discipline. But we must be realistic and we should not expect to have saints in the world nowadays, not to mention the vast number of people in the law-enforcement agencies.

MR LAU KONG-WAH (in Cantonese): President, point of order

PRESIDENT (in Cantonese): Ms Cyd HO, please sit down first. Mr LAU Kong-wah, do you wish to raise a point of order?

MR LAU KONG-WAH (in Cantonese): President, I would like to clarify Ms Cyd HO's remark which is concerned about me in her speech.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, this is not a point of order. If you wish to make a clarification, you have to wait until Ms Cyd HO has finished her speech before you can make such a request.

MR LAU KONG-WAH (in Cantonese): Yes.

PRESIDENT (in Cantonese): Ms Cyd HO, please continue with your speech.

MS CYD HO (in Cantonese): President, I remember that according to the Rules of Procedure, subject to my agreement, a Member can make a clarification first. I am happy to allow Mr LAU Kong-wah to make a clarification first.

PRESIDENT (in Cantonese): Ms Cyd HO, as I have explained the stipulation of the Rules of Procedure, please continue with your speech.

MS CYD HO (in Cantonese): President, in the remaining 10 seconds or so, I just want to say that we should not expect the law-enforcement agencies to exercise self-discipline. I therefore urge Members to oppose Mr LAU Kong-wah's amendment. Thank you.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, do you want to clarify the part of your speech which has been misunderstood by Ms Cyd HO?

MR LAU KONG-WAH (in Cantonese): Yes. First, she said I only want to amend the code of practice. This is not true. I said, apart from amending the code of practice as soon as practicable, the whole piece of legislation should also be reviewed. This is my original remark.

SECRETARY FOR SECURITY (in Cantonese): President, I have listened very carefully to the views expressed by Members just now.

In the debate earlier, Members expressed their views on and concern about the contents of and matters related to the Annual Report 2007 (the Report) submitted by the Commissioner on Interception of Communications and Surveillance to the Chief Executive (the Commissioner). The report covers the overall enforcement of the Interception of Communications and Surveillance Ordinance (the Ordinance) in the year 2007. As instructed by the Chief Executive, the Report was tabled before the Legislative Council on 11 February for its perusal. The Panel on Security then held very thorough discussions on

the Report and the Administration's responses to it. Many of the views put forward by Members just now were already expressed in the meetings of the Panel on Security. I wish to take this opportunity to respond to certain significant issues.

It is mentioned in the Annual Report 2007 of the Commissioner that four cases handled by the Independent Commission Against Corruption (ICAC) might involve materials subject to legal professional privilege (LPP). This has aroused the concern of Members, the general public and the legal profession about what law-enforcement agencies (LEAs) will do in case they obtain any information which may be subject to LPP in the course of covert surveillance. As I have recently pointed out very clearly to the Panel on Security, LEAs all attach very great importance to the protection of information subject to LPP. Besides, there are also detailed provisions in the Ordinance to ensure that both law-enforcement officers and their supervisors will not intentionally obtain any LPP information in defiance of the law.

The Ordinance provides that unless exceptional circumstances exist (as when the relevant authority is satisfied that the person concerned is a party to any activity which constitutes or would constitute a serious crime or a threat to public security), LEAs shall not carry out any interception of communications or covert surveillance at an office or other relevant premises, or a residence, of a lawyer. The Ordinance further provides that when applying for a prescribed authorization, the LEA concerned must set out in the supporting affidavit the likelihood that any information which may be subject to LPP will be obtained by carrying out the interception or covert surveillance under application, with a view to enabling the relevant authority to fully consider whether the application can fulfil the conditions of authorization.

Besides, when the officer who is in charge of the interception or covert surveillance concerned becomes aware that the subject of the interception or covert surveillance has been arrested, the officer shall, as soon as reasonably practicable after he becomes aware of the matter, provide a report to the relevant authority by whom the prescribed authorization has been issued assessing the effect of the arrest on the likelihood that any information which may be subject to LPP will be obtained by continuing the interception or covert surveillance. If, after studying the report, the relevant authority deems that the conditions of authorization can no longer be met, the prescribed authorization concerned must be revoked immediately.

It is indeed possible that in the course of covert surveillance, an LEA may inadvertently obtain information subject to LPP. To deal with this, a number of protection measures are set out in the Ordinance and code of practice under the Ordinance to deal with such cases properly. For example, section 62 of the Ordinance provides that any information that is subject to LPP is to remain privileged notwithstanding that it has been obtained pursuant to a prescribed authorization. Under section 59 of the Ordinance, in the case of a prescribed authorization for a telecommunications interception, any information obtained that is subject to LPP must be destroyed as soon as reasonably practicable. In the case of a prescribed authorization for a postal interception or covert surveillance, the information concerned that is subject to LPP must be destroyed before a specified time. And, paragraph 120 of the code of practice provides that dedicated units separate from the investigating units shall screen out information protected by LPP, and withhold such information from the investigators.

During the course of covert surveillance, if the LEAs concerned are of the opinion that information subject to LPP may be involved, it must report to the panel Judge concerned or the Commissioner. According to the conditions of issuing a prescribed authorization by a panel Judge, in case there are any material changes to the circumstances surrounding the authorization or renewal of authorization, including any changes to the risk assessment or practical circumstances relating to the obtaining of information subject to LPP, the LEA concerned must inform the panel Judge of such changes as soon as practicable. If the LEA is of the opinion that the conditions of issuing the authorization can no longer be met, it must discontinue the operation and provide a report to the panel Judge pursuant to section 57 of the Ordinance and seek discontinuation of the authorization. Even if the LEA considers that the conditions of issuing the authorization can still be met, it must still submit to the panel Judge a report on the material changes concerned. The panel Judge may impose additional conditions in relation to the original prescribed authorization, directing the LEA to report to the panel Judge in case it comes across any information that is subject to, or may be subject to, LPP in the ensuing operation, so that the panel Judge may conduct fresh assessment.

On the basis of the notification of the department concerned, the Commissioner will follow up cases involving information subject to LPP, including the information given to the investigating officers, so as to ascertain

whether such information contains any information subject to LPP that should have been screened out.

During the discussion earlier, quite a number of Members mentioned that in a case handled by the ICAC in 2007 which involved information subject to LPP, the officers concerned destroyed the interception product and the relevant records, thus rendering the Commissioner unable to effectively discharge his monitoring function. The Commissioner Against Corruption has already offered a detailed explanation on the case to the Panel on Security. However, since many Members have still expressed their concern about this case, I shall now give a concise explanation once again.

As I have already pointed that, the Ordinance requires LEAs to destroy interception products in a timely manner. In order to ensure that all information subject to LPP obtained during covert surveillance can continue to receive full protection, section 59 of Ordinance provides that where any products obtained in an authorized telecommunications interception contain any information that is subject to LPP, the LEA concerned must destroy the information as soon as reasonably practicable. In the case mentioned above, the officers concerned, who misunderstood the requests of the Commissioner, permitted the relevant records to be destroyed under established procedures, rather than preserving them as requested by the Commissioner.

As pointed out by the Commissioner Against Corruption earlier on, there were obvious inadequacies and a lack of vigilance on the part of the officers concerned. However, the case was only an isolated incident. The officers concerned have been admonished. The ICAC has taken on board the Commissioner's recommendations. New measures have been put in place since January 2008 for improving the handling of cases involving information subject to LPP, including the preservation of relevant records for inspection by the Commissioner. The Commissioner is satisfied with the new arrangements.

The Commissioner raised a number of issues regarding the access, preservation and use of information arising from LPP cases for the Administration's consideration. While LEAs have already made certain arrangements in the light of the Commissioner's comments, we will further consider the identified issues concerning LPP when conducting the review of the Ordinance.

President, in his Annual Reports for 2006 and 2007, the Commissioner mentioned that a number of provisions of the Ordinance are subject to different interpretations by the Commissioner himself, panel Judges, the Security Bureau and LEAs. For this reason, some Members have recommended the Administration to seek the Court's interpretation of the provisions concerned as soon as possible. We do not agree to this recommendation.

To begin with, the regulatory regime under the Ordinance is a completely new regime. During the initial period of implementing this new regime, due to a number of factual situations, it is only understandable for the Administration and the Commissioner to hold different views on the interpretations and specific application of certain provisions of the Ordinance. As a matter of fact, we have already put in place some pragmatic measures at the level of actual operation to improve the situation. By citing two specific cases, I wish to illustrate that although there is still room for improving certain provisions of the Ordinance, the regulatory regime concerned can still operate smoothly following the implementation of pragmatic measures by LEAs.

The first case was about the submission of a report following the arrest of the subject of interception or covert surveillance. This involves the enforcement of section 58 of the Ordinance. Under this section, once the subject of the covert operation concerned has been arrested, the LEA shall provide a report to the panel Judge. If, after studying the report, the panel Judge deems that the conditions of authorization can no longer be met, the prescribed authorization concerned may be revoked. The Commissioner and panel Judges are of the view that the interception or surveillance carried out during the interim period between the revocation of a prescribed authorization under section 58 and the actual discontinuance of the operation was unauthorized as it was carried out without the authority of a prescribed authorization. However, the Administration considers that the provision of the law cannot have been intended to lead to an unworkable situation whereby the panel Judges might have to revoke an authorization making LEAs liable to breaching the law.

Despite the differences in interpretation, the Security Bureau has still sought to address the concerns of the Commissioner and the panel Judges. Pragmatic arrangements have been put in place to keep the time gap between the panel Judge's decision on revocation of an authorization and the implementation of that decision to the minimum. As an additional measure, subsequent to the submission of the report referred to in section 58, save for critical cases, law-enforcement officers will not listen to the information obtained from the

operation on a real time basis until and unless it has been confirmed that the panel Judge has not revoked the authorization concerned. If the panel Judge decides to revoke the authorization in question, the LEA will not use any of the information gathered during the interim period, and all such information shall be destroyed. These arrangements can help minimize the intrusion into the privacy of the individuals concerned.

The other case was about the power of a panel Judge to revoke a prescribed authorization. Panel Judges and the Commissioner consider that a panel Judge should have the power to revoke a prescribed authorization upon receipt of an REP-11 report on a material change of circumstances. Panel Judges and the Commissioner consider that in cases where a prescribed authorization authorizes the interception of more than one communication facility, panel Judges should be empowered to revoke the authorization partially if the LEA concerned drops the interception of any of the services. Panel Judges and the Commissioner also hold the view that upon the completion of the retrieval of any devices specified in a device retrieval warrant, or upon the failure to retrieve any devices specified in a device retrieval warrant, the LEA concerned should provide a report to the panel Judge responsible, so that he can revoke the warrant.

Although the Administration is of the view that a panel Judge may revoke a prescribed authorization only under the circumstances specified in the Ordinance, and such specified circumstances do not cover the cases mentioned above, LEAs have still implemented various pragmatic measures to address the concerns of the panel Judges and the Commissioner. With regard to REP-11 reports, if a panel Judge, after considering the relevant report, says that an authorization shall be revoked, the LEA concerned will cease listening to the interception product and discontinue the operation as soon as possible. All related materials will then be preserved for future inspection by the Commissioner. Concerning partial revocation, we have amended the code of practice to provide that if an LEA decides to drop the interception of a service in an authorization granted by a panel Judge while having to continue with the interception of other services under the same authorization, it must provide a report to the panel Judge, with a view to revoking the service concerned. If the LEA needs to intercept the same service again in the future, it must submit a new application for authorization to the panel Judge. With respect to device retrieval warrants, LEAs have been requested to provide a report to the panel Judge concerned after the retrieval of the device and the execution the relevant warrant, or when the warrant ceases to be valid under certain circumstances.

The pragmatic arrangements mentioned above can enable the Administration to respond adequately to the views and recommendations of panel judges and the Commissioner. We will study the relevant issues in detail when conducting a comprehensive review of the Ordinance and consider whether it is necessary to amend the Ordinance.

Since the commencement of the Ordinance, the Administration has been co-operating fully with the Commissioner and panel Judges. All recommendations put forward by the Commissioner to LEAs will be considered thoroughly and followed up by the Administration. Depending on the actual circumstances, the code of practice will be amended to provide clearer guidelines to LEAs. Apart from the pragmatic arrangements I have mentioned, the code of practice also provides for other new arrangements to perfect the enforcement of the Ordinance:

- (1) provisions making it clear that the affidavit/affirmation or statement for an application for a prescribed authorization should mention the facts of any previous application that are required to be disclosed to the relevant authority by virtue of Schedule 3 to the Ordinance, and that applicants have the duty to provide sufficient grounds to justify the requested duration;
- (2) a provision stipulating that an authorizing officer must take a critical approach when considering applications, and where necessary, he should seek clarification and explanation from the applicant before he comes to any determination;
- (3) a provision making it clear that in describing the ambit of a premises-based authorization under an application, care must be exercised by the LEA concerned to ensure that the ambit will not become too wide or without limit; and
- (4) provisions ensuring that proper records with clear description of the exact usage are kept by LEAs on the inventories and movements of devices, and that officers are strictly required to return all covert surveillance devices that are no longer needed for operations.

The motion as amended by Mr LAU Kong-wah urges law-enforcement officers to improve their attitude and enhance their understanding of the

Ordinance. We agree that work in these two respects is of vital importance to the smooth implementation of the Ordinance. As a matter of fact, LEAs also attach very great importance to these issues. In a bid to ensure that law-enforcement officers can fully grasp the requirements and related procedures under the Ordinance, the various LEAs have stepped up their manpower training, organizing different kinds of training programmes, briefings and workshops. Whenever new operational procedures are introduced, LEAs will provide appropriate instructions to their staff, with a view to ensuring compliance.

With regard to the attitude of law-enforcement officers, I must point out that the several cases mentioned by the Commissioner in the Report are only isolated incidents. In fact, it is mentioned by the Commissioner in the Report that overall, LEAs are in compliance with the provisions of the Ordinance and have been rendering their full co-operation to assist the Commissioner in discharging his monitoring functions under the Ordinance. Through various channels, LEAs will continue to bring home to the relevant officers the importance of co-operating fully with the Commissioner and panel Judges to assist them in discharging their statutory duties.

LEAs all require their officers to comply strictly with the requirements under the Ordinance. In case of any non-compliance by law-enforcement officers, the head of department concerned will provide a report to the Commissioner pursuant to section 54 of the Ordinance. LEAs will conduct in-depth investigation and take appropriate disciplinary actions against officers who are found to be in non-compliance.

Some Members have proposed that the Administration should consider the introduction of criminal penalties under the Ordinance as a means of penalizing public officers who fail to comply with the Ordinance. On the question of whether any statutory penalties should be imposed on unlawful interception of communications and covert surveillance, both by LEAs and members of the public, we are of the view that we must take account of the overall situation. When studying the Law Reform Commission's report on the interception of communications and covert surveillance, the Administration will thoroughly consider the regulatory arrangements for the interception of communications and covert surveillance by members of the public. The proposal on introducing statutory penalties will also be considered. We will relay Members' concerns to the relevant policy bureaux for consideration.

I am convinced that the timely provision of adequate training and a fair and effective disciplinary mechanism are the only keys to ensuring that law-enforcement officers will fully comply with the requirements of the Ordinance.

The motion as amended by Mr James TO proposes that the Government should consider introducing a change whereby officers independent of LEAs are responsible for the interception of communications, so as to prevent law-enforcement officers from abusing their powers and protect the rights of the people. We have very great reservations about this proposal because we are of the view that the existing mechanism is time-honoured and more effective in striking a balance between confidentiality and privacy protection than the arrangement proposed by Mr James TO.

As I have mentioned, under the existing regime set out in the Ordinance, there are very stringent requirements pertaining to the conduct of interception of communications. There are various levels of supervision and different monitoring measures to ensure law-enforcement officers' compliance with the relevant requirements in the Ordinance and the protection of the privacy and other rights of the public.

Under the existing procedures, the interception of communications under an authorization must be conducted by a dedicated unit separate from the investigating unit inside the same LEA. Before handing the product of interception to the investigation unit, the dedicated unit will first screen out any information that is not required for the prevention and detection of crimes or the protection of public security as well as any information subject to LPP. An officer at or above the rank of assistant commissioner in the LEA shall cause random checks to be conducted on the materials provided by the dedicated unit to the investigating unit, to see if any materials containing information subject to LPP have been provided to the investigating unit. Besides, in case an LEA inadvertently obtains any information that is (or may be) subject to LPP in the course of the authorized operation, it must report to the Commissioner, so that he can follow up the case by, for example, reviewing the information passed on by the dedicated unit to the investigating unit to check that it does not contain any information subject to LPP that should have been screened out. At the latest request of the Commissioner, the LEA will also retain all other records on the case for inspection by the Commissioner.

Since dedicated units are separate from investigating units and do not take part in any investigation, they can conduct the interception of communications impartially. Another merit of the existing arrangement is that it can ensure the continued confidentiality of the enforcement action and minimize the number of units that are aware of the operation, thus providing more secure protection of privacy. The Administration is of the view that the existing arrangement is characterized by independence; in contrast to Mr TO's proposal, it can provide better and more effective protection of operational confidentiality and privacy. It should be retained for this reason.

The motion as amended by Mr LEUNG Kwok-hung proposes to enact legislation to restrict LEAs' practice of permanently keeping information about individuals or organizations collected by interception of communications under the pretext of "intelligence", so as to protect the privacy of the people and prevent the Government from abusing its power. The assumption of this proposal is that the privacy of the people is currently under no protection. We do not agree to this assumption. Since there is already a mechanism for the strict regulation of intelligence management, we do not think that it is necessary to introduce any statutory regulatory arrangements in this regard.

At present, the Ordinance clearly provides that the products of any interception of communications and covert surveillance, whether originals, copies, extracts or summaries of the products, must be handled according to section 59 of the Ordinance, and can be kept only when necessary. This arrangement takes account of the fact that interception products not having been screened will inevitably contain information not related to law enforcement. To minimize intrusion into privacy, it is necessary to follow strict rules on handling such information.

Information obtained by the interception of communications and covert surveillance under the Ordinance may be kept as intelligence if it is related to the prevention and detection of crimes as well as the protection of public security, so as to assist LEAs in carrying out investigations and enforcement. The intelligence collected, handled and used by LEAs for the purpose of law enforcement is currently under the regulation of several pieces of legislation, including the Basic Law, the Hong Kong Bill of Rights Ordinance and the Personal Data (Privacy) Ordinance. All law-enforcement officers must abide by such legislation.

All LEAs have put in place a stringent intelligence management system. With regard to the keeping of intelligence, LEAs will take account of factors such as the need for continued retention and information accuracy in the course of determining whether certain information inside their intelligence systems should continue to be kept. Therefore, LEAs will not and cannot permanently keep the information obtained by the interception of communications without any restrictions under the pretext of "intelligence". However, as I promised during the discussions on the Interception of Communications and Surveillance Bill, we are actively reviewing the intelligence management system of LEAs. Upon the completion of the review, we will brief the Panel on Security on the findings.

President, in the speech I delivered at the beginning of this debate, I gave a concise account of the stringent regulation regime under the Ordinance as well as the operation of the Ordinance in the initial days after its commencement. Although there is still room for improving the Ordinance, its overall operation has been smooth, and LEAs on the one hand and panel Judges and the Commissioner on the other have managed to build up a sound working relationship. Through the actual operation of the regime, all sides have managed to gain precious experience and enhance their understanding of the provisions of the Ordinance and their operation. The cases I mentioned in my reply earlier can all testify to this point. As pointed out by the Commissioner in the Report 2007 (and I quote), "Defects and inadequacies of the statutory provisions and of the procedures adopted can be discerned and against which improvements have been made or suggested." (End of quote) The situation is not like what Ms Cyd HO describes in her motion — currently there are many malpractices in the enforcement actions of the law-enforcement agencies, and an immediate review of the Ordinance is called for.

During the Second Reading debate on the Interception of Communications and Surveillance Bill in August 2006, I made an unambiguous undertaking that the Administration would conduct a comprehensive review of the Ordinance after the Commissioner's submission of the second full-year report (the Annual Report 2008). We will certainly make good this undertaking. Following the Commissioner's submission of the Annual Report 2008, we will be able to grasp more firmly the operation of the Ordinance in the first two whole years after its commencement. It will be better to conduct a comprehensive review on this very basis.

Some Members have expressed the dissatisfaction that while the Commissioner's Annual Report 2007 was already submitted to the Administration in June last year, it was not put before the Legislative Council until February this year. The main reason for this is that this is a full-year report by the Commissioner, so more time was required for handling. With the experience we have gained this year, we will handle the matter as soon as possible once the Commissioner has submitted the Annual Report 2008. We do not rule out the possibility of striving to conduct a comprehensive review in 2009.

In the interim to the commencement of the comprehensive review, we will actively make advance preparations for the review. We will also continue to co-operate fully with the Commissioner and panel Judges, with a view to perfecting the actual operation of the Ordinance through the adoption of various pragmatic measures. Depending on actual needs, we may also amend the code of practice to implement the objective of the Ordinance.

With these remarks, President, I hope Members can oppose Ms Cyd HO's original motion and the amendments of Mr James TO and Mr LEUNG Kwok-hung. I also hope that Members can support Mr LAU Kong-wah's amendment.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr LAU Kong-wah to move his amendment to the motion.

MR LAU KONG-WAH (in Cantonese): President, I move

MR JAMES TO (in Cantonese): President, I would like to set Mr LAU Kong-wah's amendment straight. He clarified a short while ago that the Government should also review the Ordinance but it is only stated in the current version that the Government should review the code of practice. I am afraid I may have read it wrongly for we are going to vote on Mr LAU Kong-wah's amendment.

PRESIDENT (in Cantonese): The version of the amendment as set out in the Agenda circularized to Members should be based on.

MR JAMES TO (in Cantonese): OK, the written version should be based on.

PRESIDENT (in Cantonese): Would Members please refer to the version as set out in the Agenda circularized to Members.

MR JAMES TO (in Cantonese): President, can I ask Mr LAU Kong-wah to clarify that he is not asking for the Ordinance to be amended? Otherwise, the written version would be different from what he just said.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, Mr James TO has asked for your clarification of your amendment. Are you willing to make the clarification?

MR LAU KONG-WAH (in Cantonese): All right, President, it is welcome.

My amendment is very clear; on one hand, I have referred to the code of practice which can be formulated at once; on the other hand, I have proposed that the Government should strive to improve the attitude of law-enforcement officers in taking law-enforcement actions. Also, I have urged the Government to honour its undertaking to review the Interception of Communications and Surveillance Ordinance immediately after the Commissioner has submitted the second full-year report, that is, after June 2009. It is clear and unambiguous.

PRESIDENT (in Cantonese): I now call upon Mr LAU Kong-wah to move his amendment to the motion.

MR LAU KONG-WAH (in Cantonese): President, I move the amendment as set out in the document as laid on the table.

Mr LAU Kong-wah moved the following amendment: (Translation)

"To delete "as the report" after "That," and substitute with "the reports"; to add "June 2007 and" after "Surveillance in"; to delete "has" after "June 2008" and substitute with "have"; to add "arousing public concern," after "agencies,"; to add ", in the light of the various recommendations mentioned in the two annual reports by the Commissioner, expeditiously adopt measures to comprehensively review the existing code of practice under the Interception of Communications and Surveillance Ordinance and make appropriate amendments thereto; in addition, the Government should strive to improve the attitude of law enforcement officers in taking law enforcement actions, enhance their understanding of the Interception of Communications and Surveillance Ordinance, and honour its undertaking to" after "the Government to"; and to add "after the Commissioner has submitted the second full-year report" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LAU Kong-wah to Ms Cyd HO'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 James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO 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 Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Vincent FANG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Dr PAN Pey-chyou and Dr Samson TAM voted for the amendment.

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted against the amendment.

Mr Paul TSE abstained.

Geographical Constituencies:

Mr LAU Kong-wah, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted against the amendment.

Mr Frederick FUNG abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, 12 were in favour of the amendment, four against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, six were in favour of the amendment, 18 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 amendment was negatived.

MR FRED LI (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Reviewing the Interception of Communications and Surveillance Ordinance" and 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 Mr Fred LI 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 "Reviewing the Interception of Communications and Surveillance Ordinance" and 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 James TO, you may move your amendment.

MR JAMES TO (in Cantonese): President, I move that my amendment be passed.

Mr James TO moved the following amendment: (Translation)

"To delete "report" after "as the" and substitute with "reports"; to add "June 2007 and" after "Surveillance in"; to delete "has" after "June 2008" and substitute with "have"; and to add ", comprehensively improve the mechanisms and procedures for supervising the interception of communications and covert surveillance, as well as consider introducing a change whereby officers independent of the Hong Kong Police Force and the Independent Commission Against Corruption are responsible for interception of communications, so as to prevent law enforcement officers from abusing their powers and protect the rights of the people; and expeditiously table the 2008 annual report by the Commissioner on Interception of Communications and Surveillance in the Legislative Council and release it to the public after receiving it" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to Ms Cyd HO'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 James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO 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 Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Vincent FANG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, 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, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the amendment.

Mr LAU Kong-wah, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, four were in favour of the amendment, 12 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 19 were in favour of the amendment and six against it. 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): Mr LEUNG Kwok-hung, you may move your amendment.

MR LEUNG KWOK-HUNG (in Cantonese): President, I move that Ms Cyd HO's motion be amended.

Mr LEUNG Kwok-hung moved the following amendment: (Translation)

"To add ", and with regard to the lack of existing legislation to regulate law enforcement agencies permanently keeping information about individuals/organizations collected by intercepting communications under the pretext of 'intelligence', restrict such practice by enacting legislation so

as to protect the privacy of the people and prevent the Government from abusing its power" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEUNG Kwok-hung to Ms Cyd HO'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 LAU Kong-wah rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Kong-wah 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 Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Vincent FANG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por and Dr Samson TAM voted against amendment.

Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, 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, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the amendment.

Mr LAU Kong-wah, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr WONG Kwok-hing abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, four were in favour of the amendment, 10 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 19 were in favour of the amendment, five 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 amendment was negatived.

PRESIDENT (in Cantonese): Ms Cyd HO, you may now reply and you have three minutes. This debate will come to a close after Ms Cyd HO has replied.

MS CYD HO (in Cantonese): I am afraid we will achieve nothing once again. In spite of this, the debate today is not as bitter and devastating as the one in 2006. However, history will seek to settle old scores with politicians very quickly, so quickly that it has already happened after just a short span of 33 months.

With regard to the blunders in law enforcement we now see, the Administration and the "royalists" both owe an apology to the people of Hong Kong. This is something the Administration and the "royalists" must ponder on. Very unfortunately, the Secretary has still chosen to evade all the problems, totally ignoring the issues raised by the Commissioner on Interception of Communications and Surveillance (the Commissioner). He has only said that a pragmatic attitude will be adopted and improve certain administrative technicalities. The Law Society of Hong Kong has asked for a review of the legislation. But he is all the same reluctant to launch a review immediately. This is very regrettable.

President, I remember that in the debate a few years ago, you talked about suddenly having an "old friend". You said that one day, a resident just walked up to you, telling you that while you did not know him at all, he had actually known you for more than a decade, because he was the one in the former Special Branch who was responsible for keeping you under covert surveillance. This reminds me of the saying "Do unto others as you would have them do unto you." You were kept under covert surveillance for more than a decade, but there was no legislation to regulate such surveillance. How did you feel about that? If the man now discloses in writing his "acquaintance" with you in the decade or so, I believe you will certainly have quite a headache.

It is useless for the Secretary to evade the problems because the 1 000 pages of the Official Record of Proceedings of the Legislative Council are all here, and so are the record of Members' scrutiny of the Bill. I have with me all the 260 amendments which were negated. The voting down of all these amendments is the precise reason for all the malpractices. At that time, Members all did their utmost to convene meetings, meet deadlines and put forward amendments. The actual time spent on meetings aside, there were also

all the efforts devoted to careful deliberations of the amendments outside of the legislature. We should recognize such a bitter, though not fierce, struggle.

President, history will continue to settle old scores with us. We cannot achieve anything today, but the second full-year report will be published very soon. So, all the malpractices stemming from this flawed piece of legislation will be exposed continuously. Not only covert surveillance relating to serious crimes, but also the surveillance relating to political activities and freedom of assembly, will be exposed before the very eyes of the public. Therefore, President, I hope that more social activists will lodge complaints with the Commissioner, so as to clear all the malpractices stemming from this flawed piece of legislation.

Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Cyd HO be passed.

PRESIDENT (in Cantonese): Will those in favour please raise your hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO 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 Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Mr CHEUNG Kwok-che and Mr Paul TSE voted in favour of the motion.

Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Vincent FANG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por and Dr Samson TAM voted against the motion.

Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, 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, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted in favour of the motion.

Mr LAU Kong-wah, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the motion.

Mr WONG Kwok-hing abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, five were in favour of the motion, 10 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 19 were in favour of the motion, five 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.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 18 March 2009.

Adjourned accordingly at fourteen minutes to Seven o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Financial Secretary to Ms Audrey EU's supplementary question to Question 2**

As regards the control regime governing post-termination employment of the Monetary Authority, according to the "Policy and Procedures on Post-Termination Employment of HKMA staff" (the Policy), the standard period of notice of termination for staff at the Executive Director level and above is six months. The Monetary Authority is required to obtain the prior approval of the Financial Secretary, within six months of leaving the Hong Kong Monetary Authority (HKMA), if he wishes to enter business on his own account, become a partner in a partnership, become a director of a company, or become an employee of another organization, corporation or firm, whether or not on a full-time basis, in Hong Kong.

In determining whether approval should be given to any application made by the Monetary Authority under the Policy, the Financial Secretary shall consider advice from a panel composed of the Chairman and two other Members of the Governance Sub-Committee of the Exchange Fund Advisory Committee.

In addition, all HKMA staff (including the Monetary Authority) are subject to strict secrecy provisions under the Banking Ordinance (the Ordinance), which prevent them from disclosing information obtained while exercising statutory functions under the Ordinance, and provide for criminal sanctions of up to two years' imprisonment for any breach. These restrictions apply indefinitely even after the staff have left the HKMA.

We believe that the above arrangements, together with secrecy provisions referred to above, are sufficient to address any potential conflicts of interest that may arise should the Monetary Authority take up employment in another organization after he leaves the HKMA.

The matter concerned was discussed at the meeting of the Legislative Council Panel on Financial Affairs (the FA Panel) held in May 2006. The Governance Sub-Committee of the Exchange Fund Advisory Committee wrote to the Chairman of the FA Panel subsequently to explain the Policy and attached a copy of it for Panel Members' reference. Please refer to CB(1)182/06-07(01) for details.