

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 8 July 2009

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING

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

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

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

### **PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE HENRY TANG YING-YEN, G.B.M., 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 STEPHEN LAM SUI-LUNG, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

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

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

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

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

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

MR RAYMOND TAM CHI-YUEN, J.P.  
UNDER SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

**CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**PRESIDENT** (in Cantonese): 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 will now start.

### **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>
Karaoke Establishments (Fee Concessions) Regulation 2009 .....	135/2009
Road Traffic (Motor Vehicle Licence Fee Concessions) Regulation 2009 .....	136/2009
Travel Agents (Fee Concessions) Regulation 2009 .....	137/2009
Rating (Exemption) (No. 2) Order 2009 .....	138/2009
Revenue (Reduction of Business Registration Fees) Order 2009 .....	139/2009
Dutiable Commodities (Liquor Licence Fee Concessions) Regulation 2009 .....	140/2009
Merchant Shipping (Local Vessels) (Fee Concessions) Regulation 2009 .....	141/2009
Places of Public Entertainment (Fee Concessions) Regulation 2009 .....	142/2009

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Road Traffic (Passenger Service Licence Fee Concessions) Regulation 2009 .....	143/2009
Schedule of Routes (Citybus Limited) Order 2009 .....	150/2009
Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2009 .....	151/2009
Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2009 .....	152/2009
Schedule of Routes (Long Win Bus Company Limited) Order 2009 .....	153/2009
Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2009 .....	154/2009
Schedule of Routes (New World First Bus Services Limited) Order 2009 .....	155/2009
Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2009 .....	156/2009
Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2009 .....	157/2009
Electoral Affairs Commission (Registration of Electors) (Village Representative Election) (Amendment) Regulation 2009 .....	158/2009
Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2009 .....	159/2009

Smoking (Public Health) (Designation of No Smoking Areas) Notice .....	160/2009
Travel Agents Ordinance (Specification of Fund Levy) (Amendment) Notice 2009 .....	161/2009
Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 .....	162/2009

#### Other Papers

- No. 100 — Clothing Industry Training Authority Annual Report 2008
- No. 101 — Hong Kong Trade Development Council Annual Report 2008/09
- No. 102 — Report by the Commissioner of Correctional Services on the Administration of the Prisoners' Welfare Fund and the signed and audited financial statements for the year ended 31 March 2009 together with the Report of the Director of Audit
- No. 103 — Construction Industry Council Annual Report 2008
- No. 104 — Hong Kong Export Credit Insurance Corporation 2008-09 Annual Report
- No. 105 — Sir Robert Black Trust Fund  
Report of the Trustee on the administration of the Fund for the year ended 31 March 2009 and the signed and audited financial statements together with the Report of the Director of Audit
- No. 106 — J.E. Joseph Trust Fund  
Report of the Trustee and the signed and audited financial statements together with the Report of the Director of Audit for the period from 1 April 2008 to 31 March 2009



- No. 107 — Kadoorie Agricultural Aid Loan Fund  
Report of the Trustee and the signed and audited financial statements together with the Report of the Director of Audit for the period from 1 April 2008 to 31 March 2009
- No. 108 — Sir David Trench Fund for Recreation Trustee's Report 2008-2009
- No. 109 — The 21st Issue Annual Report of The Ombudsman, Hong Kong (June 2009)
- No. 110 — Securities and Futures Commission Annual Report 2008-09
- No. 111 — Report of the Independent Police Complaints Council 2008
- No. 112 — Report of the Public Accounts Committee on Report No. 52 of the Director of Audit on the Results of Value for Money Audits  
(July 2009 - P.A.C. Report No. 52)

Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region - Progress Report for the 2008-2009 session (October 2008 to June 2009)

Report of the Panel on Manpower 2008-2009

Report of the Panel on Commerce and Industry 2008-2009

Report of the Panel on Public Service 2008-2009

Report of the Panel on Administration of Justice and Legal Services 2008-2009

Report of the Panel on Home Affairs 2008-2009

Report of the Panel on Transport 2008-2009

Report of the Panel on Constitutional Affairs 2008-2009

Report of the Panel on Financial Affairs 2008-2009

Report of the Panel on Development 2008-2009

Report of the Panel on Information Technology and Broadcasting  
2008-2009

Report of the Panel on Economic Development 2008-2009

Report of the Panel on Health Services 2008-2009

Report of the Panel on Environmental Affairs 2008-2009

Report of the Bills Committee on Mandatory Provident Fund Schemes  
(Amendment) Bill 2009

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Dr Joseph LEE will address the Council on the Independent Police Complaints Council Report 2008.

### **Report of the Independent Police Complaints Council 2008**

**DR JOSEPH LEE** (in Cantonese): President, I would like to present, on behalf of the Independent Police Complaints Council (IPCC), its 2008 Annual Report.

In 2008, the IPCC scrutinized and endorsed the findings of 2 572 complaint cases involving 4 523 allegations, an increase of 2.5% and 4.2% respectively over the previous year. The three most common allegations were "Neglect of Duty" (with 1 675 counts), "Misconduct/Improper Manner/Offensive Language" (with 1 520 counts) and "Assault" (with 538 counts). Allegations in these three categories accounted for 83% of all allegations made. Of these 4 523 allegations, 1 159 allegations were fully investigated by the Complaints Against Police Office (CAPO): 57 were classified as "Substantiated", 66 "Substantiated Other Than Reported", five "Not Fully Substantiated", 754 "Unsubstantiated", 179 "False", and 98 "No Fault".

Last year, the IPCC also reviewed 79 cases in response to requests from complainants.

During the year, the IPCC raised nearly 2 000 queries or suggestions on the CAPO's investigation reports. In response to the IPCC's queries, the CAPO changed the investigation results in respect of 133 allegations.

Under the Observers Scheme, a total of 548 observations were conducted last year, more than doubled that of the previous year. The observations included 51 surprise observations.

President, 2008 is a landmark year for the Council. Members witnessed the enactment of the IPCC Ordinance. Following passage of the Ordinance, we had been preparing ourselves for operation as a statutory body. Work included reviewing internal procedures on vetting of reportable complaints, revising procedures and guidelines in respect of the Observers Scheme, devising terms and conditions as well as a programme on recruitment of our own staff, and setting up our internal administrative systems and procedures, and so on.

The statutory IPCC has been established since 1 June this year, with its Chinese title changed into "監警會". Apart from exercising our powers and monitoring functions under the Ordinance, we also aim to achieve greater transparency and effectiveness in our work to be in line with public expectations. We welcome any comments and suggestions to improve our service.

Thank you, President.

**PRESIDENT** (in Cantonese): Dr Philip WONG will address the Council on the Public Accounts Committee's Report No. 52.

**Report of the Public Accounts Committee on Report No. 52 of the Director of Audit on the Results of Value for Money Audits  
(July 2009 — P.A.C. Report No. 52)**

**DR PHILIP WONG** (in Cantonese): President, on behalf of the Public Accounts Committee (PAC), I table our Report No. 52 today. This Report corresponds

with Report No. 52 of the Director of Audit on the results of value for money audits (Audit Report).

The PAC has, as in previous years, selected for detailed examination those chapters in the Audit Report which, in our view, contained more serious allegations of irregularities or shortcomings. The Report tabled today covers our deliberations on the three chapters selected.

I now succinctly report the conclusions made by the PAC.

Regarding the chapter on Equal Opportunities Commission (EOC), the PAC considers that the inadequacies relating to the EOC identified in the Audit Report, if viewed as a whole instead of individually, have revealed that serious underlying problems exist in the EOC.

The PAC does not accept the way the Chairperson, EOC, had handled the draft Audit Report and considers that the situation concerned demonstrates a lack of trust and partnership between him and Board Members, which is not conducive to the effective functioning of the EOC.

We find it appalling, as revealed by their exchange of views at the Board meeting on 26 March 2009, that the Chairperson, certain Board Members and the Director (Planning and Administration) of the EOC considered some of the audit findings trivial and insignificant and, in considering the EOC's response to the audit findings, their concern was more from the public relations perspective, leaving one with the impression that they were not serious in accepting the audit findings as genuine problems which needed to be addressed.

Regarding corporate governance, the PAC is seriously concerned and finds it unacceptable that there were a number of shortcomings relating to the EOC Board and Committee meetings as identified in the Audit Report.

As for corporate culture on the use of public funds, the PAC finds it appalling and totally unacceptable that the EOC has not adopted the "moderate and conservative" principle in making expenditure decisions. The many instances relating to the use of public funds quoted by the PAC in this Report evidently indicate a manifest lack of prudence on the part of the EOC in this regard. To this, the PAC expresses strong resentment.

The PAC also finds it appalling and totally unacceptable that the EOC's internal control, procurement and management of stores are fraught with problems.

Overall speaking, the PAC is of the view that the Chairperson, EOC, as the full-time executive head of the EOC, has failed to provide the leadership required for the EOC to meet the standard of corporate governance and management expected of a publicly-funded statutory body, and the Director (Planning and Administration), EOC, as the highest ranking staff responsible for the EOC's administrative matters, has failed to ensure that the EOC's internal control procedures are properly complied with. To this, the PAC expresses grave dismay and finds them inexcusable.

In examining the chapter on Hong Kong Arts Development Council (HKADC), the PAC is concerned that the HKADC, as a statutory body established for the purpose of the development of the arts in Hong Kong with an annual funding of about \$100 million, might not have been given due respect and recognition by the Government to enable it to fully discharge its eight functions as specified in section 4 of the Hong Kong Arts Development Council Ordinance.

Regarding the corporate governance of the HKADC, the PAC is concerned that despite the fact that the HKADC has already undergone six nomination exercises since its establishment in 1995, in the 2007 nomination exercise, there was still feedback from some arts organizations and practitioners that the process of nominating the HKADC members was not well understood by the arts sectors, with some arts organizations and practitioners not yet registered as members of the nominating bodies. The PAC is also concerned that there was a downward trend in the attendance rates of members at meetings of the HKADC Council and four of its Committees during the previous Council term.

Although we understand that some members of the HKADC Council and its Committees, being arts practitioners who have to work irregular hours or who are outside Hong Kong frequently, may face practical difficulties in attending all the meetings, we consider that as the members' expertise and commitment are essential to the effective functioning of the Council and its Committees, they should make greater efforts to attend the meetings.

The PAC notes with serious concern that there were inadequacies in the HKADC's appointment of examiners for application adjudication and project assessment as identified in the Audit Report.

The Quality Education Fund (QEF) is another chapter examined by the PAC. As the QEF has been established for more than 11 years with the objective of promoting quality school education at all levels, the PAC considers that it is of the utmost importance for the Administration to evaluate regularly whether and how the QEF on the whole and on a project basis has been able to achieve its objective. Besides, the PAC also considers that the application and reporting procedures of the QEF should be as simple and user-friendly as possible, and should not be so burdensome as to become a disincentive to potential applicants and create undue workload for teachers, provided that accountability is not undermined.

The PAC is concerned about the various problems regarding the governance and strategic management of the QEF as revealed in the Audit Report.

As for project management, the PAC considers that it is of the utmost importance that a QEF funded project can achieve the intended objectives specified in the application. Hence, in assessing whether a grant payment should be made to a grantee as scheduled, the QEF should not only focus on the grantee's degree of compliance with the QEF's guidelines and requirements on project management, but also on the effectiveness of the project in achieving its objectives, particularly from the beneficiaries' perspective.

Regarding the dissemination and commercialization of project deliverables, the PAC is concerned that the QEF does not require grantees to provide details of the mechanism for distributing project deliverables, and the QEF has not established a clear mechanism with a grantee, which is a commercial organization, to ensure that it will charge fees at a reasonable and affordable level after completing its project.

President, as always, the PAC has made its conclusions and a series of recommendations in this Report with the aim of ensuring the achievement of value for money in the delivery of public services by the Administration and government-funded organizations.

I must, however, take this opportunity to remind the Administration that, in implementing policies and measures relating to the Reports of the PAC, it should not be selective in using the PAC's conclusions and recommendations and focus only on those that align with the Administration's proposed courses of action. I also urge the Administration that, when following up the PAC's conclusions and recommendations, it should consider the conclusions and recommendations as a whole and in context in formulating and implementing its courses of action.

Lastly, I wish to register my appreciation of the active participation and contribution made by members of the PAC. Our gratitude also goes to the representatives of the Administration and other organizations who attended the hearings held by the PAC. We would also like to express our gratitude to the Director of Audit and his colleagues, as well as the staff of the Legislative Council Secretariat, for their unfailing support.

Thank you.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the progress report of the Committee on Rules of Procedure for the 2008-2009 Session.

**Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region — Progress Report for the 2008-2009 session (October 2008 to June 2009)**

**MR TAM YIU-CHUNG** (in Cantonese): President, in my capacity as Chairman of the Committee on Rules of Procedure (the Committee), I submit the Progress Report of the Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region for the period October 2008 to June 2009.

The Report has placed its focus on the proposed procedural arrangements for the implementation of Article 73(9) of the Basic Law on impeachment of the Chief Executive, review of the procedural arrangements relating to Council meetings, review of the procedures of the committees of the Council, and studies

in relation to fine-tuning of provisions and expressions used in the Rules of Procedure in the past year.

First of all, regarding the proposed procedural arrangements for the implementation of Article 73(9) of the Basic Law on impeachment of the Chief Executive, the Committee has proposed a more streamlined approach and formulated some preliminary views on the procedural arrangements after reviewing the initial suggestions of the Committee in the Legislative Council of the last term and the response of Members and the Administration. In the course of deliberating the procedural arrangements, the Committee noticed that there could be variations even within the confines of Article 73(9) of Basic Law. Therefore, the Committee, before further discussing the matter, has consulted Members on a number of issues, including: whether mover of the motion for investigation can be substituted by another Member, whether there should be stipulation regarding the number of Members who have signed the notice, and who are capable to move the motion of impeachment. The Committee will continue its deliberation in the next Session.

Regarding the review of the procedural arrangements relating to Council meetings, the Committee has discussed the order in Council and committees. After drawing reference from the relevant rules and practices of the House of Commons of the United Kingdom Parliament, the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia and the Legislative Yuan of Taiwan, the Committee considers it not necessary to introduce any new arrangements to deal with Members' disorderly conduct in Council and the President does not have difficulties in maintaining the order of Council meetings in accordance with the Rules of Procedure. The Committee also agrees that a list of precedents of expressions ruled as offensive and insulting or unparliamentary be kept for reference by the President and committee chairmen and made available for public inspection.

Meanwhile, the Committee has also discussed whether it is necessary to extend Rules 44 and 45 to cover other committees of the Council. These two rules refer to the finality of decisions made by the President or the chairman of any standing committee or select committee on a point of order, as well as his authority to order Members who persist in irrelevance of tedious repetition to stop speaking and to order immediate withdrawal of Members whose conduct is grossly disorderly. As Members have divergent views on the proposed



extension of rules, the Committee agreed that the matter should not be dealt with for the time being.

Besides, having made reference to the practices of the Senate of the Australian Parliament, the Committee has put forward a proposal to provide for a procedure to facilitate debates in Council on subsidiary legislation subject to negative vetting but to which no amendment has been proposed. Members of the Committee have also consulted Members of their respective political parties or groupings on the proposal and discussed the Administration's views on the proposal. The Committee will continue its deliberation in the next Session.

Besides, in view of the incidents of unauthorized disclosure of information relating to the internal deliberations and draft reports of committees of the Council in recent years and unidentified source of the leak in most cases, the Committee has considered whether clearer and more stringent provisions on such unauthorized disclosure should be made in the Council's rules. In response to the Committee's request, the Secretariat is now drawing up a mechanism for handling cases of such disclosures which will be presented to the Committee for consideration in the next Session.

Regarding the fine-tuning of provisions and expressions used in the Rules of Procedure, the Legislative Council has approved the amendments to Rules 73(1)(d) and 80 proposed by the Committee.

Finally, I would like to take this opportunity to thank Members for their support to the work of the Committee and their valuable views.

Thank you, President.

**PRESIDENT** (in Cantonese): Ms LI Fung-ying will address the Council on the report of the Panel on Manpower 2008-2009.

### **Report of the Panel on Manpower 2008-2009**

**MS LI FUNG-YING** (in Cantonese): President, in my capacity as Chairman of the Panel on Manpower, I submit the report on the work of the Panel during the

2008-2009 Session of the Legislative Council and briefly highlight several major items of work of the Panel.

After the announcement of the introduction of an across-the-board statutory minimum wage (SMW) by the Chief Executive in his policy address, the Panel continued to monitor closely the establishment of a SMW in Hong Kong. Members noted that the Administration would set up a Minimum Wage Commission to advise the Administration on the SMW level and its review mechanism. Some members held the view that the SMW rate should not be set at too low a level as this might discourage people from self-reliance. They considered that in setting the SMW level, the Administration should ensure that a safety net was provided to enable the low-income groups sustain a living.

A special arrangement to exempt persons with disabilities from SMW was being contemplated. Members in general supported the direction of the proposed special arrangement, but a member considered that persons with disabilities should receive wages at the SMW rate.

Regarding as to whether exemption should be provided for under the SMW legislation with respect to certain groups of employees, members did not raise objection to the exclusion from the SMW legislation of students undertaking internship programmes for meeting academic or programme requirements. While expressing support for exempting live-in foreign domestic helpers from the SMW legislation, some members were concerned about the threat of a judicial review by foreign domestic helpers and the socio-economic implications of the judicial review, if successful, on Hong Kong. Some other members considered that live-in foreign domestic helpers should not be exempted from SMW.

Concerning the enforcement of Labour Tribunal (LT) awards, members were informed that three enhancement measures, namely, making non-payment of LT awards a criminal offence, empowering the LT to order defaulting employers to pay additional sums to employees and empowering the LT to order disclosure of the financial details of defaulting employers, were proposed by the Administration. The Administration will introduce a bill into the Legislative Council today to make non-payment of LT awards a criminal offence. Members in general support its proposal. But some members took the view that the other two enhancement measures should be implemented together.

Members are very concerned about the financial position of the Protection of Wages on Insolvency Fund (PWIF). They noted that the reserve of the PWIF stood at \$1.4608 billion by the end of November 2008. Due to the financial tsunami, the number of applications under the PWIF had increased by 42% during the first eight months of the 2008-2009 financial year. Some members are very concerned about the measures taken by the Administration to prevent companies from going bankrupt so as to preserve employment. The Administration said that it had introduced a scheme that would provide \$100 billion in loan guarantees to companies, aiming to save struggling firms and protect jobs.

After the onslaught of the financial tsunami, the Chief Executive announced that over 60 000 jobs would be provided by expediting infrastructure projects, advancing recruitment of civil servants and creating temporary positions. Members are very concerned about the measures put in place by different Policy Bureaux and government departments for the creation of job opportunities and provision of employment-related support services. Some members opined that while individual Policy Bureaux and government departments were making efforts to create jobs under their respective policy portfolios, there was no co-ordination among them. These members proposed the setting up of a committee on employment to oversee and co-ordinate unemployment issues.

The Administration assured members that different Policy Bureaux and government departments were working closely in implementing the measures to boost the economy and employment.

Regarding the Internship Programme for University Graduates (IPUG) launched by the Labour Department (LD) in August this year, some members expressed concern that university graduates under the IPUG might be offered wages as low as \$4,000 monthly. Some other members queried the need to provide further training to university graduates, given that they had received the requisite training in universities. The Administration explained that offering wages of \$4,000 monthly for hiring a university graduate was a misconception of the community. Employers who participated in the IPUG must offer wages commensurate with the duties, responsibilities and training contents of the posts. The IPUG was introduced as a temporary measure to help university graduates establish a foothold in the job market.

The Panel was very concerned about the future direction of development of the Employees Retraining Board (ERB). Some members were concerned whether the expansion of the Employees Retraining Scheme (ERS) to cover people aged 15 or above had resulted in overlapping between the ERS and other youth training programmes offered by the LD, such as the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme. Some members considered that in the short term, the ERB should provide training to the unemployed who wished to start up their own businesses but did not have the knowledge and experience to do so. In the long term, the ERB should develop training courses which could tie in with the development and needs of different industries. For instance, the ERB should develop courses to meet the needs of six economic areas, namely, testing and certification, medical services, innovation and technology, cultural and creative industries, environmental industry and education services, identified by the Task Force on Economic Challenges to have the potential to strengthen Hong Kong's economic growth in the long term.

The Administration responded that the ERB would liaise with the relevant government departments and industries to understand the needs of the six economic areas in terms of manpower and skills required for people with education at sub-degree level or below and develop suitable training courses in due course. The imminent task of the ERB was to offer placement-tied training courses to the unemployed who, with the assistance of training providers, could secure jobs immediately after training. The ERB also offered training courses to assist self-employed people to start and run businesses.

In respect of the Transport Support Scheme (TSS), some members considered that the Administration should further relax the TSS to operate on a long-term basis and to extend it to workers of districts other than the four designated districts. The Administration stressed that the objective of the TSS was to provide time-limited transport subsidy so as to encourage needy job seekers and low income employees in the four designated districts to seek jobs and remain in employment. The Administration did not consider it appropriate to provide the subsidy on a permanent basis, which was tantamount to providing an income supplement to employees on a long-term basis.

The Panel passed a motion urging the Government to cancel immediately the one-year subsidy duration of the TSS, extend the TSS immediately to all

districts and relax its coverage to include part-time workers and reinstate the allowance for local domestic helpers working across districts.

Finally, I would like to take this opportunity to thank members for their support to the work of the Panel and colleagues of the Secretariat for their dedication. Thank you, President.

**PRESIDENT** (in Cantonese): Mr Vincent FANG will address the Council on the report of the Panel on Commerce and Industry 2008-2009.

### **Report of the Panel on Commerce and Industry 2008-2009**

**MR VINCENT FANG** (in Cantonese): President, in my capacity as Chairman of the Panel on Commerce and Industry, I submit the report on the work of the Panel for the current session and briefly highlight several major items of work of the Panel.

The Panel followed up on many occasions the relief measures for the small and medium enterprises (SMEs) in view of the financial hardship and liquidity problem faced by the SMEs amidst the global financial turmoil and credit crunch. It also received views from representatives of various trades, chambers of commerce and the Hong Kong Association of Banks. Local banks had tightened credit facility on the SMEs which were facing great difficulties in maintaining their normal business. The Panel therefore urged the Administration to devise more concrete measures to effectively boost the confidence of lending institutions in providing credit facility to the SMEs. After several rounds of discussion, the Administration proposed the Special Loan Guarantee Scheme (SpGS). Subsequently, enhancement measures were made to the SpGS so that the Government's loan guarantee level was raised to a maximum of 80%. The Panel welcomed the measure and hoped that the Administration would ensure the effectiveness of the SpGS in helping the SMEs tide over the difficulties.

Regarding the latest Supplement to CEPA, the Panel urged the Administration to render every assistance to facilitate Hong Kong enterprises in making the best use of the opportunities brought about by CEPA, in order to deepen the economic and trade co-operation between Hong Kong and the

Mainland, in particular, co-operation between service industries in the Pearl River Delta (PRD) Region and Hong Kong. In view of the successful events held by the Hong Kong Trade Development Council (HKTDC) in the Mainland, members considered that more funding resources should be provided to the HKTDC to organize similar events in other cities to help Hong Kong enterprises tap the business opportunities in the mainland market.

The Panel discussed the measures and initiatives to enhance co-operation between Hong Kong and Taiwan in the promotion of trade. Some members considered that efforts should be strengthened to tap the vast business potential of the Taiwan market and urged the Administration to update the Panel on the impacts of the Three Direct Links on Hong Kong economy.

On the work of Invest Hong Kong (InvestHK) in promoting inward investment, members opined that whilst the HKTDC and the Hong Kong Economic and Trade Offices were also responsible for promoting Hong Kong to the Mainland and overseas countries, consideration should be given to co-ordinating the work of InvestHK and different bodies for cost savings and avoid possible overlapping of resources.

Upon completion of the Atrium Link extension of the Hong Kong Convention and Exhibition Centre (HKCEC) in April 2009, members considered it necessary to pursue the Phase 3 development of HKCEC without further delay and urged the Administration to commence the public consultation as soon as possible upon completion of such studies. In the long run, the Administration should commence the Asia World-Expo Phase 2 expansion project and provide sufficient supporting facilities in order to meet the growth in demand for exhibition and conference space.

As regards the smart card technologies proposed to be featured in the Urban Best Practices Area at zone E in the Shanghai Expo, members pointed out that some of the applications were only at the pilot stage and not yet implemented in Hong Kong. They therefore requested the Administration to draw up a timetable for developing and implementing the various smart card applications and update the Panel on the progress.

The Panel has discussed the proposal to provide for a situation within which the copying and distribution offence would not apply under a section

which had not yet commenced operation under the Copyright Ordinance. The Panel supported in principle the proposed amendments and the provision on numeric limits. Members urged that appropriate licensing scheme(s) that covered the making or distribution of copies of copyright work(s) and printed work(s) should be made available and put in place prior to the commencement of the provisions. The new provisions should be widely publicized so that the risk of inadvertent breaches would be minimized.

The Panel supported the Administration's proposed subsidiary legislation for implementing the Road Cargo System (ROCARS) which would enable customs officers to conduct risk profiling on cargo consignments in advance. Some members opined that the Administration should provide an open-ended transitional period to allow the industry to adapt to the new mode of operation. Some members also suggested the Administration to review the situation by the end of 2010 before mandating ROCARS submissions.

The Panel followed up the mid-term review of the operation of the Research and Development (R&D) Centres. The Panel in general supported the continuous development of the R&D Centres and welcomed the Administration's proposal to adjust the industry contributions to platform projects from 40% to 15% in response to members' suggestions. Members suggested that efforts should be stepped up for staging trade shows to strengthen the connection between the Centres and the industry, and the commercialization of R&D deliverables should be speeded up. Members also called on the Administration to strengthen co-operation with local and mainland institutions and help the R&D Centres forge closer ties with the manufacturers in the PRD Region. Some members expressed serious concern about the corporate governance of the R&D Centres and considered that the operating expenditure for the Centres should be kept at a low level to ensure prudent use of public money. I thank members for their participation in the work of the Panel and thank the Secretariat for the assistance rendered.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan will address the Council on the report of the Panel on Public Service 2008-2009.

**Report of the Panel on Public Service 2008-2009**

**MR LEE CHEUK-YAN** (in Cantonese): President, in my capacity as Chairman of the Panel on Public Service, I submit the report on the work of the Panel in the 2008-2009 Session and briefly highlight several major items of work of the Panel.

Last year, the issue concerning Mr LEUNG Chin-man aroused public concern on the control regime for post-service outside work for directorate civil servants. The Panel has actively followed up the issue. Apart from discussing the approval process of Mr LEUNG's application and the enhancements for the existing control regime, the Panel has also conveyed its concerns and views on the existing control regime to the Committee on Review of Post-service outside Work for Directorate Civil Servants.

The Panel was very much concerned about the three Grade Structure Review reports submitted to Chief Executive in November last year. Members noted that there was strong dissatisfaction from various disciplined services over the relevant report because it failed to address their strong demands in respect of pay structure, career development and hours of work. The Panel called on the Administration to handle these concerns properly and give a clear account on the way forward in respect of the three reports expeditiously.

Regarding the Draft Civil Service Code (the Code) published in December last year, members generally considered that the draft Code had failed to define the division of roles and responsibilities between Permanent Secretaries and Under Secretaries/Political Assistants. Neither had it addressed the issue of unclear supervising/subordinating relationship between Under Secretaries and civil servants. Members urged the Administration to take into account all the views received during the consultation period when finalizing the Code.

Regarding the legislative proposals on the disciplinary framework for civil servants who have participated in the Civil Service Provident Fund Scheme, the staff of the disciplined services have expressed concern about the existing discrepancies in the disciplinary proceedings of civil servants subject to the disciplined services legislation (DSL). Members urged the Administration to consider whether the different disciplinary practices currently adopted by the different disciplined services under their respective DSL should be standardized.



In March this year, a judgment was handed down by the Court of Final Appeal concerning the denial of legal representation for a civil servant during a disciplinary proceeding conducted under DSL. Afterwards, the Panel discussed with the Administration about making legislative amendments to repeal those provisions in the relevant DSL which had been ruled unconstitutional, and about how requests for legal representation at disciplinary hearings conducted under the relevant DSL be handled. The Panel was also concerned about whether any more provisions under the existing DSL might also be unconstitutional and requested the Government to keep the civil service disciplinary system under regular review.

The Panel has been closely following up the policy on employment of Non-Civil Service Contract (NCSC) staff. Some members considered the NCSC Staff Scheme unreasonable and had given rise to the problem of "different pay for the same job", and that the Scheme should be phased out.

The Panel was concerned about the "3+3" entry system for newly recruited civil servants. Under the entry system, recruits to the basic ranks are appointed initially on three-year probationary terms, to be followed by three-year agreement terms, before they are considered for appointment on the permanent terms. Some members opined that the arrangement was too stringent and exerted great pressure on the staff, thus seriously affecting their morale. So, they requested the Administration to review the policy.

The Panel has also discussed the outsourcing of services by the Government. In a bid to protect the opportunities for the lower-skilled workers to join the Civil Service, some members requested the Administration to stop contracting out services delivered by Workman I or II posts under Model Scale 1 (MOD 1) grades. Some members were also concerned that the Administration might outsource more of its services. The Panel considered that the Administration should provide channels for gauging civil servants' views in the course of conducting the reviews of government outsourcing activities.

The Panel was very much concerned that civil servants had expressed dissatisfaction with the long waiting time in seeking medical consultation and treatment under the existing system of provision of civil service medical and dental benefits. The Panel passed a motion urging the Government to include Chinese medicine in the scope of civil service medical benefits and explore the

provision of medical benefits to civil servants by other means, such as taking out medical insurance.

The Panel has discussed the proposals concerning the 2009-2010 civil service pay adjustment. The Panel requested the Administration to provide further information to facilitate discussion of the issue at a special meeting to be held on 7 July.

President, other work of the Panel has been detailed in the report. I would like to take this opportunity to thank members and the Administration for their contribution to the work of the Panel. I also thank the Secretariat for the hard work done. Thank you, President.

**PRESIDENT** (in Cantonese): Dr Margaret NG will address the Council on the report of the Panel on Administration of Justice and Legal Services 2008-2009.

### **Report of the Panel on Administration of Justice and Legal Services 2008-2009**

**DR MARGARET NG:** President, in my capacity as the Chairman of the Panel on Administration of Justice and Legal Services (the Panel), I briefly report on the major work of the Panel in the 2008-2009 Session.

The Panel monitored the progress on the preparation made by the Judiciary and the two legal professional bodies for the implementation of the Civil Justice Reform (CJR) which was implemented on 2 April 2009 and would bring about significant changes in the landscape of civil proceedings in Hong Kong. The Panel considered that it was important to monitor the reformed civil justice system and gauge feedback from the relevant stakeholders. The Panel noted that the Chief Justice had established a committee to monitor the working of the reformed civil justice system. The Judiciary Administrator would brief the Panel on the effectiveness of the reformed system in about a year's time after its implementation.

The Panel was of the view that in light of the procedural changes in the CJR, services to unrepresented litigants should be enhanced. The Panel

proposed to the Administration that a free legal advice scheme for unrepresented litigants should be provided at a location near the Resource Centre for Unrepresented Litigants. The Administration undertook to examine carefully the proposal in consultation with the Judiciary.

The Panel supported the development of mediation as an alternative means of settling disputes and in that context, the Administration's proposal to extend legal aid to cover the costs of mediation in matrimonial cases. The Administration gave a briefing to the Panel on the latest developments on the work of the Working Group on Mediation, chaired by the Secretary for Justice and its three Subgroups. The Panel considered that in addition to the pilot scheme implemented in July which would provide *pro bono* mediators with the use of venues in two community centres during specified period free of charge, the Administration should further explore ways to address the profession's concern about the availability of suitable venues.

With effect from 1 July 2009, the Lands Tribunal would adopt the measures taken in the one-year Pilot Scheme for Building Management Cases as the standard practice, the aims of which were to facilitate an expeditious and fair disposal of building management cases and to encourage the use of mediation. The Panel considered that success in mediating settlement in the Lands Tribunal would bring about savings in judicial resources which should be spent on encouraging people to use mediation more extensively in resolving building management disputes.

The Panel was concerned that legal aid should meet the changing needs of the community, and in that context monitored closely the progress of the Administration's ongoing five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants. Members considered that the scope of the Supplementary Legal Aid Scheme should be expanded by raising the financial eligibility limits, increasing the types of cases to be covered and applying flexibility to the contribution rate. Members also queried whether it was appropriate to have a single financial limit for all types of legal aid applications. The Panel had agreed to follow up these issues when the Administration's recommendations on the five-yearly review are available.

The progress of the Administration's review of the criminal legal aid fees system was monitored closely by the Panel. The Panel was disappointed that

although the Administration had reached a broad consensus with the two professional bodies on the adoption of a new fee structure more than two years ago, the reform is still stalled because the Administration had yet to resolve its differences over the rates and basis of fees for solicitors with the Law Society. The Panel urged the two parties to resolve their differences as soon as possible.

To complement the changes brought about by the CJR, the Panel considered that the scope of legal aid services should also be extended to legal advice. The Panel was deeply concerned that after spending a substantial amount of time and resources to conduct the Consultancy Study on Demand for and Supply of Legal and Related Services and to consider the findings in the Report published in May 2008, the Administration had not put forward any concrete proposals to address the gaps of unmet needs for legal services in the community. The Administration undertook to work out concrete proposals for improving the existing community legal advice service and report to the Panel at the beginning of the next Legislative Session.

The Panel was consulted on the legislative proposal to grant higher rights of audience to solicitors. A draft Code of Conduct for Solicitor Advocates had been provided by the Law Society. The proposed scheme was put forward after extensive consultation and was supported by both branches of the legal profession. The relevant Bill had been introduced to this Council on 24 June 2009.

The Panel was informed that the Administration planned to introduce a bill to enable solicitors to practise in limited liability partnerships (LLPs) in line with the global trend. The Panel, however, stressed at the same time that due consideration must be given to consumer protection. The Panel noted that provisions would be included to ensure the transparency of the operation of the LLPs and the Administration would work out a public education programme when the new mode of practice was implemented.

The Panel had always held the view that prosecution should be conducted by legally qualified practitioners. The Administration, while agreeing to this in principle, had yet to set a timeframe for doing so but continued to take the position that Court Prosecutors had been providing high quality prosecution services, while the standard of counsel-on-fiat had received criticism from the Court. The Panel noted from the Bar Association that to enhance the standard of

prosecution services of junior barristers, a training course with emphasis on criminal prosecution would be introduced for its junior members. The Administration would revisit the Court Prosecutors system after the effectiveness of the Bar's proposed training programme had been evaluated.

Arising from public outcry over the incident concerning the wife of the President of the Republic of Zimbabwe, Mrs Grace MUGABE, who had allegedly committed an assault against a photojournalist during her visit to Hong Kong, the Panel invited the Secretary for Justice to explain the decision of the Department of Justice not to prosecute Mrs MUGABE. According to the Secretary, Mrs MUGABE had been granted immunity and inviolability pursuant to the Regulations of the People's Republic of China concerning Diplomatic Privileges and Immunities. Members expressed grave concern over the effect on the public's confidence in the rule of law in Hong Kong if a person who had committed an assault blatantly and intentionally could enjoy immunity from prosecution. The Department of Justice recently decided not to prosecute the bodyguards of the daughter of the President and Mrs MUGABE, in relation to an alleged assault of two journalists in Hong Kong. The decision again caused public concern and the Panel called a special meeting to follow up the relevant issues with the Secretary for Justice.

President, may I take this opportunity to thank members for their contribution to the work of the Panel, and present on their behalf our heartfelt appreciation for the dedicated support of our Legal Adviser, our Clerk and her team. These are my remarks on the report. Thank you, President.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him will address the Council on the report of the Panel on Home Affairs 2008-2009.

### **Report of the Panel on Home Affairs 2008-2009**

**MR IP KWOK-HIM** (in Cantonese): President, in my capacity as Chairman of the Panel on Home Affairs, I submit the report on the work of the Panel on Home Affairs during the 2008-2009 Session and briefly highlight the deliberations of the Panel.

With the commencement of the development of the West Kowloon Cultural District, members held the view that the Administration should step up its efforts in bringing the arts and culture to the community, nurturing and developing artistic talents and arts administrators, and widening the audience base for the arts and culture. The Administration should also capitalize on the New Senior Secondary School Curriculum in promoting arts education. Some members expressed concern about the existing funding mechanism which was not addressing the needs of the small and medium sized arts groups. They urged that measures be adopted to ensure a reasonable and fair distribution of funding resources amongst performing arts groups.

In response to the Panel's concern, the Administration advised that a steering group would be set up later this year to co-ordinate cross-bureaux and inter-departmental efforts in further developing the cultural software in Hong Kong. Besides, to improve the existing assessment and funding mechanism for major performing arts groups (MPAGs) and to strengthen the progression ladder for the second tier arts groups, the Administration advised that a consultancy study would be commissioned in 2009 to develop a new set of assessment criteria for MPAGs.

Regarding the promotion and development of Cantonese Opera, the Panel supported the Administration's proposal to convert the Yau Ma Tei Theatre and Red Brick Building into Xiqu Activity Centre. Given the unique history and status of the Sunbeam Theatre in the development of Cantonese Opera, the Panel has passed a motion urging the Administration to consider the preservation of the Theatre as a performance venue for or as part of the collective memory of Cantonese Opera.

Regarding the preparation for the 5th East Asian Games (EAG) in 2009, the Administration indicated that measures would be adopted to facilitate public viewing of the Opening Ceremony and participation in the 100-Day Countdown and Torch Relay. The Administration has assured members that the organizer of the EAG would continue to monitor the expenditure vigilantly.

Regarding the promotion and development of local football, members criticized the Administration for failing to take effective measures to address public concern about the worrying decline of local football. Members were also concerned about the inadequate government subvention to district football and the shortage of sports facilities at the district level.

In response to members' suggestion, the Administration also advised that a consultancy study would be commissioned to review the current status of local football and develop proposals and strategies to raise the standard of the sport. The Administration undertook to revert to the Panel on the findings and recommendations of the study in the first quarter of 2010.

The Panel was also concerned about the implementation of recommendations of the 2006 District Council Review in the 18 District Councils (DCs), in particular, the progress the District Minor Works. Some Members were of the view that DCs should play a stronger role in district planning and participate in the management of district facilities relating to food and environmental hygiene.

In response to members' suggestions, the Administration undertook to explore the feasibility of expanding the role of DCs to cover other district facilities. The Panel has decided that the relevant issues should be discussed with the authorities concerned in late 2009.

Finally, I would like to take this opportunity to thank members and the Secretariat of the Legislative Council for their support to the work of the Panel in the past year.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr CHEUNG Hok-ming will address the Council on the report of the Panel on Transport 2008-2009.

### **Report of the Panel on Transport 2008-2009**

**MR CHEUNG HOK-MING** (in Cantonese): President, in my capacity as Chairman of the Panel on Transport (the Panel), I submit the work report of the Panel for this year and will introduce some major work items of the Panel.

In regard to transport infrastructure, the Panel has positively followed up the progress of the Hong Kong-Zhuhai-Macao Bridge (HZMB) and discussed three applications for funding support in relation to the HZMB. The Panel has

also discussed with the Administration the proposal to relax arrangements for regulating cross-boundary private vehicles, so that drivers of private vehicles from the Mainland and Macao could use the HZMB to come to Hong Kong, thus enhancing its economic benefits.

As regards the latest progress of the consultancy study on Central Kowloon Route, the Panel urged the Administration to also positively address the concern of affected residents about the air and noise impacts while expediting the implementation.

Road safety has been a topic of concern to the Panel. The Panel has discussed the proposals of the Administration to amend the relevant legislation with a view to addressing the problem of some drivers trying to circumvent the Driving-offence Points System by avoiding receiving summonses.

In view of a fatal accident involving a public light bus (PLB) that occurred recently, Members urged the Administration to quickly explore the installation of a vehicle monitoring system and speed limiter on PLBs, as well as enhancing law enforcement against speeding by PLB drivers. Members also urged the Administration to review the existing bus and green minibus stop arrangements along Mong Kok Road, with a view to improving the traffic of that area.

Given the three franchised bus fire and smoke incidents occurred at the end of last year, the Panel requested the Administration and the bus companies to review the adequacy of the existing maintenance programme for buses. It also urged the Transport Department to step up surprise spot checks of buses operating on the road, with a view to further enhancing the safety of franchised bus operation.

Besides, in response to public demand for heavier punishments on drink driving offenders, the Administration is in the course of formulating specific legislative proposals. The Panel would schedule discussion of the proposals at its meeting.

In regard to the change in promotional offer of the MTR Railway Corporation (MTRCL) such that the HK\$2 flat fare for the elderly originally offered on Sundays was changed to Wednesdays with effect from 1 January 2009, the Panel was very dissatisfied and passed a motion urging public transport



operators to offer concessionary fares to the elderly on a permanent basis, and that the franchised bus companies should continue to offer the "Same Day Return" discount while the MTRCL should continue to offer interchange fare concessions to residents of the outlying islands.

In regard to the fare adjustment of taxis, the Panel supported the fare adjustment application made by New Territories taxis last year. It also requested the Administration to enact legislation to regulate charging according to meters, with a view to addressing the problem of fare bargaining. The Panel would continue to follow up the impact of the fare adjustment on the taxi trade and listen to their views on the measures to tackle the problem of discount gangs.

In road traffic management, Members were very concerned about the uneven distribution of tunnel traffic. The Panel has discussed measures to improve the utilization of the existing four Build-Operate-Transfer (BOT) tunnels. Members also noticed that in dealing with the uneven distribution of tunnel traffic, the Administration had commissioned a one-year consultancy study on this issue in order to find a long-term solution.

As far as the measures to improve the pedestrian environment are concerned, the Panel has discussed the assessment system proposed by the Administration for the provision of hillside escalator links and elevator systems. The Panel would further discuss the progress of taking forward the assessment system in the next Legislative Session.

The Panel has discussed in detail the complaints made by MTRCL staff about changes introduced by the MTRCL to staff salary and benefits. The Panel passed a motion to strongly condemn the Government for its failure to strictly monitor the fulfilment by the MTRCL of the undertakings it made at the merger and the MTRCL's discrimination against its staff unions. The Panel would continue to follow up this issue in its meetings.

The Panel has also set up the Subcommittee on Matters Relating to Railways (the Subcommittee) during this Legislative Session to oversee the planning, implementation and operation of various railway projects. During this Session, the Panel and the Subcommittee have respectively reviewed the planning, design and implementation, as well as the financial arrangements for the following projects: Kowloon Southern Link, Shatin to Central Link, West

Island Line, South Island Line, Guangzhou-Shenzhen-Hong Kong Express Rail Link (Hong Kong Section) and Tseung Kwan O Extension (Phase II).

In regard to the operation of railways, the Subcommittee has discussed the recent railway incidents, including the progress of the retrofitting of platform screen doors. It has also reviewed the MTR By-laws and North-west Railway By-laws.

The above is my brief account of the work of the Panel this year. Finally, I would take this opportunity to thank the Panel and the Administration for their support to the work of the Panel.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the report of the Panel on Constitutional Affairs 2008-2009.

### **Report of the Panel on Constitutional Affairs 2008-2009**

**MR TAM YIU-CHUNG** (in Cantonese): President, in my capacity as Chairman of the Panel on Constitutional Affairs (the Panel), I would like to highlight some of the deliberation work of the Panel during this Legislative Session.

#### *Constitutional development*

It was the Administration's original plan to consult the public within the first half of 2009 on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 (the two electoral methods). Some members were of the view that the Administration should also consult the public on the ultimate models for implementing universal suffrage for the Chief Executive and the Legislative Council during the forthcoming public consultation. They stressed that functional constituencies (FCs) should be abolished for the implementation of universal suffrage. Some members also said that according to the decision made by the Standing Committee of the National People's Congress (NPCSC) in December 2007 on issues relating to the two electoral methods in 2012 and on issues relating to universal suffrage (the NPCSC Decision), the number of FC seats would invariably be increased. Therefore, they would not support increasing the seats of the Legislative Council in 2012.

The Administration explained that the target of the current term Government was to determine the two electoral methods in 2012 in accordance with the NPCSC Decision. However, the public was free to give views on the ultimate models for universal suffrage at any of the stages of constitutional development. It was up to the current term Government and the current term Legislative Council to decide whether the size of the Legislative Council should be expanded in 2012 and if so, how the electoral method could be further democratized within the framework laid down by the Basic Law and the NPCSC Decision.

The Administration later decided that the public consultation on the two electoral methods would be deferred to the fourth quarter of 2009. At the Panel's request, the Administration briefed members on the working timetable for the public consultation and legislative process for the two electoral methods

Some members expressed concern that one year's time as planned by the Administration would not be sufficient for dealing with public consultation and the legislative process for amendments to Annexes I and II to the Basic Law. They were worried that discussion on the electoral methods for implementing universal suffrage for the Chief Executive in 2017 and for the Legislative Council in 2020 would be precluded from the public consultation because of the compressed schedule. Some other members considered the timetable workable, provided that the Administration could put forward a package of proposals for the two electoral methods for 2012 in the fourth quarter of 2009. They urged the Administration to listen to the views received seriously and strive to forge a consensus as far as possible. These members were also worried that given the divergent views expressed, it would be extremely difficult to reach a consensus on the two electoral methods and to achieve progress in constitutional development in 2012.

#### *Issues relating to racial discrimination*

Following the enactment of the Race Discrimination Ordinance (RDO) in July 2008, the Administration briefed the Panel on the subsidiary legislation and the draft Code of Practice on Employment (the Code) to be issued by the Equal Opportunities Commission (EOC), for the full implementation of the RDO scheduled for around mid-2009.

Some members expressed disappointment that the draft Code had failed to deal adequately with discrimination issues relating to language. They held that the EOC should have prepared a code of practice with practical guidance for eliminating discrimination and promoting equality of opportunity in a user-friendly and positive manner. In light of the view expressed by some members, apart from publishing the initial draft of the Code in Chinese and English, the EOC subsequently published translations of the draft Code into six common languages of ethnic minorities for the public consultation exercise.

The Panel noted that after taking into account the views received during the relevant public consultation exercise and comments made by the Panel, the EOC had made substantial revisions to the first draft of the Code. Members stressed that adequate funding should be provided for the EOC to promote the Code.

The Panel has discussed with the Administration and the representatives of organizations the second report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on Elimination of All Forms of Racial Discrimination (ICERD). Some members expressed dissatisfaction that the report had failed to reflect truly the problem of racial discrimination in Hong Kong. They expressed concern about whether there were interpretation services for ethnic minorities in their access to medical services, and whether there was sufficient support to ethnic minorities in terms of education.

### *Prisoners' voting right*

Following the High Court ruling in December 2008 that the provisions disqualifying any prisoner across the board from registration as an elector and from voting in Legislative Council elections contravene the Basic Law and the Hong Kong Bill of Rights, the Administration briefed the Panel in January and February 2009 on possible policy options for relaxing the relevant disqualification provisions under the Legislative Council Ordinance, as well as the Consultation Document on Prisoners' Voting Right issued for public consultation. In April 2009, the Administration briefed the Panel on the results of the public consultation and the relevant legislative proposal.

A majority of members expressed support for the Administration's decision of relaxing the existing restrictions on prisoners' voting right. They were of the view that the right to vote was a basic human right which should be protected. Members also stressed the importance of ensuring access to candidates'

information by prisoners in order for them to make an informed decision in an election

The Administration subsequently further consulted the Panel on the practical arrangements to facilitate the registration of prisoners as electors, and the voting by prisoners and persons held in custody who were registered electors in public elections.

*Separation of the posts of Chairperson and the Chief Executive Officer of EOC*

The Panel has discussed the possible options suggested by the Administration on how to take forward the proposal of separation of the posts of the Chairperson and the Chief Executive Officer (CEO) of the EOC. While members held divergent views on the three options, a majority of members expressed support for the separation of the posts of the Chairman and CEO of the EOC. However, some members took the view that whether the two posts should be separated was not a primary issue. What is more important should be the enhanced transparency in the appointment process for its Chairperson, CEO and Commission members, as well as the calibre of the persons appointed. The Administration assured the Panel that it would be mindful of the need to ensure that any changes to the structure should not undermine the EOC's independence, and the Chairperson and the CEO would be appointed by way of open recruitment.

Apart from the above deliberation work, the topics discussed by the Panel during this Legislative Session include the Report on the 2008 Legislative Council Election submitted by the Electoral Affairs Commission, the regulation of exit polls, the report of the HKSAR submitted to the United Nations Human Rights Council under the Universal Periodic Review mechanism, the implementation plan for the establishment of the four regional support service centres for ethnic minorities, the outline of topics in the second report of the HKSAR under the Convention on the Rights of the Child, the role of Hong Kong Deputies to the National People's Congress and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, as well as the financial provision for the Office of the Privacy Commissioner for Personal Data.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam will address the Council on the report of the Panel on Financial Affairs 2008-2009.

### **Report of the Panel on Financial Affairs 2008-2009**

**MR CHAN KAM-LAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Financial Affairs (the Panel), I submit the work report for this Session and give a brief account on several key areas of work.

This year, the Panel continued to exchange views with the Financial Secretary on matters relating to Hong Kong's macro-economic situation. Members were deeply concerned about the impacts of the global financial crisis on the Hong Kong economy. The economic downturn had significant impact on the financing of enterprises and the labour market in particular, and the unemployment rate rose to 5.2% in the first quarter of 2009. The Panel urged the Government to formulate effective measures to improve the economy and create job opportunities. Given the shrinkage of bank loans, small and medium enterprises (SMEs) have to face a liquidity problem. Panel members called on the Administration to step up liaison with the banking sector and facilitate the granting of loans to SMEs under the loan guarantee schemes.

Members noted that the banking system of Hong Kong remained sound and robust despite the global financial crisis. The Hong Kong Monetary Authority (HKMA) would continue to monitor banks' asset proportion, quality and review their risk management systems. In the protection of deposits, members supported in general the recommendations of the Hong Kong Deposit Protection Board on increasing the protection limit and extending the coverage of deposit protection.

Noting that the incumbent Chief Executive of the HKMA, Mr Joseph YAM, would retire on 1 October 2009, the Panel has discussed with the Financial Secretary the appointment mechanism for his successor as the Chief Executive of the HKMA, including the method and criteria of selection, the procedures for appointment, and so on. Some members were of the view that the selection exercise lacked transparency and objective criteria, and they urged the Government to review and improve the situation.

In regard to the regulation of the securities and futures markets, following the bankruptcy of the Lehman Brothers Holdings Inc. in September last year, members were keenly concerned about the regulation of the sale of complex and high risk structured financial products to retail investors. The Panel was concerned about the overall position of complaint investigation of Lehman Brothers-related Minibonds by the Administration and measures to assist the affected investors, including the progress of the Government's proposal for distributor banks to "buy back" the minibonds from retail investors. The Panel was also briefed on the reports prepared by the HKMA and the Securities and Futures Commission (SFC) on the Lehman Brothers Minibonds incident.

Members continued to monitor investor protection under the existing regulatory framework for the securities market, including providing adequate protection to minority shareholders during the privatization process of listed companies, regulation of the disclosure of investment and financial position of listed companies, and the regulation of credit-linked products.

Given the industry concern for the proposed extension of the "black out" period for directors of listed companies, members have held discussions with the Administration, the SFC and the Hong Kong Exchanges and Clearing Limited (HKEx). Some members were of the view that the proposed extension would excessively lengthen the period during which directors were prohibited from dealing in securities, and would deter companies from listing in Hong Kong. However, some members considered that the proposal would enhance investor confidence of a level playing field. The Panel passed a motion requesting the HKEx to launch a consultation on the proposal afresh. Members noted that the HKEx had decided subsequently to modify the proposal so as to reduce the range of extension of the "black out" period and to defer implementation of the modified proposal until 1 April 2009.

The Panel has discussed the legislative proposal of increasing employees' control over their Mandatory Provident Fund (MPF) investment to the effect that an employee is allowed to transfer the accrued benefits derived from the employee's mandatory contributions from the MPF scheme to a personal account under a scheme of his own choice. Some members suggested that the Administration should study some measures to facilitate employees in checking their MPF accounts balance.

President, for the other work of the Panel, there is already a detailed account in the written report. I so submit.

**PRESIDENT** (in Cantonese): Mr LAU Wong-fat will address the Council on the report of the Panel on Development 2008-2009.

### **Report of the Panel on Development 2008-2009**

**MR LAU WONG-FAT** (in Cantonese): President, in my capacity as Chairman of the Panel on Development (the Panel), I submit the work report of the Panel for 2008-2009. In the following, I would like to give a brief account on several key areas of work of the Panel.

This year, the Panel has held discussions on a number of major infrastructure projects. Members in general were supportive of implementing the construction works of Central-Wan Chai Bypass and Wan Chai Development Phase II as soon as possible. They also noted that the Administration was confident that the reclamation works involved in the works projects could meet the legal requirements under the Protection for the Harbour Ordinance. Members have also put forward various proposals on the planning and implementation programme of the Kai Tak Development District and held discussion with the Administration on how to solve the pollution and odour problems at the Kai Tak approach channel. In regard to the Lok Ma Chau Loop, the Closed Area, the North East New Territories New Development Areas and the proposed Liantang/Heung Yuen Wai Boundary Control Point, members in general were supportive of the Administration conducting detailed planning and construction works studies on these development projects. They also urged the Administration to ensure that there would be effective co-ordination in the conduct of these studies.

The Administration launched the review of the Urban Renewal Strategy in July 2008. The Panel discussed with the Administration later on the key issues that should be examined in the Review. The Panel put forward various views and proposals on the future direction of urban regeneration and listened to the public's views in its special meetings.



The Administration briefed the Panel on the progress of the key initiatives of its heritage conservation work in December 2008 and April 2009. Members welcomed the district-based approach adopted by the Administration for planning the preservation and revitalization of the old Wan Chai area and the vicinity of Hollywood Road. Members suggested that the approach could also be adopted for the conservation work of other districts such as Kowloon City and various areas in the New Territories. Members also gave views on the conservation arrangements for various heritage sites, the engagement of District Councils and other organizations in pursuing conservation initiatives, and also the Revitalizing Historic Buildings Through Partnership Scheme.

As the details of other deliberation work of the Panel have already been recorded in the report, I will not expound them here.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr Andrew LEUNG will address the Council on the report of the Panel on Information Technology and Broadcasting 2008-2009.

### **Report of the Panel on Information Technology and Broadcasting 2008-2009**

**MR ANDREW LEUNG** (in Cantonese): President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting (the Panel), I submit the work report of the Panel for this Session and highlight several major areas of work of the Panel.

The Panel expressed grave concern for a series of incidents relating to leakage of personal data by the Government and public organizations. It urged the Administration to ensure that appropriate measures were formulated to enhance the awareness of all staff of information security and to prevent leakage of personal data so as to restore public confidence in the handling of personal data by government departments and public organizations.

The Panel also supported the pilot scheme on District Cyber Centres with a view to narrowing the digital divide and eliminating intergenerational poverty. Some members suggested that the Administration should devise performance

indicators, step up liaison with the 18 districts and also compile district-based data on digital inclusion.

The Panel held two meetings to receive views from deputations and members of the public on the review of the Control of Obscene and Indecent Articles Ordinance. Since the community had divergent views on the review, some Panel members suggested that the Administration should strike a balance between protecting the youth from indecent and obscene materials on the one hand and preserving the free flow of information and the freedom of expression on the other in reviewing the Ordinance. The Government should also be careful when addressing the legal and technical problems involved in Internet control.

The Panel had listened to the views from representatives of the industry on the Film Development Fund (FDF). Members requested the Administration to streamline the application and vetting procedures, and to further improve the operation of the FDF to meet the needs of the film industry.

The Panel followed up many times the progress of the review of administration of Internet domain names in Hong Kong and also met with representatives of relevant stakeholders. It made recommendations on issues relating to the policies and operation of the Hong Kong Internet Registration Corporation Limited (HKIRC). Members urged the Administration to ensure that the HKIRC will have good corporate governance, and that domain name registration would be processed fairly in the interests of the community so as to uphold freedom of expression.

The Panel agreed with the release of relevant spectrum and multiplexes by auction for expansion of the second generation mobile service and mobile TV services. Some members supported the proposed light-handed regulatory approach of the Administration for mobile TV services as this would allow programme diversity and facilitate a wide variety of programme choices to the public.

In regard to domestic free television programme services, the Panel urged the Government to conduct the mid-term review of the domestic free television programme service licences of the two licensees as soon as possible to ensure that they were still capable of providing services in accordance with the relevant

statutory requirements and the provisions in their licence conditions. As regards the progress on the implementation of digital terrestrial television (DTT) broadcasting, the Panel also urged the Administration to discuss with the two licensees in order to further enhance their DTT services with a view to introducing a greater variety of quality programmes to the viewing public.

The Panel was also concerned about the review of public broadcasting services, including the deferral in handling the future of Radio Television Hong Kong (RTHK) for a period of time. Therefore, it urged the Administration to finalize the consultation paper and to widely consult the public and RTHK as soon as possible. The Administration would brief the Panel on the latest progress of the matter and the timetable for the consultation before the end of the current Legislative Session.

In regard to the development of creative industries, the Panel hoped that the dedicated office, Create Hong Kong, through co-ordination of government policy and integration of resources, could draw up comprehensive strategies and long-term policies, and could work closely with the trade. As regards CreateSmart Initiative, the Panel also requested the Administration to put in place a fair, open and transparent vetting and approval mechanism.

I would like to take this opportunity to thank members for their support to the work of the Panel, officials of the Commerce and Economic Development Bureau and the related groups and organizations for their full co-operation and participation, as well as the Secretariat for its assistance so that the work of the Panel could be accomplished smoothly.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr Jeffrey LAM will address the Council on the report of the Panel on Economic Development 2008-2009.

### **Report of the Panel on Economic Development 2008-2009**

**MR JEFFREY LAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Economic Development (the Panel), I submit the work report of the

Panel for 2008-2009 and will give a brief account on some of the major work stated in the report.

The Panel has all along been very concerned about the development of the tourism industry in Hong Kong. It has raised opinions on various tourism initiatives and discussed with the Administration. The Panel urged the Administration to take forward speedily the development work of the new cruise terminal at Kai Tak and the ancillary facilities, while the terms and conditions of the future tenancy agreement for the operation of the cruise terminal should be formulated as early as possible in order to tie in with the commissioning of the first berth in mid-2013.

The operation and expansion plan of the Hong Kong Disneyland (Disneyland) had been a great concern to the Panel. In regard to the agreement in principle reached between the Administration and the Walt Disney Company of the United States on the financial arrangements for the expansion of the Disneyland, the Panel was concerned about the reasonableness and sustained viability of the related financial arrangements.

In regard to the Aberdeen Tourism Project, members expressed disappointment to the Administration's decision to abandon the development of the "Fisherman's Wharf", and urged the Administration to reconsider the decision.

The Panel was briefed by the Hong Kong Tourism Board (HKTB) on its work plan for 2009-2010. Members urged the HKTB to ride on the further liberalization measure of the Individual Visits Scheme policy, step up publicity in the markets concerned and analyse the factors that would motivate tourists to visit Hong Kong again. In order to assist the tourism industry to withstand the impact of the human swine influenza, the Administration, in response to the request from the Panel, would waive the licence fee of travel agents for one year to help reduce the cost of operation of the industry.

As regards the fair competition law, while some members were very disappointed with the delay in submission of the Competition Bill by the Administration, other members supported that more time was needed to review overseas experience in order to minimize potential conflicts during implementation of the new law. Members had raised the following concerns, namely, the competition law should incorporate the provision for private action

against anti-competitive conduct, the need to impose criminal penalty to enhance the deterrent effect of the law, and the exemption of statutory bodies from the regulation of the competition law.

In the protection of the rights and interests of consumers, the Panel was highly concerned about the Administration's inaction in combating advertising bluffs, consumer scams and traps as well as high pressure sales tactics. The Administration undertook to review existing legislation to prohibit unscrupulous trade practices in the supply of services.

Panel members had all along criticized that local auto-fuel prices were "quick going up, slow coming down". They considered that consumers should have reasonable expectation that the oil companies would reduce the retail prices in tandem with the drop in international oil prices. Members welcomed the Environment Bureau's initiative to publish on its website, on a weekly basis, the local import prices and retail prices of auto-fuels. Besides, the Consumer Council would publish weekly the local retail prices of auto-fuels and various cash/non-cash discounts, to enable consumers to have a better grasp of the market situation and make a smart choice in consumption.

In the electricity market, the Panel was disappointed to note that pursuant to the newly signed Scheme of Control Agreements (SCAs), the CLP Power Hong Kong Limited (CLP) reduced its average Net Tariff by merely 3%. The Panel urged that the Administration should closely monitor fuel clause charge adjustments made by the CLP. Some members suggested that the CLP should consider selling the surplus electricity to other parties to ease the pressure of tariff increase. In the adoption of cleaner fuels for power generation, the CLP planned to gradually increase the use of natural gas to around 50% of its overall fuel source portfolio.

Members welcomed the reduction of Net Tariff by 5.9% by the Hongkong Electric Company Limited (HEC) and urged the HEC to exercise greater versatility in handling the coal procurement contracts. Members noted that even without the generating unit L10 which had been turned down by the Administration, the HEC would still be able to meet the 2010 emission caps.

President, the gist of other work of the Panel has already been recorded in the report submitted. I would like to take this opportunity to thank members of

the Panel, government officials and the Legislative Council Secretariat for their full support over the past year.

I so submit. Thank you.

**PRESIDENT** (in Cantonese): Dr Joseph LEE will address the Council on the report of the Panel on Health Services 2008-2009.

### **Report of the Panel on Health Services 2008-2009**

**DR JOSEPH LEE** (in Cantonese): President, in my capacity as Chairman of the Panel on Health Services (the Panel), I submit the work report of the Panel for 2008-2009 to the Legislative Council and will focus on introducing some major deliberation work of the Panel in the area of health services.

Human cases of a new strain of swine influenza A (H1N1) virus infection were identified in April 2009 in Mexico, the United States and Canada. According to the World Health Organization (WHO), the H1N1 viruses characterized in this outbreak had not been previously detected in pigs or humans. The Government raised the response level to "Emergency Response Level" under the Preparedness Plan for Pandemic Influenza in Hong Kong upon the confirmation of an imported case of human swine influenza (HSI) infection in Hong Kong on 1 May 2009. The Panel could then discuss issues concerning the prevention and control of HSI in Hong Kong. The Panel has to date held a total of five meetings with the Administration, including one joint meeting with the Panel on Food Safety and Environmental Hygiene and three special meetings.

Members generally concurred with the Administration's strategy against pandemic influenza, which was containment for as long as it would take to delay community transmission. However, mitigation would apply when local transmission of HSI became significant and containment strategy was no longer appropriate or feasible, that was, the occurrence of a confirmed local case that had no identifiable link, such as travel to an affected area in the previous seven days. Members were also very concerned as to whether the Administration had sufficient contingency ability as well as adequate supply of antiviral drugs and personal protective gear in time of outbreak in the community. Some members were of the view that closure of schools for up to 14 days when the first local HSI

case occurred should cover all secondary schools, in addition to all primary schools, kindergartens, nurseries and other pre-schools.

In the light of the recent incidents concerning pharmaceutical products in Hong Kong, such as fungal contaminated Allopurinol, the Panel had discussed with the Administration how to improve the existing regulation and control of pharmaceutical products in its special meetings. Some members considered that the main reason for the recent drug incidents was the inadequate manpower of the Department of Health (DH) to perform inspection and surveillance on the drug supply chain. Members urged the DH to recruit 10 additional pharmacists than planned and raised the penalty to ensure compliance with the General Manufacturing Practices. Besides, it would implement any enhancement measures where practicable prior to completion of work in six to nine months' time by the Review Committee. The Panel would continue to monitor the progress of the review of the existing regulatory regime on pharmaceutical products.

In regard to the development of a territory-wide electronic health record (eHR) sharing system, Members were particularly concerned about the success of the project if the participation of private doctors in the system was not high. Members requested the Administration to explain in writing its strategy on encouraging the private medical sector to join the eHR sharing system, especially how to ensure there were adequate private service providers to participate and use the system before submitting its application for funding and human resources to the Finance Committee for developing the eHR sharing project. The reply concerned had already been sent to other Legislative Council Members for their perusal.

Finally, President, I would like to thank members for their efforts and support over the past year, and the Legislative Council Secretariat, in particular, for its provision of highly professional services so that the meetings could proceed very smoothly.

I so submit.

**PRESIDENT** (in Cantonese): Ms Audrey EU will address the Council on the report of the Panel on Environmental Affairs 2008-2009.

**Report of the Panel on Environmental Affairs 2008-2009**

**MS AUDREY EU** (in Cantonese): President, in my capacity as Chairman of the Panel on Environmental Affairs (the Panel), I submit the work report of the Panel for 2008-2009 and will give a brief account on some major work stated in the report.

The Panel has all along been very concerned about the air quality of Hong Kong, and power companies and vehicles are the two major emission sources in Hong Kong. For Hong Kong to achieve the 2010 emission reduction targets, the Administration suggested to follow the provisions under the Air Pollution Control Ordinance to allocate quantities of emission allowances for the three specified pollutants (namely, sulphur dioxide, nitrogen oxides and respirable suspended particulates) to the power plants in Hong Kong for the year 2010 and beyond through a technical memorandum. While there was general support for improving air quality, a question was raised by members on the basis upon which the emission caps for individual specified pollutants were arrived at. Given that the two local power companies would need to build into their operational plans costs of pollution abatement equipment, members were concerned that such costs would be passed onto consumers through increase in electricity tariffs.

To reduce vehicular emissions, the Administration launched a consultation exercise to seek the public's views on the proposal to introduce a statutory ban against idling vehicles with running engines (idling vehicles). The result of the consultation showed that although the general public was supportive of the statutory ban against idling vehicles, the transport trades remained discontented that the statutory ban would seriously affect their operation. Having considered issues such as the operational needs of the transport trades and the enforcement practicability, the Administration had revised the exemption arrangements. The revised proposal was discussed by the Panel in two meetings during which deputations were invited to express their views. While acknowledging that the revised exemption arrangements were a step forward, some members pointed out that these arrangements could not fully resolve the practical difficulties faced by the transport trades in complying with the ban. They urged the Administration to further consult the trades with a view to working out practicable solutions to the problems. Other members, however, pointed out that about 60% to 70% of the people in Hong Kong supported the ban, and that there was a price to pay to improve the environment. Therefore, the ban should not be put on hold by the Government because of certain technical issues.



To enable more focused discussion on the Government's efforts in addressing air pollution, the Panel set up a Subcommittee on Improving Air Quality to monitor and study policies as well as public concerns on improving air quality. Upon completion of the work, the Subcommittee would submit a report to the Panel.

As regards waste management, in order to reduce the number of plastic shopping bags (PSB) to be disposed of at landfills, the Administration decided to implement the environmental levy scheme on PSB, and the Panel had discussed the implementation details of the levy scheme. While the Panel in general supported the levy scheme, some members expressed concern that since the definition of PSB was too loose, registered retail outlets could easily get round the scheme by providing non-regulated PSB. They were also concerned that since consumers might not be aware of the scope of application of the levy, non-registered retail outlets might be able to profiteer. Apart from retailers, members opined that the scheme should apply to manufacturers as well, and the Government should also take the lead in avoiding the indiscriminate use of PSB. The Regulation related to the levy scheme had already been passed by the Legislative Council and was implemented on 7 July this year.

The problem of fly-tipping and land filling activities had all along been a concern of the Panel. These activities had become more rampant despite the enhanced control measures by the Administration. The situation was further exacerbated given that some depositing activities had been approved by the Administration for land formation purpose. To enable more focused discussion on the Government's efforts in tackling fly-tipping and land filling activities, a Subcommittee on Combating Fly-tipping was set up under the Panel. It would review the existing enforcement policy in dealing with the problem of fly-tipping and recommend improvement measures when necessary. Upon completion of the work, the Subcommittee would submit a report to the Panel.

In regard to the treatment of sewage, the Panel noted that while the commissioning of the Harbour Area Treatment Scheme (HATS) Stage 1 had helped to improve the water quality of the harbour, it also produced an enormous quantity of sludge. The current practice of sludge disposal at landfill was not sustainable from both environmental and technical perspectives. Therefore, some members supported the Administration's proposal to build the Sludge Treatment Facilities (STF) at the eastern end of the ash lagoon at Tsang Tsui near

Nim Wan, Tuen Mun. However, some members pointed out that the Tuen Mun District Council (TMDC) opposed the proposed STF because there were environmental impacts associated with the incineration of a large amount of sludge, and it was unfair that the Administration placed many perceivingly unwelcomed public facilities in Tuen Mun. Given the fact the many overseas modern incineration facilities, which were clean and environmentally-friendly, were situated in close proximity to residential developments or recreational facilities, the Administration should consider arranging for TMDC members to observe these facilities in person. In compensation for the unwanted facilities in Tuen Mun, the Administration should also consider providing more wanted facilities for the betterment of Tuen Mun residents.

The gist of the other work of the Panel has already been stated in the report submitted. President, I wish to take this opportunity to thank members of the Panel and the Government for their support and work over the past year. I would also like to thank the Legislative Council Secretariat, in particular, for its high quality services.

Thank you, President.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. The first question.

### **Advance Directives of Patients in Relation to Health Care or Medical Treatment**

1. **MRS SOPHIE LEUNG** (in Cantonese): *President, on 16 August 2006, the Law Reform Commission (LRC) released its report on Substitute Decision-making and Advanced Directives in Relation to Medical Treatment (the Report). The Report examined, inter alia, the giving of instructions by a patient, while he is still competent in making medical decisions, as to the health care or medical treatment he wishes to receive if he later becomes incompetent to do so (advance directives). In this connection, will the Government inform this Council:*

- (a) *whether it knows how many patients have, since the release of the Report, made advance directives on their own initiatives, and how many of these directives have been executed by hospitals or doctors; and*
- (b) *whether the Government has, since the release of the Report, allocated resources to help patients and their families understand the rights and responsibilities involved in making advance directives; if it has, of the amount of money spent on such promotional work, as well as the relevant details; if not, the reasons for that, as well as whether it will allocate resources in the foreseeable future to educate the public?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, let me first explain the concept of advance directives.

In order to provide patients with the most appropriate treatment that is in their best interests, it is imperative to establish mutual trust and maintain good communication among doctors, patients and their family members throughout the whole treatment process. In case of conflict, a patient's right of self-determination should prevail over the wishes of his relatives, and a doctor's decision should always be guided by the best interest of the patient. However, when a patient is terminally ill, in a state of irreversible coma or in a persistent vegetative state, and by medical judgment, all treatment will be futile in improving the condition, the health care professionals and family members caring for the patient often encounter the problem of providing the patient with suitable forms of health care or medical treatment.

The Code of Professional Conduct for the Guidance of Registered Medical Practitioners (the Code of Professional Conduct) of the Medical Council of Hong Kong (Medical Council) has provided guidelines on the care for the terminally ill. Where death is imminent, it is the doctor's responsibility to take care that a patient dies with dignity and with as little suffering as possible. Withholding or withdrawing life-sustaining treatment taking into account the patient's benefits, wish of the patient and family, and the principle of futility of treatment for a terminal patient, is legally acceptable and appropriate. It is important that the right of the terminally ill patient be respected. The view of his relatives should

be solicited where it is impossible to ascertain the views of the patient. The decision of withholding or withdrawing life support should have sufficient participation of the patient himself, if possible, and his immediate family, who should be provided with full information relating to the circumstances and the doctor's recommendation.

Under the common law, an individual may, while mentally competent to make decisions or take actions, give directions as to the future medical treatment that he wishes to receive when he is no longer mentally competent to make such decisions. Such directions are known as "advance directives". An individual who makes an advance directive usually makes a written statement to specify that, when he is terminally ill, in a state of irreversible coma, or in a persistent vegetative state, save for basic and palliative care, he can choose not to receive any life-sustaining treatment or any other treatment he has specified, such as cardiopulmonary resuscitation, or to specify the withholding or withdrawal of futile treatment which merely postpones his death, such as artificial ventilation, so as to minimize distress or indignity that he may suffer and to spare the health care professionals or relatives or both from the burden of making difficult decisions on his behalf. The concept of advance directive is derived from the belief in a person's autonomy in health care decisions and the principle of informed consent.

I must emphasize that advance directives and euthanasia are two distinct concepts. Advance directives concern the principle of a patient's autonomy which allows him to decide, when being conscious, the form of health care he would like to have in a future time when he is no longer mentally competent. Euthanasia involves a third party's unlawful acts of intentional killing, manslaughter, or aiding, abetting, counselling or procuring the suicide of another, or an attempt by another to commit suicide, which are unlawful in Hong Kong. The Code of Professional Conduct of the Medical Council of Hong Kong defines euthanasia as "direct intentional killing of a person as part of the medical care being offered". Euthanasia is neither medically ethical nor legal in Hong Kong. Hence, no one in Hong Kong can indicate a wish to perform euthanasia in his advance directive. Even if a person expressly requests for such an illegal behaviour to be conducted, health care professionals should in no way act as instructed. Any person who is involved in euthanasia will be suspected to have committed the above offences.

I now proceed to reply each part of the question:

- (a) The Hospital Authority (HA) issued the Guidelines on Life-sustaining Treatment in the Terminally Ill (the Guidelines) in 2002 based on the Code of Professional Conduct with a view to assisting front-line doctors, nurses and other health care professionals caring for the terminally ill in making decisions with respect to life-sustaining treatment for the terminally ill. The health care professionals of the HA have all along followed the Guidelines and maintain communication with the terminally ill patients and their family members having regard to the development of the health conditions of the patients. When a doctor considers that withholding or withdrawing life support is in the best interest of the patient, the doctor will involve the patient, if possible, and his immediate family in making the decision. According to the information provided by the HA, so far no patient treated or received health care services in hospitals under the HA have shown advance directives to the health care professionals, nor has there been any patient initiated the making of an advance directive.
- (b) We share the view of the LRC in its Report published in August 2006 that Hong Kong people are not yet familiar with the concept of advance directives. As such, it is not the appropriate time to implement advance directives at this stage through any form of legislation. Having considered the Report's recommendation to promote advance directives through non-statutory means, we plan to work with the HA and the Department of Health to promote the concept of advance directives and consult the health care sector (including the Medical Council), legal profession, patient groups and non-government organizations providing health care-related services for patients this year. Information materials on advance directives will be prepared and distributed to the public through these bodies and organizations. Relevant information will also be made available to the public at hospitals, health care institutions, and so on. Moreover, we will consult the health care and legal sectors on the need to issue guidelines on the making and handling of advance directives. The relevant work will be done by the existing staff of the Food and Health Bureau, and we have not yet estimated the resources required at this juncture.

**MRS SOPHIE LEUNG** (in Cantonese): *Part (b) of the main reply mentioned various promotional initiatives that may be conducted in the future, however, the Report was publicized in August 2006 and it was stated at length that the public had to be educated of this concept. But why does the Government consider promotion only now, that is, three years later? President, the supplementary question I wish to ask is: Towards the end of part (b) of my main question, I asked the Government whether resources had been allocated to help patients and their families to understand the rights and responsibilities involved in making advance directives, and the relevant details of such promotional work; if not, the reasons for that. No explanations seemed to have been given at all in the main reply as to why there was no follow-up on this during these three years.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I have answered that in part (a) of the main question. In the area of public medical services, in particular, the HA in 2002, based on the Guideline, sufficiently assisted front-line health care professionals in handling this problem faced by patients. According to our past experience, the communication between Hong Kong's health care professionals and patients (especially the terminally ill) as well as their families are rather sufficient. A number of patients would indicate to the medical professionals at an early stage the kind of treatment they wish to receive or not to receive when they reach the end of their lives. While this special way of handling in which advance decisions are made and written down is relatively clear to doctors and nurses, it is rather new to the Hong Kong public. Over the past few years, this mode of practice was regarded by the HA as uncommon and unconventional. In order to minimize conflicts that may arise on the concept between them and the family members, Hong Kong's health care professionals need some time to accept this as a feasible and alternative channel of communication with the patients. Hence, we consider that some time is needed to be spent on this. Educational work had been conducted in this aspect over the past years, and we reckon this to be the appropriate time to introduce information on this in this year.

**DR LEUNG KA-LAU** (in Cantonese): *Medical professionals are aware of the several sets of words that can usually be found in beds of wards or patients' charts. One of those sets is TLC, which is tender loving care; another set is NCC, which is no crash call. Both sets of words have the same meaning.*

*According to the Secretary, it appears that currently there is certain communication; however, it was pointed out in the main reply that according to information from the HA, so far no patient treated or receiving health care services has given advance directives to the health care professionals. In fact, tens of thousand people passed away in hospitals every year, is it the case that no one had given such directives over all these years? May I ask the Secretary whether he indeed believes in the information provided by the HA? Or is there a problem in communication, or are they talking about different matters?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): We are indeed talking about different matters. In the HA, Dr LEUNG may have to deal with the same problems every day. Very often, whether is in the oncology, intensive care, medical or surgical ward, one has to deal with patients who are coming to the end of their lives, and very often decisions would have been made during communication with patients or their families. Hence, we would have that written down clearly on the beds of wards or patients' charts, and would respect their wishes for the kind of services they would like to receive.

As regards the advance directives mentioned, specific forms have been drawn up by the LRC for patients to fill in, a practice that resembles that of the consent form and requires the signatures of two witnesses. Hence, I believe the communication between doctors and patients or their families is sufficient, and they think there is no need to do so. Hence, health care professionals are now using the practice mentioned by Dr LEUNG every day, but not the more official or standardized format proposed by the LRC. Is this practice indeed more effective or does it offer more protection? Certainly, in some countries, it is dealt with by way of legislation; but we regard that more time is needed for this concept to be accepted in Hong Kong, and there is a need for health care professionals to agree to this need, or patients to be aware that there is such a specific need before the concept is brought into implementation. In overseas countries, especially where cases of medical incident litigations are more, this practice is regarded as particularly effective in protecting the interests of health care professionals. Back to Hong Kong's situation, I reckon certain discussions have to take place in Hong Kong before it could be decided whether this would be a mainstream practice or one that provides extra protection for the interests of both parties. Hence, consultations on this practice have to be conducted.

**DR JOSEPH LEE** (in Cantonese): *President, just now the Secretary mentioned that advance directives are matters to be understood between patients and the health care professionals. It was mentioned in the main reply that the health care sector, professionals, and patient groups would be consulted and that advance directives are informed choices to patients and their families, which are very important. In the Secretary's main reply, I do not see any substantive practice proposed, that is, how patients and their families can be enabled to make informed choices through promotional efforts. Not only do health care professionals have to be familiar with advance directives, but patients and their families also have to understand the concept before choices could be made. However, I could not see any answer in response to the question raised by Mrs Sophie LEUNG as to whether resources for this have been allocated by the Secretary and what actions would be taken.*

*Hence, my supplementary has to repeat the questions how much resources would be allocated by the Secretary this year? What substantive arrangements are there to make patients and their family more familiar with the whole concept of advance directives and enable them to make informed choices? How would the practice be described as successful, and is there a timetable?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Several issues have been raised in the supplementary question. Firstly, this year, we are prepared to first consult the groups (that is, health care professionals and patients groups, and so on) that are concerned about this concept. We hope to obtain the relevant information before deciding whether extensive community consultation needs to be conducted, when we in particular understand that many people may not have considered this in advance before they are faced with the problem. Hence, it is most imperative for us to obtain more information from the health care professionals, patients or their families at the hospital level, in particular when dealing with chronic or cancer patients. Meanwhile, many patient groups also hope that more information could be provided by us on this aspect.

There are different views on the practice adopted in dealing with patients coming to the end of their lives. Some would entrust their lives to the health care professionals and, in the hope that they would try their best to take care of them, they consider there is no need for them to have advance directives clearly



written down. However, there are some who consider that since the future is unknown, they would rather make advance directives concerning the practice to be adopted in case they fall into a coma, such as their throats would not be damaged when intubation is being carried out and their ribs would not be broken when cardiopulmonary resuscitation is being performed. They would probably feel safer when they have informed health care professionals of these wishes in advance. When they are near the end of their lives, a good many people in Hong Kong would state that clearly to their family members. Hence, this practice can resolve many issues considered necessary to be addressed in overseas countries. However, at the same time, we feel that if there is such a mechanism, a channel for both parties to resolve situations in which conflicts are predicted to arise, one more alternative is being provided for handling the matter, and this is what we have to deal with. Hence, we regard this to be the appropriate time for consultations to be conducted.

As regards resources, I believe not too much resources need to be injected save for holding certain consultation gatherings or adopting other channels for conducting consultations. Publicity work would be conducted if extensive publication of this message is called for. Some resources have been reserved for work in this area.

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

**DR JOSEPH LEE** (in Cantonese): *President, the Secretary has not answered when consultations and the relevant timetable would be introduced specifically.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I am prepared to introduce this by the end of the year.

**PRESIDENT** (in Cantonese): We have spent 19 minutes and 30 seconds on this question. Last supplementary question.

**MR CHAN HAK-KAN** (in Cantonese): *I would like to ask the Secretary a simple question. May I ask the Secretary what would be done if difference in opinions concerning advance directives exists between patients and their families? In the event that health care professionals insist on an enforcing patient's wishes, would his family members have a legal right to pursue responsibility?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Be it in law enacted overseas or the concept itself, priority would be given to patients' wishes in advance directives. Hence, if patients have made advance directives, health care professionals would still respect their wishes even if family members may have different opinions about the choices. Certainly, in handling patients' conditions, health care professionals would very often spend a lot of time communicating with family members, such as canvassing respect for the decisions made by patients prior to the coma state. That being the case, health care professionals who have to face this issue every day have ample experience. Also, when health care professionals and patients work on the decisions, very often family members would either be requested to be present or would have been aware of the patients' wishes. This would lessen the chances of family members being at a loss or not knowing what to do in the event that patients fall into a coma.

**PRESIDENT** (in Cantonese): Second question.

### **Electronic Money Systems of Hong Kong and PRD Region**

2. **MR ANDREW LEUNG** (in Cantonese): *President, Octopus and Shenzhen Tong are two electronic money systems used extensively by residents in Hong Kong and Shenzhen respectively, and both systems may be used for various types of services such as public transport and shopping. Residents in Hong Kong and Shenzhen travel frequently between the two places, with over 100 million trips made each year, and approximately 10 million residents in Shenzhen are now eligible to apply locally for endorsement to visit Hong Kong under the "Individual Visits Scheme". Furthermore, nine cities in the Pearl River Delta Region have commenced preparation work for a "Smart Card"*

*electronic money system which may be used for public transport. It is expected that the "Smart Card" will be introduced within the next few years for public use, and it will become the largest electronic money platform in the region. In this connection, will the Government inform this Council whether it will, under "The Outline of the Plan for the Reform and Development of the Pearl River Delta" (the Outline):*

- (a) take the initiative to raise, as one discussion item, the early and pilot implementation of mutual use and access of the electronic money systems of Hong Kong and Shenzhen; and*
- (b) strive for participating in the above preparation work for the "Smart Card", so as to transfer Hong Kong's experience in electronic money system to the Mainland, and strive for the inclusion of Hong Kong in the coverage of the "Smart Card"; if it will, of the progress; if not, the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, the Government's reply to the question is as follows:

- (a) The Government and the relevant regulators (including the Hong Kong Monetary Authority (HKMA)) have been promoting the financial infrastructure and economic co-operation between Hong Kong and the Mainland. Long before the promulgation of the "Framework for Development and Reform Planning for Pearl River Delta Region", the HKMA has been in discussion with the Shenzhen Central Sub-branch of the People's Bank of China (PBoC Shenzhen) and other relevant parties on the feasibility of establishing a linkage between Octopus and Shenzhen Tong with a view to enabling cross system usages.

At present, Octopus is the only multi-purpose e-money widely used in Hong Kong. As the supervisory body, the HKMA has been encouraging and supporting Octopus in providing cross-border services. For example, with the joint efforts of the HKMA and PBoC Shenzhen, Octopus has started operation in relevant retail outlets in Shenzhen since August 2006. Currently, Octopus has

over 30 processors in Shenzhen to facilitate use by Octopus card holders.

With the joint efforts of the two governments, a Task Force has been established by Octopus Holdings Limited and Shenzhen Tong Co. Ltd. The Task Force will, based on the principles of providing convenience to the residents of Hong Kong and Shenzhen and promoting mutual benefits, explore the feasibility of establishing the linkage and co-ordinate the work required. As the project involves a number of technical, business and operational issues, including the system standard, card reader compatibility, cryptographic capability, management concept, business operation, and so on, more time is required for both parties to examine the project in detail.

Under the co-operation framework between Hong Kong and Guangdong, the HKMA will continue to join hands with PBoC Shenzhen to make the Octopus and Shenzhen Tong cards interoperable with a view to bringing convenience to residents of Hong Kong and Shenzhen and facilitating the flow of people, capital and goods between the two places.

- (b) Regarding the Pearl River Delta Region, to facilitate the implementation of the "Framework for Development and Reform Planning for Pearl River Delta Region (2008-2020)", the People's Government of the Guangdong Province General Office issued the "Guiding Opinions on Expediting the Economic Integration in the Pearl River Delta Region" (Guiding Opinions) on 10 June this year. For transportation, the Guiding Opinions proposed the promotion of the transportation management integration, including taking forward the intercity connection, and striving to achieve the use of a single card on public transport in five years.

It is our understanding that the implementation arrangements have not been promulgated yet. The Government will closely monitor the development in this regard, and follow up with the relevant party when appropriate and consider the appropriate role to be played by Hong Kong in the relevant development.

In addition, the HKMA has established a close co-operation relationship with the People's Bank of China's Guangdong Branch (PBoC Guangdong). Since 1998, the two authorities have jointly introduced a number of cross-border co-operation projects, including the cross-border Joint Clearing Facility for Hong Kong Dollar and US Dollar Bills, and one-way Renminbi joint cheque clearing. These projects have helped bring convenience to the residents and enterprises of the two places in terms of consumption as well as making cross-border financial and commercial payments. Since their introduction, the services have been running smoothly with an increasing amount of usage. In 2008, the daily transactions conducted through the abovementioned cross-border facilities amounted to over HK\$1.7 billion on average.

The HKMA will continue its ongoing efforts and discussion with PBoC Guangdong on the potential financial infrastructure co-operation initiatives.

**MR ANDREW LEUNG** (in Cantonese): *President, the Secretary pointed out in the main reply that both the HKMA and the Government very much support the work. However, there are hurdles at the institutional level, and the issue has been discussed for a few years but so far it has not borne fruit. The Secretary should have also seen the advertisement that we only need to walk across the line to reach the MTR station, and when we arrive in Shenzhen station on the regional express link in future, we can immediately connect to other modes of transport. We have also referred to the development of the Qianhai Zone in Shenzhen. May I ask how the Government will vigorously promote this, especially in terms of the means of transport? As far as I know, the meeting of the Hong Kong/Guangdong Co-operation Joint Conference will be convened in August, will the Government include this matter on the agenda? As the new leader of Shenzhen is visiting Hong Kong, will the Administration take this opportunity to take the issue to a higher political level in order to resolve this problem?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, as I have said in the main reply, we are now implementing the project through the mechanism I have just mentioned. I think that the future

use of Octopus in Shenzhen mainly lies in railway service. In this regard, Shenzhen Tong and Octopus have already formed a working group to deal with these matters.

I would also like to say that we support this in terms of policy. However, in fact there are many problems to deal with before a linkage between the two systems is established and cross system usages are enabled, as it involves regulations of two different governments, and the balance of interests between the business of different enterprises and co-ordination in operation management. In addition, there are some technical problems, such as the card reader compatibility which I have just mentioned, and many technical and business operation issues must also be discussed. However, as to our position, we support the idea and in terms of policy, we will offer our assistance, too.

**MR JEFFREY LAM** (in Cantonese): *The Secretary pointed out in paragraph (a) of the main replay that "with the joint efforts of the HKMA and PBoC Shenzhen, Octopus has started operation in relevant retail outlets in Shenzhen since August 2006". However, we can see that there are only about 30 Octopus processors in Shenzhen, and according to the statistics provided by the Octopus website, Octopus cards can be used in 11 retail outlets only, including two Fairwood fast-food restaurants and nine Cafe de Coral fast-food restaurants.*

*May I ask the Secretary, it has almost been three years since August 2006, but only about 30 Octopus processors are operating in Shenzhen, if it means that Hong Kong dollar is not so popular these days as a currency on the Shenzhen side? Does the Secretary find it satisfactory?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I wish to thank Mr LAM for raising this supplementary question. If we look at the history of the use of Octopus in Hong Kong, we would find that it was also implemented on the traffic level first. Of course, the extensive usage of Octopus in Hong Kong is a result of many years of development; once the transport network accepts its usage, it will gradually expand to different modes of transport or even to the retail level. I believe the development of any kind of electronic money will go through this process, and

there is also a specific reason for its wide usage to enable that type of electronic money to be widely accepted.

As to the issue of the use of Hong Kong's Octopus in Shenzhen, I believe we will have to go through the same process. In particular in respect of the means of transport, can it be widely used? This is the major driving force determining whether or not Octopus can be widely used in that market in future.

Of course, how can we achieve this result? The Government's policy is to support the establishment of a linkage between the two e-money systems with a view to enabling cross system usages. But as I mentioned earlier, as far as commercial development is concerned, it depends on the needs in commercial operation, the operating modes, as well as the cross-system linkage between the two enterprises, namely, Shenzhen Tong and the Octopus. It also involves a balance of business interests among enterprises as well as the co-ordination cost and revenue distribution. I believe this boils down to some kind of commercial discussions. We certainly support their discussions, and under the promotion of the two governments, the two companies have already formed a working group to look into the issues. However, I believe it really depends on the progress of commercial operation, and we shall leave the matters to them, but we stand ready to provide assistance.

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

**MR JEFFREY LAM** (in Cantonese): *Yes, President, I have just asked the Secretary whether or not the use of Hong Kong dollar as a transaction currency is not so popular in Shenzhen?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, as to the reply I have given just now, my opinion is that it is not the case. My view is that an electronic money platform needs to have support measures in terms of technology and in other aspects. I believe I have already explained why I consider we need time to enable its extensive usage.

**MR WONG KWOK-KIN** (in Cantonese): *At present, exchanges between Hong Kong and Shenzhen have become more frequent, and residents of the two places are travelling to and from the two places every day. Therefore, the use of electronic money is in fact a very convenient means to the public and therefore it is worthy of vigorous promotion by the Government. I can see from the Government's main reply in response to part (b) of Mr Andrew LEUNG's main question that the Secretary seemed not to have given a direct answer to the issue of whether the Administration will strive for the inclusion of Hong Kong in the coverage of the "Smart Card" not only in Shenzhen, but also the Smart Card system of the nine cities in the Pearl River Delta (PRD) Region. As to the progress in this regard, will the Government provide us with a concrete reply?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, as to achieving the use of a single card, in principle, we will closely monitor the development in this regard. We certainly support the measure of establishing a linkage between the monetary systems of Shenzhen and Hong Kong, or even a linkage between the monetary systems of Guangdong and Hong Kong; this is our policy. As for the details of the concrete plan and design of the "Smart Card" system, they have to be announced and we will closely monitor the matter.

As to the expansion of the scope, as well as the overall planning for the development of the PRD, different departments of Hong Kong and Guangdong Province will work closely to a different extent. We will closely monitor the development of the entire PRD Region and its relationship with Hong Kong.

**MRS REGINA IP** (in Cantonese): *Just now the Secretary said that the government policy was to support the linkage of Hong Kong's and Shenzhen's electronic money systems, although there were still some commercial considerations and there were some technical problems to be resolved. I do not know whether the Secretary agrees that such an electronic system requires a very important technology — the electronic certification technology? Does the Secretary know that a Hong Kong company has already spent more than \$100 million on the development of these electronic certification technologies and is prepared to provide such a platform? Will the Secretary recommend these Hong Kong technologies to the Shenzhen side?*



**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I wish to thank Mrs Regina IP for raising this supplementary question. I personally am interested in getting to know more about the details of these technologies, and of course we will convey this information to the relevant department on appropriate occasions. However, I believe, to deal with technical issues, in addition to overcoming the technical requirements, the cost-effectiveness and business operation should also be taken into consideration. I believe that if there are certain developments in technology, we will be more than happy to raise them in the working group for consideration.

**MR PAUL TSE** (in Cantonese): *President, regarding the current situation, we can withdraw money from automatic teller machines of a certain bank at different locations. There is a common system for different businesses, such as coffee shops, supermarkets and pharmacies, and just like other modes of transport, there is a linkage, and it seems that the technical problem is not that big. On the other hand, in fact, some Octopus processors have already been deployed in Shenzhen, but Shenzhen Tong cannot be used in Hong Kong.*

*I wish to know if it is a technical problem, or the real question is the Government considers that it cannot gain any benefit at all. If so, should Hong Kong's Octopus adopt the so-called co-operative mode with the Hong Kong SAR Government? That is, the Government will take the initiative to promote this by allowing Hong Kong's Octopus to enter the mainland market, which is just like the battle between Betamax and VHS, the one who enters the market first is in a more favourable situation because it involves substantial interest. If the Government can make the relevant local company pay for the costs of negotiation or research resources, while the Government assumes a supporting role in the implementation of this policy and only levies some kind of administrative fee, then, instead of hanging a leg, the implementation of the whole thing can be accelerated a lot.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I wish to thank the Member for the question.

The development history of Octopus in Hong Kong enables us to see that this mode of business operation has been working well. We can also see the good results of Hong Kong's Octopus Card in the transport sector or even at the

retail level, for it has been driven by commercial operations. Hong Kong's situation is much better than that in many other cities, as many of them do not have such a simple and easy electronic money system as Hong Kong does. I consider this business mode good. Therefore, the Government has no intention ..... it can be said that the Government hopes that the business mode will continue.

Of course, when we look at the linkage and cross system usage of electronic currencies in Hong Kong and Guangdong, we have to make a lot of business considerations, as well as addressing issues of economic efficiency; we will keep a close watch on this matter. With regard to the policy, we will give impetus to this work, but we also wish to see the market raise the issue itself, as it involves a lot of commercial considerations and considerations of economic interests, so commercial institutions should take the initiative themselves. We will closely follow up and see what barriers there are at the policy level; we will follow up as long as they can be resolved.

**MR CHAN KAM-LAM** (in Cantonese): *President, I believe both the governments of Shenzhen and Hong Kong are hoping to speed up the linkage between Octopus and other electronic currency, so as to enable cross system usage. Recently, the Central Government has granted approval for Hong Kong and the Mainland to make settlements in Hong Kong dollar or Renminbi. Will the Government consider putting forward the proposal of allowing settlement with the two currencies when it further discusses this issue with the mainland authorities concerned? This may help to avoid the exchange rate problem arising from settlement in Hong Kong dollar or US dollar, thereby enabling both sides to benefit directly through this arrangement.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): With regard to the issue of establishing the linkage and cross system usage of electronic money which may cause a currency conversion problem, of course, it is definitely a technical problem, but in this respect, we have been actively studying this issue. As I said earlier, the HKMA has been maintaining a close co-operation relationship with PBoC Shenzhen and PBoC Guangzhou. As we are studying all of these issues, perhaps we may take appropriate follow-up actions if feasible. I consider that the most important thing is that it still depends

on other issues, such as whether the matching measures can be implemented, so that these electronic currencies can be used across the boundary.

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

### **Promoting Development of Private Hospitals**

3. **DR LEUNG KA-LAU** (in Cantonese): *President, the Chief Executive stated in his 2008-2009 policy address that "the Government is identifying suitable sites initially including the Wong Chuk Hang, Tseung Kwan O, Tai Po and North Lantau areas" for the development of private hospitals. In this connection, will the Government inform this Council:*

- (a) of the exact lot numbers and areas of such sites, as well as other specific criteria for selecting them;*
- (b) whether it knows the current site area and gross floor area of each private hospital, as well as the numbers of beds therein; and*
- (c) as there are at present quite a number of schools or other types of buildings in the urban areas which are vacant, whether it has studied the feasibility of converting such buildings for private health care purposes, which districts are relatively suitable, and of the mechanism and criteria for approving the change of their use?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, our health care system is overly reliant on public services and there exists a significant imbalance between the public and private health care sector. One of our health care reform initiatives is to promote and facilitate the development of private health care service, with a view to increasing the overall capacity of the health care system in Hong Kong and addressing the imbalance between the public and private sectors. At the same time, we will encourage more public-private-partnership and facilitate the creation of more market capacity for the private sector. To this end, the Government has identified four sites at Wong Chuk Hang, Tseung Kwan O, Tai Po and Tung Chung for the development of

private hospitals. We will launch an Expression of Interest exercise by the end of 2009 to solicit market interest in developing private hospitals in the four identified sites. The Food and Health Bureau will at the same time embark on the relevant planning process of the individual site for the proposed land use (including the change of land zoning), conduct district consultation and handle the interfacing issues with other infrastructure works. Replies to various parts of the main question are provided as follows:

- (a) Details of the four sites are at Annex A. When determining if a piece of land is suitable for hospital development, the major considerations include the planned use, size and geographical location of the site, the environment and facilities in the vicinity, the accessibility of the site as well as the cost-effectiveness of the development. In terms of site selection, hospitals should preferably be located in elevated positions with good air quality, so as to allow patients to recover in a comfortable and quiet environment.
- (b) At present, there are a total of 13 private hospitals in Hong Kong. Their site area, gross floor area and number of beds are set out at Annex B.
- (c) Generally, buildings for hospital use are specially designed in order to provide appropriate facilities, such as hospital wards and operation theatres. In addition, hospitals also have specially-designed ventilation systems, and special facilities to handle medical waste and prevent the spread of infectious diseases. Therefore, buildings originally designed for use as schools or for other purposes may not be suitable for hospital use.

As for the procedures of converting buildings for hospital use, it involves considerations from planning, land and works perspectives.

Firstly, for the conversion of vacant schools or other buildings to hospital use, we must consider if provision of hospital service is a permitted use of the site. Given the various planned use in different sites, some sites could only be used as hospital with approval by the Town Planning Board (TPB). For example, for sites falling within "Commercial" and "Residential" zones on outline zoning plans (OZPs), "Hospital" may be included as a Column 2 use on the Notes

of the OZP. A planning application should be submitted to and approved by the TPB before development of hospital on these sites. Besides, if the relevant site falls within a zone which does not allow "Hospital" use (such as "Industrial" zone), hospital development could only proceed after a planning application to amend the relevant OZP is made and approved by the TPB. In making a decision on the abovementioned applications, the TPB will take into account all relevant planning considerations for land use, including land use compatibility, traffic and environmental impacts. As for sites falling within "Government, Institution or Community" zone on OZPs, hospital use is always permitted. Therefore, vacant schools or other buildings on these sites could be converted for private hospital use and no planning application to the TPB is required.

Secondly, if the lease conditions governing the lot on which the vacant school or building stands do not permit hospital use, the lot owner has to apply to the Lands Department for modifying the relevant conditions of the land lease.

Meanwhile, under the Buildings Ordinance, prior approval of plans and consent to the commencement of works shall be obtained from the Building Authority (that is, the Director of Buildings) for any proposed building works to be carried out in connection with the proposed change in the use of an existing private building as a hospital.

In addition, all private hospitals must apply for registration with the Department of Health (DH) in accordance with the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance before commencement of operation. The DH will take into account a number of factors when considering the application for registration, including whether the applicant is suitable for managing the hospital, and if the relevant premise has suitable accommodation and equipment, staffing, facilities and supporting services (such as laboratory and catering service), and so on.

As for vacant schools and buildings that are government properties, the Government will first consider them for government use. Vacant government property without government use would

normally be put to alternative use (for example, commercial leasing) on a temporary basis, pending identification of its long-term use. Most of the vacant government properties are only transiently vacant for various reasons, such as the property has been earmarked for sale or development shortly, the property is being allocated for government use, or the property is undergoing/under planning for refurbishment/renovation, and so on. According to the information provided by the Government Property Agency (GPA), there is at present no vacant property under the GPA's purview that is considered suitable for hospital use, due to the planned uses and various constraints (for example, conditions of land lease, deed of mutual covenant and site location) of the property.

## Annex A

## Details of the four sites identified for private hospital development

	<i>Site</i>	<i>Location</i>	<i>Site Area (hectare)</i>	<i>Planned use of the site</i>
1	Wong Chuk Hang	Nam Fung Path, Wong Chuk Hang	Around 2.82	Government, Institution or Community use
2	Tseung Kwan O	Pak Shing Kok, near the Hong Kong Movie City	Around 2.5	The site is originally planned for residential use. The Government will propose to the Town Planning Board to rezone the site to Government, Institution or Community use
3	Tai Po	Near Tai Po Hospital	Around 4.8 (the site is adjacent to hillside. The gross site area comprises the slope and platforms at different levels.)	Government, Institution or Community use
4	Tung Chung	Yu Tung Road, Tung Chung (near Yat Tung Estate)	Around 2.2	Government, Institution or Community use

## Annex B

## Site area, gross floor area and number of beds of private hospitals

<i>Hospital</i>	<i>Site area according to the lease plan (hectare)</i>	<i>Existing Gross Floor Area (GFA) (sq m)</i>	<i>Number of beds (as at end of 2008)</i>
Canossa Hospital (Caritas)	About 0.66	About 11 600	177
Hong Kong Central Hospital	About 0.88 <sup>(1)</sup>	About 2 300	64
Matilda & War Memorial Hospital	About 1.40 <sup>(2)</sup>	About 16 900	102
Hong Kong Adventist Hospital	About 0.83 <sup>(3)</sup>	About 15 100	141
Hong Kong Sanatorium and Hospital, Limited	About 0.99	About 62 800	464
St. Paul's Hospital	About 2.19 <sup>(4)</sup>	About 14 000	366
The Hong Kong Anti-Cancer Society Jockey Club Cancer Rehabilitation Centre	About 0.53	About 7 500	28
Precious Blood Hospital (Caritas)	About 0.32 <sup>(5)</sup>	About 15 900	144
Evangel Hospital	About 0.15	About 3 900	63
Hong Kong Baptist Hospital	About 0.66	About 29 900	810
St. Teresa's Hospital	About 1.17	About 68 900	801
Tsuen Wan Adventist Hospital	About 0.76 <sup>(6)</sup>	About 11 200	173
Shatin International Medical Centre Union Hospital	About 1.04 <sup>(7)</sup>	About 36 200	379

## Notes:

- (1) The site area includes the area of hospital, quarters, churches, theological college, kindergartens and welfare council.
- (2) The site area includes the area of hospital and quarters.
- (3) The site area includes the area of hospital and quarters.
- (4) The site area includes the area of hospital, school, kindergarten and chapel.
- (5) The site area includes the area of hospital, school and convent.
- (6) The site area includes the area of hospital, quarters and nursing school.
- (7) The site area includes the area of hospital and quarters.

**DR LEUNG KA-LAU** (in Cantonese): *President, before asking my supplementary question, I must say that the main reply of the Secretary is a "rudimentary" reply; or putting it in a more elegant way, it is a very crude reply.*

*First of all, part (a) of my main question asks the Secretary for the specific criteria. However, he has only mentioned the factors but not the criteria. For example, I have asked about the criteria to be considered if a patient needs an operation but he answers that it depends on the age of the patient. In fact, we should not only consider his age but also the age limit for a patient undergoing an operation, that is, the site areas required. That is why I have asked about the specific criteria in part (a), but the Secretary has not answered my question; he has only given the factors that should be taken into consideration.*

*About part (b), I have asked about the current site area and gross floor area of each private hospital. I have noticed from Annex B of the main reply that, taking St. Paul's Hospital as example, it is stated in Note 4 that the site area includes the area of hospital, school, kindergarten and chapel. How can the Secretary prepare the main reply in such a "rudimentary" manner? Taking St. Paul's Hospital as example, the site area as shown in Annex B is about 2.19 hectares. However, my assistant has found after checking that the actual site area of St. Paul's Hospital is only 0.21 hectare; in other words, there is roughly a 10-time difference. How can the Secretary give such a "rudimentary" reply? We all know that land is very valuable, and the industry precisely wants to know why it is so difficult for the Government to find suitable sites, and why all the sites it identified are in the remote areas. If the identified sites are in the remote areas, it will be inconvenient to local patients; the hospitals will have recruitment difficulties and they will be less competitive. If a site of a larger area is identified, the cost will certainly be higher and the higher investment risks will be reflected in the costs and prices of services.*

*My supplementary question is: The Secretary has stated in the last paragraph of his main reply that most of the vacant government properties are only transiently vacant pending sale or development; these are precisely the sites we should identify and most of the sites are suitable. I have done some checking myself. At present, the biggest hospital, that is, St. Teresa's Hospital, has a site area of 0.7 hectare while the smallest hospital has a site area of less than 0.1 hectare. The Government has culled some schools in the past few years, and the*



*designated land use of the sites is "Government, Institution or Community use". These sites can be used for the construction of hospitals for which applications would not be necessary. I have also noticed that there are some sites like that in Mong Kok. Thus, I have this question for the Secretary who has said that these sites are pending sale or development and consideration needs not be given to the site areas. Can the Government simply include these sites in the List of Sites for Sale by Application (Application List) for triggering by interested investors? If these sites are not included in the Application List, even if investors consider some sites suitable, how can they make use of them?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, any person who wants to use a private site for hospital development can file an application. On this point, as I have just said, regardless of the land use and land lease of the site, any person who has the need can file an application. If the Food and Health Bureau considers that the relevant site meets the requirements for hospital use, we can give policy support to his application. In this regard, all private sites can be considered. Hence, he can make use of all the channels that I have just mentioned.

Dr LEUNG has asked why we have to look for sites with larger areas. We have mainly consulted quite a few private hospitals before deciding to look for suitable sites of certain scale for hospital development. In particular, if the existing private hospitals need greater room for development, they must consider upward development. In the case of hospitals, if elevators are needed for too many essential services, it will be a great challenge in terms of planning or design of services, which will not be satisfactory. Thus, general hospitals should not be high rises in design. This is a factor for consideration in our site identification process.

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

**DR LEUNG KA-LAU** (in Cantonese): *President, I have just talked about the vacant government properties mentioned in the last paragraph of the main reply*

*and I have not talked about changing the land use of private sites. As mentioned in the last paragraph of the main reply, vacant schools are government properties pending sale or development. I asked just now whether these sites can be included in the Application List for triggering. As regards how the hospitals will be constructed, the interested developers will only trigger the sites after making calculations and architectural plans. Is that right?*

**PRESIDENT** (in Cantonese): Your supplementary question is very clear. Secretary, please reply.

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, about the triggering of sites from the Application List, I believe the Development Bureau has specific strategies and procedures. In the course of hospital site identification, we have also followed these procedures and that is how these four sites were identified.

**MR ALBERT CHAN** (in Cantonese): *President, I understand very well Dr LEUNG's indignation and dissatisfaction. Actually, the crux of the present problem is that the locations of the sites originally planned by the Government might be unsuitable and the sites might be too large, putting a lot of constraints on hospital development. If the Government has suitable properties at suitable locations ..... many properties are located in urban centres; following the culling of schools, the school premises of these culled secondary and primary schools, especially Year 2000 design schools, are very suitable for conversion for hospital use. If these schools are to be converted to hospital use, the proposals should be submitted by a Policy Bureau to the authorities concerned, and the appropriate Policy Bureau is the Food and Health Bureau under the charge of Secretary Dr York CHOW.*

*I hope the Secretary can carefully consider Dr LEUNG's proposal and expeditiously convert the school premises of some culled schools ..... because many Policy Bureaux can compete for these vacant school premises, for example, the Home Affairs Bureau or the Labour and Welfare Bureau. In that case, if Secretary Dr York CHOW in charge of health care affairs finds it suitable and*

*feasible in various aspects, he has the responsibility to strive for the conversion of these vacant school premises for hospital use. Will the Secretary further consider the matter? If yes, will he first consider providing such sites to non-profit-making private hospitals, that is, non-government hospitals? As there are many types of private hospitals, insofar as application approval is concerned, certain regulations should be imposed, for example, the charges of doctors must be regulated such that private hospitals cannot make exorbitant profits after being provided with resources by the Government.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, Mr CHAN has asked a few questions and I will try my best to answer them. In respect of site selection, we have actually discussed with private hospitals to find out what kinds of sites they are seeking, and the site areas they have in mind. If they need small sites — most vacant school sites are quite small with an area of less than 1 hectare — we can take that into consideration. Yet, in the better part of the past year, we have already identified these four sites after lengthy consideration.

Concerning land grants, we will invite the interested parties to submit expression of interest in respect of the services to be provided by them. As I have said time and again, if the private hospitals they run can meet the needs of most Hong Kong people — especially the middle class because some of them have taken out medical insurance, and if the services are covered by their insurance schedules — we think they will be more suitable operators. Thus, we will set out a range of conditions. During the open bidding process of the sites by the end of this year, we will explain these conditions more clearly with a view to helping the interested parties make selections.

**PROF PATRICK LAU** (in Cantonese): *President, in fact, the most important factor is that there should be a set of planning guidelines in Hong Kong, specifying the number of hospitals to be in place when the population of each district reaches a certain size. According to the relevant guidelines and the Secretary's understanding, may I ask the Secretary which districts need the construction of more hospitals, be they public or private hospitals?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, generally speaking, these guidelines are related to the planning of public hospitals, and we should of course consider the development potentials of the relevant districts and project their future population. In recent years, we think that two districts — Tung Chung and Tin Shui Wai — need the construction of new hospitals. As for most other districts, given their limited population growth, we do not have plans to construct additional public hospitals at present. Furthermore, we should consider whether sites are available. One of the sites of a larger area which can be used for the development of a public hospital in the future is the site of the former Kai Tak Airport. The site has been selected for a new hospital in East Kowloon, and further development could be expected in future. Therefore, apart from the population distribution, we should consider if we could identify sites with larger areas for development purposes.

**MS AUDREY EU** (in Cantonese): *President, as we all know, the waiting time for public medical services has become longer and longer; even the patients waiting for very simple cataract extractions have to wait for years. Therefore, I would like to ask the Secretary: in providing private sites for the provision of private services by private hospitals, how can it be ensured that the demands within districts ..... in particular, such districts as East Kowloon and New Territories North need a large number of hospital beds, for example, there are inadequate psychiatric services. In that case, President, how can the Government ensure that there will not be a health care personnel shortage because of the conversion to the provision of private services, thereby failing to meet the demands for public services within the districts?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, basically, there are enough hospital beds in public hospitals at the moment. The Honourable Member has just mentioned psychiatric services. In the past few years, we even needed to reduce hospital beds in psychiatric wards because of the excessively high vacancy rate. On the contrary, we now attach greater importance to the development of primary medical services and community medical services, especially preventive work. For this reason, we must enhance the interface between the public and private sectors and encourage more public-private-partnership programmes.

In connection with hospital development, the quality should be emphasized besides the numbers. Quite a number of public hospitals are now undergoing redevelopment or conversion works. As all of us have noticed, the Prince of Wales Hospital is undergoing redevelopment, and similar works are also being carried out at the Caritas Medical Centre. So, in this respect, not only should we consider the numbers, but we should also consider the quality.

As to private services, we all know that some 1 million Hong Kong people — if their family members are included — or nearly 2 million Hong Kong people have taken out medical insurance. Even so, not too many of them choose private hospital services because of the limited capacity of private hospitals. They may choose public hospital services for various reasons. Hence, there is room in the market for the development of private services, and with increased service provision in the future, these people could more easily receive services covered by their insurance policies. If the services provided by the public and private sectors are simultaneously enhanced, I believe people from all sectors will be benefited under all circumstances. Hence, we think that the present development direction can induce an increase in the overall service provision.

**MS AUDREY EU** (in Cantonese): *President, the Secretary has not answered my supplementary question. I have just highlighted the shortage of public services. If there are more private sites for the operation of private hospitals, how can the problem of increasingly long waiting time at public hospitals be solved? Let me cite the cataract extractions that I have just mentioned or even the psychiatric services as examples. President, there is not only a problem of hospital beds, and I have also talked about a manpower shortage problem because we need doctors to provide psychiatric services.*

**PRESIDENT** (in Cantonese): Ms EU, what is your follow-up question?

**MS AUDREY EU** (in Cantonese): *President, my follow-up question is: While the Government provides private sites for the operation of private hospitals, how can it first solve the problem of inadequate public medical services? This is the thrust of my question; President, the Secretary has not answered it.*

**PRESIDENT** (in Cantonese): I think the Secretary has already given an answer. But, let me see if the Secretary has anything to add.

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, in connection with hospital development, we cannot merely focus on the public or private sector, we should also consider the overall service provision in Hong Kong. Quite a number of Hong Kong people use the services of public and private hospitals at the same time. While they may have registered at public clinics and wait for their turn, they may consult private doctors. That being the case, if there is desirable development in both areas without an imbalance, overlapping or wastage, the public will think that our services are more satisfactory and have better quality.

**PRESIDENT** (in Cantonese): We have spent more than 23 minutes on this question. Fourth question.

#### **Assistance for Working-poor Households**

4. **MR LEE CHEUK-YAN** (in Cantonese): *President, will the Government:*
- (a) *list out by household size the number of non-Comprehensive Social Security Assistance (CSSA) households in the fourth quarter of 2008 with at least one member who is employed and with monthly household income which is less than the median monthly CSSA payment received by CSSA households of the same size (working-poor households), as well as the age distribution of the members of the working-poor households;*
  - (b) *list out by household size the number of CSSA cases of the "low earnings" category as at the end of 2008, as well as the age distribution of the CSSA recipients concerned; and*
  - (c) *inform this Council of the measures currently in place to assist the working-poor households which are not receiving CSSA in meeting the needs of their daily lives?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President,

- (a) Under the Comprehensive Social Security Assistance (CSSA) Scheme, we usually work out relevant statistical figures based on "recognized needs" (that is, the payment that the applicant and his/her family members are entitled to receive, including standard rates, various supplements and special grants), instead of the median CSSA payment received by the CSSA recipients. It is considered inappropriate to use the latter, that is, the median CSSA payment, because CSSA households may receive actual payments lower than the recognized needs by a certain level under different circumstances, such as CSSA payment exempted from deduction under the Disregarded Earnings, rent allowance payable by the Social Welfare Department (SWD) to the Housing Authority direct.

Based on the "recognized needs" under the CSSA Scheme, the General Household Survey (GHS) conducted by the Census and Statistics Department (C&SD) indicates that there are 111 300 households in the fourth quarter of 2008 with monthly income less than the recognized needs of CSSA households of the corresponding size and with at least one employed household member (that is, the so called "low-income households"). The number of members living in these households by age is at Table 1.

With the gradual improvement in the socio-economic situation in the past few years, the number of low-income households dropped by 14% from 129 800 in the fourth quarter of 2006 to 111 300 in the fourth quarter of 2008. Besides, the population living in the low-income households also decreased by 16% from 475 600 in the fourth quarter of 2006 to 397 700 in the fourth quarter of 2008.

As respondents of the GHS may not be willing to disclose whether they are CSSA recipients, the C&SD is unable to ascertain whether the above low-income households are receiving CSSA or not.

- (b) According to the SWD, there were about 14 000 low earnings CSSA cases as at end-2008, involving some 53 300 recipients. The

number of eligible household members of these cases by age is at Table 2.

Similar to the situation in paragraph (a) above, owing to the improvement in the economy, the number of low earnings CSSA cases also decreased by 16% from 16 643 cases (64 580 recipients) as at end-2006 to 14 026 cases (53 340 recipients) as at end-2008.

- (c) The Government attaches great importance to the needs of the low-income earners. At present, the CSSA Scheme provides a safety net for the poor, unemployed and low-income earners. For those non-CSSA low-income earners, the Government also provides plenty of free or highly subsidized services in various policy areas, such as housing, medical and education, and so on, with a view to assisting them to meet the basic needs of their daily lives. For instance:
- (i) on housing, the Government has a long established public housing policy to provide those low-income families who cannot afford private housing with accommodation at an affordable rent. Rental allowance is also provided to needy low-income families.
  - (ii) on medical services, the Government has been providing heavily subsidized public health care services. Low-income earners and their families can also apply for assistance from the medical fee waiver system administered by the Hospital Authority or the Department of Health, as well as the Samaritan Fund, to pay for the medical expenses.
  - (iii) on education, the Government has launched the Pre-primary Education Voucher Scheme since the 2007-2008 school year, and has offered 12-year free education starting from the 2008-2009 school year. On the other hand, the Education Bureau has earmarked a recurrent provision of \$75 million per annum since 2005-2006 to introduce the School-based



After-school Learning and Support Programme, with a view to supporting schools and non-governmental organizations (NGOs) to organize suitable activities for students who come from poor families or whose parents are not able to afford their extra-curricular activities. These measures have greatly reduced the educational expenses of the low-income families.

The Government has also rolled out other supportive measures to assist low-income earners to enter the labour market, including:

- (i) the Labour Department (LD), through formulating various employment programmes, assists those who may face greater difficulties in employment (including the youth, middle-aged and persons with disabilities) to seek suitable jobs. The LD also organizes various types of job fairs to help job seekers seek employment.
- (ii) the Employees Retraining Board (ERB) endeavours to provide training and retraining programmes for people with low education levels so as to improve their employability and competitiveness. In 2009-10, the ERB plans to provide about 123 000 training places and is prepared to offer an additional 20 000 training places when necessary. About 60% of these training places are for placement-tied courses, the employment rate of which reaches 80%.

Moreover, the ERB set up a pilot one-stop Training cum Employment Resources Centre in October 2008 to provide more convenient training and job matching services for people in need.

- (iii) through subsidizing NGOs, the SWD provides diversified child care and after-school care services for parents who cannot take care of their children temporarily because of work or other reasons. The Government announced in the budget last year to allocate additional funding of \$45 million in the

subsequent three years to promote different forms of, and more flexible, child care services. To this end, the SWD launched the Neighbourhood Support Child Care Project in October 2008 to provide, in addition to regular services, more flexible child care services for the needy parents. Families encountering financial difficulties and in need of child care or after-school care services can apply for service assistance or fee waiver.

We understand that low-income families face much greater financial hardship owing to inflation and the outbreak of the global financial tsunami. In this regard, the Chief Executive and the Financial Secretary introduced a number of relief measures both last year and this year to help the people, especially the grassroots, to tide over the economic adversities. Apart from extra payments to the Old Age Allowance and Disability Allowance recipients, there were measures focusing on the needs of the low-income earners, for example:

- (i) paying the rent for public housing tenants for five months in total;
- (ii) providing a one-off grant of \$1,000 both last year and this year to students receiving CSSA or Student Financial Assistance to meet expenses on the commencement of school term;
- (iii) providing \$3,600 electricity subsidy to each residential electricity account;
- (iv) injecting \$6,000 to the Mandatory Provident Fund accounts of low-income employees;
- (v) allocating a sum of \$100 million for providing short-term food assistance to poor families in need; and
- (vi) allowing people with financial difficulties to extend the student loan repayment period.

Table 1

Number of households with monthly income less than the recognized needs of CSSA households of the corresponding size and with at least one employed household member (Fourth Quarter of 2008)

	<i>Household size</i>						<i>Total</i>
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6 or above</i>	
No. of working poor households with employed member	4 800	18 000	29 800	34 700	16 700	7 400	111 300
No. of Household Members (by age group)							
0 - 14	N. A.	1 700	14 500	36 800	23 300	11 800	88 100
15 - 24	*	3 800	12 800	27 100	19 600	10 500	74 300
25 - 34	600	2 100	8 700	10 500	5 100	3 700	30 600
35 - 44	*	4 800	14 300	23 300	11 700	5 900	60 400
45 - 54	1 400	8 500	17 200	24 600	13 500	5 300	70 600
55 - 64	800	5 500	7 200	6 900	2 800	1 200	24 200
65 or above	900	9 500	14 600	9 500	7 400	7 300	49 600
Total (persons)	4 800	36 000	89 300	138 700	83 300	45 700	397 700

Notes:

\* Figures are not released because of large sampling error.

Figures may not add up to the totals owing to rounding.

Table 2

Low Earnings CSSA Cases  
(As at end 2008)

	<i>No. of eligible household members</i>						<i>Total</i>
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6 or above</i>	
No. of low earnings CSSA cases	448	1 453	3 656	4 845	2 497	1 127	14 026
No. of Household Members (by age group)							
0 - 14	/	304	2 354	6 282	4 691	2 990	16 621
15 - 24	7	483	1 724	3 326	2 500	1 587	9 627
25 - 34	31	125	723	1 049	624	387	2 939
35 - 44	82	347	1 569	3 424	1 918	904	8 244
45 - 54	229	707	2 172	3 306	1 762	738	8 914
55 - 64	96	475	1 196	1 191	458	215	3 631
65 or above	3	465	1 230	802	532	332	3 364
Total (persons)	448	2 906	10 968	19 380	12 485	7 153	53 340

**MR LEE CHEUK-YAN** (in Cantonese): *President, I hope the Secretary and the public will pay particular attention to one figure. In fact, the most important part of the entire question is that asking how many low-income working households there are. They belong to low-income families. What do we mean by low-income families with employment? The definition is very clear, that is, the net incomes of such families are lower than the CSSA payment that CSSA households of the corresponding size receive. There are 111 000 low-income families with employment throughout Hong Kong with 397 000 people in them. Within this group of people, how many of them are receiving low earnings CSSA from the Government? We must note that their incomes are lower than the level of CSSA payment. The answer is that there are only 14 000 such families, that is, 53 000 people. If we look at the relevant figures, of the 400 000 low-income earners, only some 50 000 of them are receiving CSSA payments, that is, only one in 7.5 persons receives CSSA but the other 6.5 persons do not. As regards children under 14, 88 100 of them live in these working-poor families but only 16 621 of them receive CSSA.*

*In view of these figures, may I ask the Secretary if his people have conducted any review? Why are so few people receiving low earnings CSSA? Why do they not apply for CSSA even though their lives are so difficult? Have the authorities conducted any study or review to see how they can help these low-income families in a more targeted manner, particularly this category of working-poor families, so that they can receive low earnings CSSA? Have the authorities conducted any study in this regard?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I thank Mr LEE for his concern about this issue. In fact, we have all along been very concerned about these low-income families and we particularly appreciate their remaining in employment because they are all self-reliant people who work very hard. The CSSA safety net is a truly open safety net but even though these people are eligible, they still have to lodge applications because, for various reasons, some individuals may choose not to apply for CSSA. This is their personal decision. For this reason, it is very difficult for us to analyse the relevant figures to examine the reasons why some people choose not to apply for CSSA. Some of them may not be eligible and some of them may be new arrivals. We respect their wish.

However, if they have difficulties, CSSA functions as a safety net that is open in nature. They are welcome to seek help from us when in need. We will

screen their cases and provide assistance. It can be seen from the figures, and I have also explained clearly in the main reply, that we understand there is a need to help these low-income earners. For this reason, Members can see that the additional relief measures implemented by the Government in the last couple of years have offered assistance to them in a targeted way. Even in respect of people regarded as the "five nots" and people with nothing at all, we have also introduced new measures to provide short-term food assistance and co-operated with non-governmental organizations in local communities, in the hope of drawing them out so that we can help them. I believe we must work hard together. Why? Our message is that CSSA is really a safety net and so long as people are eligible, they are welcome to apply for it and we will surely provide assistance. Our goal is to help the needy.

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

**MR LEE CHEUK-YAN** (in Cantonese): *I asked him if a review to see why so few people had applied for CSSA had been conducted, but he has been beating around the bush without saying if a review has been conducted. If the answer is in the negative, do the authorities intend to look into the reasons?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have already answered Mr LEE. This question is very complicated and I have said very clearly that CSSA is an open safety net with quite a high degree of transparency. Moreover, the criteria and requirements are also stated clearly. If members of the public are in need, they are welcome to lodge applications because our goal is to help them meet their basic needs of living. For this reason, they must meet the application criteria. However, if, for various reasons, they have not made any application, we really have no idea what their personal wishes are. However, if families in difficulty get in touch with us, we will consider their cases. Members all understand that the front-line colleagues of the SWD often handle cases with flexibility and will try to understand if these families have any actual need. Nevertheless, ultimately, these families have the right to choose but of course, they also have to meet our application requirements.

**MR CHEUNG KWOK-CHE** (in Cantonese): *Just now, the Secretary said that CSSA was open in nature and that the decision rested with the applicants. May I ask the Secretary, firstly, how extensive the publicity given by the Government to this area is, so as to enable members of low-income families to learn about the relevant application procedures? Secondly, I know that some organizations have conducted surveys and found that in the announcements of public interest (APIs) on television in the past year, the Government has conveyed a derogatory overtone concerning CSSA recipients in varying degrees. In view of this, if we look at this matter from another angle, is it due to these APIs that low-income families regard receiving CSSA as having a negative implication and as a result, they dare not apply for CSSA no matter how hard their lives are? These are the two issues involved.*

**PRESIDENT** (in Cantonese): Mr CHEUNG, you should only ask one question.

**MR CHEUNG KWOK-CHE** (in Cantonese): *One question is consequential to another. (Laughter)*

**PRESIDENT** (in Cantonese): I do not know what you mean by "one question is consequential to another".

**MR CHEUNG KWOK-CHE** (in Cantonese): *President, my second question is an extension of the first question.*

**PRESIDENT** (in Cantonese): In fact, you are asking about the publicity efforts made by the Government on application for CSSA.

**MR CHEUNG KWOK-CHE** (in Cantonese): *Yes. Thank you, President.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): First, I have to stress that when looking at or describing CSSA recipients, we do not have a modicum of derogatory overtone, nor are we trying to influence the perception of

the public. We have absolutely done nothing of the sort. We should not do so, nor will we ever do so. Therefore, Members should not have such a mistaken perception. We do not have a modicum of derogatory overtone regarding CSSA recipients. In fact, they are all people whom we want to help and they are exactly a socially disadvantaged group. If we look at the relevant figures, is the publicity adequate? In fact, judging from some 280 000 cases and 480 000 recipients at present, the CSSA Scheme has taken root in the hearts of the public and everyone knows this scheme well. Of course, we will still make vigorous publicity efforts at the level of local communities by targeting people who meet the application criteria but who perhaps still do not know that they can lodge applications. However, I wish to stress that there is no derogatory overtone whatsoever in our publicity and education. There is definitely nothing of the sort.

**MR FREDERICK FUNG** (in Cantonese): *President, from the relevant figures, it can be seen clearly that there are about 400 000 people or 110 000 families classified as the working poor. Just now, the Secretary cited six relief measures proposed by the Government but in fact, they are not geared towards these people. This is particularly so with regard to items (i) and (iii), that is, paying the rent for public housing tenants for five months in total and providing \$3,600 in electricity subsidy to every household regardless of their means. None of these items is designed specifically to help those 110 000 families. Will the Government consider extending the personal transport subsidy to cover the 110 000 families classified as the working poor according to their total family income and provide transport subsidies to them as well? Or will the Government consider granting one month of allowance which is equivalent to the monthly CSSA payment granted by the Government to families on CSSA to these 110 000 families automatically, provided that they can prove that their incomes fall within the category of the working poor, that is, below the CSSA level?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, I thank the Member for his question. Concerning the Transport Support Scheme (TSS) mentioned by Mr FUNG, we have already undertaken to launch a review in July and we have already embarked on it. In the course of the review, we have to consider a lot of factors because, as we all know very well, this scheme is geared for four remote areas and the aim is to encourage residents there to work*

outside their districts. I do not wish to repeat the details here because Members all know the underlying justification very well. When carrying out long-term planning in the course of review, we will study the future positioning and direction of this scheme.

**MR FREDERICK FUNG** (in Cantonese): *President, the Secretary has not answered my supplementary. What I refer to specifically is those 110 000 working-poor families.*

**PRESIDENT** (in Cantonese): You only have to repeat your question clearly once.

**MR FREDERICK FUNG** (in Cantonese): *What I am asking is: At present, there are 110 000 working-poor families but the Government does not have any policy to help them in a targeted way. Just now, we have pointed out two policies that can be implemented by the Government, one being the transport subsidy and the other being an allowance equivalent to one month of CSSA payment. The Secretary has only responded that a review of the transport subsidy would be conducted, but the main question that he did not reply to is: Regarding the 110 000 ..... is there any targeted measure?*

**PRESIDENT** (in Cantonese): Secretary, he is asking if the Government has any targeted measure. When asking questions, will Members please be as concise as possible and they should not include a lot of details that are irrelevant to the subject. Otherwise, the question will become very vague. Secretary, please answer.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): In fact, I pointed out the targeted measures mentioned by Mr FUNG just now when talking about the TSS. He talked about being "consequential" and I was also being "consequential" when giving a reply. He asked about the targeted measures. Among our relief measures, as I said just now, our short-term food support service is also a targeted measure. For example, from 27 February when we



launched this scheme to 5 July, a total of 13 500 needy people have been helped and among them, the number of low-income families stood at 5 594, accounting for 36.3% of the total. In addition, there were also 1 168 people regarded as the "five nots" or "six nots" that all of us are concerned about and they accounted for 7.6%. We are co-operating with some organizations to visit the cubicles or rooftop structures that these people live in to encourage them to make applications and tell them about the facilities and services. We have really carried out out-reaching work actively to show that we sincerely want to help them. These figures are quite useful and specific, that is, 37% of them are low-income earners and another 8% are people regarded as the so-called "five nots". We have all along been making efforts to help them in a targeted manner.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, just now, when replying to Mr LEE Cheuk-yan, the Secretary said that it would be very difficult to carry out in-depth investigations because the underlying reasons are very complicated. I remember that in the past, we also carried out an investigation into how many illegitimate children were born out of wedlock in Hong Kong and we could even find the answer to such a difficult question. The question is whether we are willing to do so. If we are, there will not be any difficulty. Since we have so many people in the academic sector, if we seek their help, this task can surely be done.*

*President, what I want to ask is: Mr LEE Cheuk-yan said in his main question that the incomes of low-income families are even lower than the CSSA payments received by families on CSSA. Moreover, the number of people in such low-income families stands at some 300 000 to 400 000. In that case, apart from the transport subsidy, will the Government also consider providing family subsidies? To the Government, the provision of family subsidies means that it will not be necessary for these families to receive CSSA, so it will not be necessary to spend so much money as the Government only has to make up for the shortfall between the two, so that their living standard will not be too low. We know that low-income families also raise children. As pointed out just now, tens of thousands of children are involved. Since they are leading such hard lives, may I ask how society can bear to see this? Will the Secretary consider providing family subsidies, so that the lives of these families will not be so miserable?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I thank Mr LEUNG for his question. My main reply also mentioned low earnings CSSA cases. In fact, it can be seen from part (b) of the main reply that there were 14 000 low earnings CSSA cases as at end-2008, involving some 53 300 recipients and we are now exactly working on these low earnings CSSA cases. These families cannot get by with their income and cannot meet their basic necessities, that is, their recognized needs, so we use CSSA payments to make up for the difference and this is precisely a kind of family subsidy. In fact, it has already been introduced and it is not a new measure. However, we require applicants in low earnings CSSA cases to be employed, that is, they must have an income. We encourage them to take up employment. Mr LEUNG also knows that we have the disregarded earnings arrangement and it has now been relaxed to \$2,500. The first \$800 is not included. This is also designed to encourage CSSA recipients to look for work, earn more income and improve their lot.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, the Secretary has not answered my supplementary. I asked about working-poor families as a whole but he has only given a reply concerning those families eligible for low earnings CSSA. What about those families not eligible for it? I am referring specifically to the latter, but the Secretary has not given any reply. His answer is rather incomplete.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have made it clear just now that the underlying reasons why these families numbering over 100 000 did not apply for CSSA are varied and complicated, and we are not in a position to learn about them. As I said just now, some of them simply do not meet the criteria or they own properties or their incomes are just a bit lower, so they are not qualified to apply, or they have properties which have been let. It is not possible for us to see the reasons. In addition, some new arrivals may not meet the residence requirement. Therefore, the underlying factors are many. I think a practical course of action is ..... from the relief

measures on this occasion, it can be seen clearly that through the short-term food assistance project, a small group of people in need of help has been assisted.

**PRESIDENT** (in Cantonese): We have spent more than 22 minutes 30 seconds on this question. Fifth question.

### **Assistance for School Children in Using Computers and Accessing Internet**

5. **DR MARGARET NG** (in Cantonese): *President, under the existing Comprehensive Social Security Assistance (CSSA) Scheme, child recipients are not provided with any allowance to pay for Internet access charges. With the popularity of information technology education in secondary and primary schools, computers have become indispensable daily study tools for students, and amid the recent outbreak of human swine influenza, students who are affected by suspension of classes rely even more on computers to study. In this connection, will the Government inform this Council:*

- (a) *if it has assessed whether or not learning through the Internet is a basic need of school children; if such an assessment has been made and the outcome is in the negative, of the reasons for that;*
- (b) *whether the authorities have assessed the effectiveness of the current work undertaken in respect of district cyber centres, partnerships in the community, computer recycling programme, Internet access in the community, and so on, so as to ensure that such programmes meet the study needs of school children; if so, of the details; if not, the reasons for that; and*
- (c) *of the respective amounts of expenditure incurred on the work mentioned in (b) in each of the past five years, and the additional expenditure to be incurred annually on purchasing computers and providing Internet access for all child recipients of CSSA?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, one of the key action areas of the Government is to build an inclusive,

knowledge-based society. Our target is to enable citizens and businesses to harness the full potential of the information society to improve their quality of life, and develop Hong Kong into an inclusive, knowledge-based society through the use of information and communications technologies. From the educational perspective, the use of information technology (including the use of computers and Internet connection) is conducive to students' learning. The Government has therefore put in a large amount of resources to equip schools with adequate computer facilities. We have also introduced various measures to facilitate the effective integration of information technology into learning and teaching to improve students' learning outcome.

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

(a) and (b)

As explained above, the use of information technology (including the use of computers and Internet connection) is conducive to students' learning. The Government has introduced various measures to help students from low-income families gain access to computers and the Internet. These include:

- The Education Bureau disburses recurrent subsidies to all primary and secondary schools annually to enable them to open their computer rooms and facilities for use by needy students after school.
- Following the "Computer Recycling Scheme" which was launched in partnership with the Hong Kong Council of Social Service (HKCSS) from 2005 to 2007, the Education Bureau has collaborated with the Environmental Protection Department (EPD) to launch a "Computer Recycling Programme" in the 2008-2009 and 2009-2010 school years. Families in receipt of CSSA or financial assistance under the School Textbook Assistance Scheme are eligible. Students benefiting from the Programme will each be provided with a recycled computer and one-year free Internet access service. They may also choose to join a favourable Internet access service plan for a further two years afterwards. The Programme commenced operation at the beginning of this

year. The Education Bureau and EPD will closely monitor the situation and review the effectiveness of the Programme in due course.

- Computer and Internet access facilities are available for use by students free of charge at various locations across the territory. For example, altogether 136 Integrated Children and Youth Services Centres and 66 public libraries are providing more than 1 700 computer workstations with Internet access. Some of these facilities are open for use even in evenings and during weekends. In the past three years, computer and Internet access facilities in public libraries had been used more than 4 million times each year.
- Moreover, the Financial Secretary announced in the 2008-2009 Budget that a pilot scheme would be launched to establish District Cyber Centres (DCCs) to provide computers and technical support at the district level so as to enable students from low-income families and other needy members of the community to access the vast information and knowledge in the digital world. The pilot scheme provides computer hardware, software, Internet connection, training and application content to these persons. A library of laptop computers for loan equipped with free wireless Internet access has also been set up. As at end June this year, 14 DCCs had participated in this pilot scheme.
- To effectively monitor the progress and effectiveness of the pilot scheme, a steering committee comprising the DCC Alliance responsible for implementing the scheme and the Office of the Government Chief Information Officer (OGCIO) has been set up to give policy directive and supervise the work progress. The DCC Alliance will submit regular progress reports to the Steering Committee for monitoring the performance of the Alliance.
- The OGCIO will also continue to promote partnership programmes at the district level organized by non-governmental organizations with a view to bringing the

benefit to more children from low-income families and other needy members of the community. For instance, under the co-ordination of the OGCIO, the HKCSS has earlier partnered with an Internet service provider (ISP) to provide two-year free broadband Internet access service to 1 000 students from low-income families (especially students in receipt of CSSA).

- (c) The total expenditure for the "Computer Recycling Scheme" implemented in 2005-2007 was \$18 million. As at end-June this year, the new "Computer Recycling Programme" had incurred an expenditure of \$5.5 million. The Education Bureau has reserved another \$57 million for the Programme, which is expected to benefit some 20 000 families. Depending on the actual implementation, the Education Bureau may apply for additional funding. As for the pilot scheme to establish DCCs, a total sponsorship of \$14.4 million had been allocated in 2008-2009.

The Government has implemented the measures outlined above to facilitate the use of information technology in students' learning. We have not made any assessment under the CSSA Scheme on the additional expenditure involved in purchasing computers and providing Internet access for all CSSA child recipients.

**DR MARGARET NG** (in Cantonese): *President, the Secretary has wasted so much time to say so much without actually answering my main question. The crux of the problem is the basic needs of school children, that is, whether Internet access is one of their basic needs and hence, whether the Government should subsidize Internet access charges of the needy school children? President, in medieval times, books were locked up because nobody considered it necessary for people to have their own books. But nowadays, it would be nothing short of ridiculous if you tell someone he does not need to have his own books because he can read all the books he wants in the library.*

*The question as to whether Internet access charges is a basic need of school children is an integral part of the Government's education policy and for which the Secretary for Education is responsible. As the Director of Social Welfare has already said that arrangements could be made to subsidize Internet access charges under CSSA, all that is required is for the Secretary for Education*

*to confirm today that Internet access is indeed a basic need of school children. My supplementary question is that: As the question is so clear, why is the Secretary for Education not here today to answer this question? Why has the Chief Executive not directed him to come and answer the question? Why is the Secretary for Education not present as we are discussing this core issue? This is my supplementary question.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I thank Dr NG for her supplementary question. When preparing our reply to the main question, we have already incorporated relevant information provided by our colleagues from the Education Bureau.

Back to Dr NG's main question, as part of it is about school children who are CSSA recipients, I am here to represent colleagues of the Education Bureau who are not with us today to give an integrated response.

From the education perspective, Internet access could indeed be helpful students' learning. As I have said clearly in the main reply, the use of Internet is conducive to students' learning. We generally consider Internet access a useful and beneficial tool for students' learning. However, when we consider the matter from the perspective of CSSA — let me elaborate a bit here, the aim of CSSA is to help the recipients meet their daily basic needs — Internet access is not considered a basic need of school children and hence, should not be subsidized under CSSA. But I agree with Dr NG that for the purpose of learning, Internet access can really help. There is no denying that.

**DR MARGARET NG** (in Cantonese): *The Secretary has still not answered my question. The thrust of my supplementary question is that if Internet access is a basic need for the learning of school children, why is the Secretary for Education not here today? I do not mind the Secretary for Labour and Welfare here, but I really would like to know why the Secretary for Education is not here today.*

**PRESIDENT** (in Cantonese): I have heard the Secretary's reply just now. But let me see if the Secretary has anything to add.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have nothing to add, thank you. I will try my best to answer Dr NG's question today.

**MR CHEUNG KWOK-CHE** (in Cantonese): *I am also very much concerned about this subject. Dr NG asked in her main question whether Internet access is a basic need of school children from low-income or CSSA-assisted families. Since Secretary Matthew CHEUNG also considers it a basic educational need and not a social welfare need, officials from the Education Bureau should have attended this meeting. Nonetheless, I will try to bring the question back to Secretary CHEUNG's purview. If, as indicated by the Secretary that the Education Bureau does not consider Internet access a basic educational need — the Government has only provided us with this year's financial provisions and we do not know what is its plan for next year — given the importance of Internet access to the learning of school children, will the Secretary consider incorporating this item in the scope of CSSA so as to establish education as a basic need of the family?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): We have already explained in different forums, including the Welfare Services Panel and the Subcommittee on Poverty Alleviation, that the Government will conduct a comprehensive Household Expenditure Survey (HES) on CSSA households once every five years. As we all know, the Government has started the preparatory work for conducting a new round of the HES with a view to updating the latest expenditure patterns of CSSA households and the weighting of the Social Security Assistance Index of Prices (SSAIP). As Members may be aware, we have the SSAIP under the CSSA Scheme. We hope that through the HES, we can ascertain the expenses of CSSA households on Internet access for their children. And after the HES, we will consider whether CSSA should cover Internet access charges. In fact, we have embarked on the relevant preparatory work, and the new round of HES will be conducted in full swing this coming September.

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



**MR CHEUNG KWOK-CHE** (in Cantonese): *Instead of answering whether Internet access is a basic need, the Secretary has just said that the Government would review the relevant weighting. But we all know that at present, Internet access charges are not covered by CSSA and hence, it will not be covered regardless of the outcome of the HES. He is just fooling us around. May I ask the Secretary whether he, as the Government's representative, considers Internet access a basic need? There is really no need to do any survey.*

**PRESIDENT** (in Cantonese): Just now, you did not ask whether the Secretary considered it a basic need, instead you asked whether the Secretary would consider incorporating Internet access charges as a basic need in the CSSA Scheme. I believe the Secretary has already answered it.

**MR CHEUNG KWOK-CHE** (in Cantonese): *Yes, but the most important point is that Internet access charges will not become a basic need as a result of whatever surveys he conducts. That is why his answer is erroneous. He needed only tell me whether Internet access charges will be incorporated in CSSA.*

**PRESIDENT** (in Cantonese): I believe the Secretary has already heard your point.

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, many of us here in this Chamber have children and we know very clearly that Internet access is a basic daily need of school children because learning is the single most important thing in their daily lives. Like textbooks, it is indispensable. The situation now is that CSSA recipient students can borrow computers for use at home but they do not have the means to subscribe to Internet service. What is the use of the computers then? As Internet access charges are getting cheaper and cheaper, they might be more cost-effective in the long run when compared with the staff cost incurred for extending the opening hours of computer rooms in schools or the costs for providing computer services in community centres.*

*May I ask the Government whether consideration will be given to resolving this contentious issue once and for all so that Internet access would be provided*

*for all CSSA recipient school children such as through group subscription to Internet service or open tender to procure the best deal for Internet service packages (and to pay the charges to the relevant ISP direct)?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I thank Mr CHEUNG for his supplementary question. In fact, as I have said in the main reply, the Government has a full range of measures to help school children from CSSA and low-income families. As we all know, the Computer Recycling Programme jointly launched by the Education Bureau and EPD this year could benefit school children from some 20 000 families. First, I believe many of those benefited under the Programme are CSSA recipient school children. Second, if there is the need, the Education Bureau has clearly undertaken that additional funding would be sought so that more school children would benefit. As we all know, students benefiting from the Programme will each be provided with a computer and one-year free Internet access service. They may also choose to join a favourable Internet access service plan for a further two years afterwards. In other words, they could get three years' Internet service.

In addition, many outside organizations, such as the HKCSS and various ISPs, have plans to provide 1 000 computers and one-year free broadband Internet service to help students from low-income families. All these measures could effectively help the needy students, particularly those who cannot gain Internet access previously due to financial hardships.

I would also like to share with Members some figures. According to the findings of a survey conducted by the Census and Statistics Department from July to September 2008, 97.1% of the households with school children aged 10 years or above have one or more computers at home, and 97.8% of these computers are connected to the Internet. Based on these findings, we estimate that there are about 20 000 school children not having computer and Internet access at home. The Computer Recycling Programme together with assistance schemes provided by outside organizations, as well as other subsidy plans, have all helped these needy school children to gain Internet access in the short term, at least for two to three years.

**MR CHEUNG MAN-KWONG** (in Cantonese): *I guess Members all know what I am going to say. The Secretary has not answered the most important part of my question, that is, whether the Government will resolve the problem once and for all by subscribing group Internet service for all CSSA recipient students or conducting an open tender to procure the service at a reasonable cost. I am not talking about some interim solution for one or two years.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, as I have mentioned in my reply to Mr CHEUNG Kwok-che's supplementary question just now, the Government will review the CSSA once every five years. In the upcoming review, we will update the weighting of SSAIP and study the expenditure patterns of CSSA households to ascertain their expenses on Internet access for school children. We will then give overall consideration to all relevant factors and decide the way forward. I have explained all these very clearly just now.

**MR CHEUNG MAN-KWONG** (in Cantonese): *I think it is futile to ask any further. But my supplementary question has absolutely nothing to do with the calculation of expenses on Internet access. Instead, it is just a simple question about whether the Government will directly arrange for group subscription to Internet service for all CSSA recipient students. I think the cost should be lower.*

**PRESIDENT** (in Cantonese): Mr CHEUNG, I believe the Secretary has heard your suggestion loud and clear, and I think he has already given a reply.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, we are here today talking about a long-term solution to provide the means to meet the Internet access charges for school children from low-income families. I remember that when Ms Audrey EU and I discussed the matter with the Director of Social Welfare, he had said that the Social Welfare Department (SWD) would be prepared to provide the said assistance. But the only thing lacking was that no one had ever told him that Internet access was a must for the learning of school children. He did not have such confirmation. If he was told by any government department*

*or school that this was a basic need, he could consider whether the necessary assistance should be provided under CSSA.*

*May I ask the Secretary whether he can give a confirmation to that effect? If this is indeed the right thing to do, would the Secretary initiate in-depth discussions with the Education Bureau to confirm that Internet access is an essential mode of learning for students so that the problem could be resolved once and for all? If he will not do so, what are the reasons?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I fully understand the concerns expressed by Honourable Members for this matter as I also care about it very much. We have discussed the matter many times in different forums including the Subcommittee on Poverty Alleviation. I have all along closely liaised with our colleagues in the Education Bureau and I have already undertaken to follow up this matter personally with the Secretary for Education.

**MR LEUNG YIU-CHUNG** (in Cantonese): *I wish the Secretary to state clearly what are the matters he intends to follow up. The question now is, once it can be confirmed that Internet access is an essential learning tool for school children, the SWD will follow up the rest. Is the Secretary saying that the two Policy Bureaux will also follow that up?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I am referring to the follow-up actions we need in the long run because we must first define the role of Internet access in terms of learning. Having done that, we could then proceed to consider the long-term solution to the problem.

**MS AUDREY EU** (in Cantonese): *President, I have to follow up this question because Mr LEUNG Yiu-chung, Mr Alan LEONG and I have indeed met with the representatives of the Education Bureau and the Director of Social Welfare, Mr Stephen FISHER, in early June. According to Mr FISHER, if the Secretary for Education, Mr Michael SUEN, can confirm that Internet access is a basic education need, the SWD is alright with the arrangement.*

*President, my follow-up question is that: I would like Secretary Michael SUEN to furnish a written reply to explain why he has not attended this meeting. He should also provide a written explanation as to why Internet access charges are not considered a basic need. I request him to give us a written reply. (Appendix I)*

*President, we are now in a special situation with the human swine flu pandemic and not everyone can go to libraries, and so on, to have Internet access. Moreover, the Secretary is just talking again and again about some pilot schemes that last for one or two years. We want to resolve the problem and hence, I request Secretary Michael SUEN to give us a written reply. If he considers Internet access a basic need of school children, the problem will be resolved as CSSA and low-income families would be provided with the necessary financial assistance. If he considers otherwise, I would like to have his explanation in black and white.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thank you, Ms EU. I will relay your request to Secretary Michael SUEN personally.

**PRESIDENT** (in Cantonese): We have spent more than 20 minutes on this question. Last oral question.

### **Using Open Space and Government Properties to Display Works of Art**

6. **MR LEE WING-TAT** (in Cantonese): *President, regarding the use of open space and government properties to display works of art, will the Government inform this Council:*

- (a) *of the details of the various schemes, participated by each government department and public organization in the past three years, which were under the public art programmes (PAP) organized by the Art Promotion Office (APO) of the Leisure and Cultural Services Department (LCSD);*
- (b) *apart from PAP, whether various government departments and public organizations had discussed or studied in the past three years*

*the setting aside of indoor or outdoor areas in their properties for displaying works of local artists; if they had, of the procedure or process for making applications or arrangements for display; if not, the reasons for that; apart from museums, of the name of each property currently displaying works of local artists and the total number of such properties, as well as the number of works of art involved; and*

- (c) *whether it has considered setting aside more indoor or outdoor areas in government properties for displaying works of local artists, and whether it has formulated guidelines to encourage various government departments and public organizations to do so accordingly; if it has, of the details of the guidelines; if not, the reasons for that?*

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

- (a) The APO of the LCSD is dedicated to the development and promotion of public art. Since its establishment in 2001, it has been from time to time partnering with government departments, public organizations, non-profit-making bodies and commercial undertakings, to organize PAP for the display of works of local artists in public places.

In the past three years, the government departments and public organizations participating in the PAP organized by the APO included the Highways Department, the Yuen Long District Council, the Hong Kong Arts Centre and the Hong Kong Arts Development Council. The programmes concerned are set out in Annex 1. The MTR Corporation Limited (MTRCL) and the Link Management Limited have also co-operated with the APO to promote public art.

Since 2001, the APO and the museums under the LCSD have partnered with the Hong Kong Airport Authority (HKAA) in the display of selected pieces of cultural heritage and artwork in the Passenger Terminal Building of Hong Kong International Airport, in order to promote local art and creative activities. The exhibition currently underway at the Departures Hall of the Airport features the

works of a number of local artists using white porcelain and white marble under the theme of "Rhyme of White". The LCSD has also been in liaison with the HKAA to update the exhibits and look for new display areas.

Apart from government departments and public organizations, the APO also teams up with non-profit-making bodies to organize PAP. The "Oasis.Mirage: Hong Kong International Sculpture Symposium 2009" co-organized not long ago with the Hong Kong Sculpture Society invited 14 local, mainland and overseas artists to stage 11 days of on-site demonstration at the West Kowloon Waterfront Promenade. The works thus created, together with the sculptures of various active local artists, were displayed at the Promenade for public enjoyment.

The PAP that will be launched shortly with partner organizations include — the "Public Art Project 2009" whereby the APO will work with the Sai Kung District Council to install four artworks at the LCSD venues in Sai Kung and Tseung Kwan O Districts, namely the Po Tsui Park, Po Hong Park and Man Yee Playground; and the installation of a major artwork at the Tsim Sha Tsui East Promenade with the Hong Kong Arts Centre to embellish the waterfront environment. These two projects are expected to complete in 2010. Another project is the "SAORI Hand-weaving Project" to be jointly organized with the Spastics Association of Hong Kong, the Salvation Army, and the Kadoorie Farm and Botanic Garden. This project is not only intended for art therapy for the disabled through hand-weaving workshops, but also for the promotion of art to the general public by displaying hand-weaving works in the Kadoorie Farm and the Hong Kong Central Library.

- (b) The Government strongly supports the development of local art. We consider that pluralistic development of local art will enable local artists and people from different walks of life to have more chances of participation. Apart from the PAP mentioned above, the Government encourages and welcomes private and public organizations to allocate areas in their properties for the display of works by local artists. At present, government departments, public or other organizations can decide whether they would like to have display of artworks at suitable places, having regard to the actual

conditions of the property concerned (for example, availability of public space suitable for displaying artworks, flow of public visitors, security, and so on). We have not prescribed a set of standard procedures or process on the arrangements for the display of works of local artists.

Apart from museums, we understand that there are a total of 75 such properties where works of local artists are displayed. The location of these properties and the number of artworks involved are listed in Annex 2.

- (c) To actively promote and further encourage government departments to display local artworks in their properties, the Home Affairs Bureau has established an inter-departmental working group to explore the feasibility of displaying local artworks at government properties (including government building projects under planning and existing government properties). The working group will further discuss a pilot scheme for installing local artworks at public spaces in existing government joint-user buildings. It will also formulate guidelines on the acquisition and preservation of local artworks.

Annex 1

PAP organized by the APO in conjunction with government departments, public and other organizations from 2006-2007 to 2008-2009

<i>Year</i>	<i>Project</i>
2000-2001 to 2006-2007	Installation of Public Artworks at Yat Tung Estate, Tung Chung
2004-2005 to 2008-2009	Camera Yuen Long: Art-in-Subways Project
2004-2005 to 2008-2009	Public Art along the Tsim Sha Tsui East Promenade
2006-2007	Roving Art – Love You, No Matter What You Are Fabric Art Exhibition
2006-2007	Big · Happy · Heart — Community Art Project
2006-2007 to 2008-2009	Artists in the Neighbourhood Scheme III and IV
2006-2007 to 2008-2009	Public Art Scheme
2007-2008 to 2008-2009	Mobile Art Gallery 2008



## Annex 2

Works of local artists displayed at properties owned by the Government,  
public and other organizations  
(As at 6 July 2009)

<i>Venue of Display</i>	<i>No. of Works</i>
Two hospitals under the Hospital Authority <sup>(1)</sup>	166
West Kowloon Waterfront Promenade	70
25 MTRCL stations <sup>(2)</sup>	30
Yat Tung (I) and (II) Estates, Tung Chung	26
Kowloon Park	23
Government House	22
Hong Kong Economic and Trade Office in Washington, D.C.	22
City Art Square	19
Hong Kong International Airport (Departures and Arrivals Halls)	16
Hong Kong International Airport (Government VIP Lounge)	15
Hong Kong Economic and Trade Office in Geneva	12
Hong Kong Park	12
Office of the Hong Kong Examinations and Assessment Authority	11
Hong Kong Central Library	10
Hong Kong Economic and Trade Office in Brussels	9
Official Residence of the Hong Kong Commissioner for Economic and Trade Affairs in USA	8
Tsim Sha Tsui East Promenade	7
Hong Kong Economic and Trade Office in San Francisco	6
Belilios Public School	6
Hong Kong Cultural Centre (outdoor areas and foyer)	5
Hong Kong Economic and Trade Office in Singapore	4
Office of the Government of the Hong Kong Special Administrative Region in Beijing	4
Kwai Tsing Theatre	4
Memorial Garden and Foyer of Hong Kong City Hall	3
Statue Square	3

Notes:

<sup>(1)</sup> Alice Ho Miu Ling Nethersole Hospital and Queen Elizabeth Hospital.

<sup>(2)</sup> Fourteen stations on the Island Line, four stations on the Tseung Kwan O Line, three stations on the Tsuen Wan Line, three stations on the Tung Chung Line and one station on the Kwun Tong Line.

<i>Venue of Display</i>	<i>No. of Works</i>
Tsing Yi Municipal Services Building	3
Hong Kong Economic and Trade Office in Sydney	2
Hong Kong Economic and Trade Office in Tokyo	2
Tuen Mun Public Library	2
Heritage Discovery Centre	2
Tai Po Central Town Square	2
Hong Kong Economic and Trade Office in London	1
Hong Kong Economic and Trade Office in New York	1
The floor of a footbridge at the junction of Yee Wo Street and Sugar Street, Causeway Bay	1
The roundabout at the junction of Cheong Tung Road South and Hung Lok Road, Hung Hom	1
Victoria Park	1
Yuen Chau Tsai Park, Tai Po	1
Tai Po Waterfront Park	1
Ko Shan Road Park	1
Po Hong Park	1
Salisbury Garden	1
Chater Garden	1
Hong Kong Coliseum	1
Basic Law Library	1
Tseung Kwan O Public Library	1
Fanling Public Library	1
Ma On Shan Public Library	1
Hong Kong Cultural Centre (Piazza)	1
Yuen Long Theatre	1
Hong Kong Space Museum	1
Total	545

**MR LEE WING-TAT** (in Cantonese): *President, from Annexes 1 and 2, Honourable colleagues can see that in Hong Kong ..... Though we have a few hundred or even a thousand government buildings, works of art or local artworks are not displayed in buildings in general. I am happy to see that the Secretary pointed out in part (3) that the Home Affairs Bureau had established a working group to follow up the work.*

*I want to raise a question on street performances. I chatted with Mr IP Kwok-him last week and told him that we had discussed the idea with the*

*Government before. The impression I got is that there are many difficulties, for instance, insurance is required to be taken out for almost everything and they also worry about the hazards of fire and blockage. President, the Government will raise a hundred reasons to explain its difficulties in facilitating this. Only the Secretary, in his capacity as Director of Bureau, is capable of encouraging his colleagues to break down restrictions and fetters with a "can do" spirit.*

*Therefore, may I ask the Secretary if he will discuss with the responsible colleagues himself, to let them deal with the issues of street performances and display of local artworks as raised by IP Kwok-him last week?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, our policy direction is to bring works of art into the community. Thus, I will hold further discussions on the matter with my colleagues.

**MR FRED LI** (in Cantonese): *President, according to the information provided by the Government, the number of artworks on loan by the LCSD to government departments for display in government properties is in fact minimal. During the past four years, only once a month on average, adding up to a total of 37 times. However, only two departments are involved, namely, the Chief Executive's Office and Chief Secretary for Administration's Office. President, perhaps you need to borrow a few pieces for your office. It shows that the Government itself has not taken the lead in promoting art, how can the Secretary ensure that our art and cultural development at the community level is able to cope with an enormous development like the West Kowloon Cultural District (WKCD)?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Places displaying on loan local artworks are not confined to the two offices as mentioned by Mr LI just now. From the Annexes, we can see that a number of other places, in particular our overseas Economic and Trade Offices, display a considerable number of local artworks. It is because we wish to promote the works of local artists to overseas countries. Apart from those two places, government departments also display local artworks at other venues. We will exert every effort in promoting the display of local artworks in more places.

**MR IP KWOK-HIM** (in Cantonese): *President, the Democratic Alliance for the Betterment and Progress of Hong Kong visited Taiwan last week to see its work on the conservation of art and culture. Last week, I also talked about street performances and the issue of artworks display as referred to by Mr LEE Wing-tat today.*

*On street performances, we found that they are governed by law in Taipei. The regulation, entitled "Permission regulations on engaging in art and cultural activities", is so detailed that it is like a book. Perhaps if I have the chance, I should give the Secretary a copy for reference, so that he can effect promotion in this area.*

*In regard to the display of artworks, there is also a booklet in Taipei showing a lot of artworks displayed in public venues. In Taiwan, it is stipulated that 1% of the public works budget will be used for the installation of public artworks. Because of this, in the past few years, 30 to 50 artworks were created on a yearly basis in Taipei, allowing us to see so many works of art. It is also said that Taipei might be the place where we have the highest density of artworks on display.*

*Therefore, may I ask the Secretary whether he has considered introducing legislation, with reference to the experience of Taiwan, so as to give us more flavour in culture and art, such that culture and art can become part of our life?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *President, not long ago, I had the opportunity to have exchanges with the director of the art and culture office of Taipei City. This director has experience in working long term with the legislature. He did emphasize the importance of promoting art and cultural development through legislation. The experience of Taipei City merits our reference and further exchange.*

*In regard to the scheme generally referred to as Percent For Art as mentioned by Mr IP, it has in fact existed for quite some time, and is not just confined to Taipei. Other overseas cities, such as some cities in Australia and New York, as well as certain oversea cities, have also adopted a similar approach. Since the scheme has existed for quite a long time, our colleagues in the Home Affairs Bureau have also conducted studies and researches. Although the*

scheme is adopted by some oversea cities, there are also other cities which decided against adopting the scheme after studying it.

Our preliminary view is, the overall environment for property development in Hong Kong is different from that in those oversea cities or cities outside Hong Kong. If we start to introduce legislation to impose requirement on property developers in the prevailing market, we must be very careful. To the Government, it involves various departments and not just the art and culture front. It will certainly involve departments responsible for land and property development. It will also have substantial impact on the entire community. If we start to impose art and cultural requirements on property developers, do we also have to impose requirements of environmental protection and other areas? It requires the consensus of the community.

For places where the Percent For Art Scheme is implemented, a lot of disputes did arise because the cost is eventually passed onto property owners and members of the public. As to what kind of art should be developed, it has also been a subject of controversy. Even in the city of Taipei, for those pieces of artworks created with money raised from the property, not all the property owners or residents welcome them. For this reason, the Home Affairs Bureau will give the matter further thoughts, studying it very carefully and cautiously.

As for our current approach, we hope to encourage property developers, owners or residents to support the display of more artworks in the process of property development. At present, many property developers have in fact been doing this. Some of them are doing a remarkable job and setting a good example for others to follow. For the SAR Government, we hope to take the lead and play an exemplary role by displaying artworks in government buildings.

**MR ABRAHAM SHEK** (in Cantonese): *President, I support the Secretary's view. We cannot make private property developers and shopping malls do so by way of force, but only by way of encouragement. It is also feasible. Will the Administration provide some incentives or rent places from them at lower cost, so as to allow famous painters and collectors to display artworks in those places, with a view to encouraging art development? Will the Administration consider this?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): We are prepared to study various options of promoting the penetration of art into the community. We will therefore look into the suggestion of Mr SHEK.

**MR KAM NAI-WAI** (in Cantonese): *In part (2) of the Secretary's main reply, it is pointed out that the Government strongly supports the development of local art and encourages private and public organizations to display artworks. However, for the arrangement of displaying artworks, he does not have a procedure or process for making applications. The Annex that he provided is so absurd. In public venues like the Hong Kong International Airport, the number of works displayed is six, while there is only one in the Victoria Park and none at all in the Hong Kong Park near us. The Secretary said he supported the development of local art, was it a deliberate lie? Or is he fastidious and demanding but inept?*

*As regards the working group he just mentioned, when will it be established? Then the public, in particular artists, can make applications in accordance with the procedure ..... we are talking about private venues, just now Mr Abraham SHEK said there should be some incentives, but it should not be so. For public venues and government properties, can there be a procedure for these artists to make applications ..... when will the work of the working group be completed? Is there any procedure for making applications?*

**PRESIDENT** (in Cantonese): Mr KAM Nai-wai, you have raised several questions just now. Please state clearly what your supplementary question is?

**MR KAM NAI-WAI** (in Cantonese): *President, the Secretary mentioned that there would be a working group. I want to know when this working group is going to finish its work and whether it will include an application procedure for those artists.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, the working group has started to work, and it mainly engages in exploring the feasibility of displaying local artworks in government properties and government buildings. It will also formulate guidelines on the acquisition and preservation of local

artworks and will soon identify suitable display venues on a trial basis. As we all know, in government buildings under construction, local artworks will also be displayed. To answer your question, an inter-departmental working group will commence operation very soon and it will propose a policy objective.

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

**MR KAM NAI-WAI** (in Cantonese): *I asked when this working group would be established, and whether it would include an application procedure for local artists. The question is very clear.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, the APO has a set of standard procedures in place for the display of local artworks. We do not specifically set down any procedure because we advocate freedom of creation. We therefore strive to be open in the process. The working group will formulate guidelines on selecting local artworks for display in government buildings.

**MISS TANYA CHAN** (in Cantonese): *I have this question for the Secretary. Mr Abraham SHEK's suggestion just now is similar to what I have mentioned before, that is, the establishment of an Art Bank. This approach is adopted in overseas places. The Australian Government, for instance, is responsible for collecting works of local artists and renting these items at a lower cost to private developers or other people who are interested in displaying those works. These are art collections. In future, these items can be lent to the WKCD, art galleries or museums. It is an option we may consider.*

*If we ask all of a sudden private developers to borrow works of art from the Government, it would be very difficult. Will the working group consider taking the initiative to approach private developers or companies, even small companies which occupy only a few units, to see if they are interested in renting some pieces of local artworks? Will the Government take a proactive approach?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, in order to bring these artworks into the community, we will strive to play a bridge and communication facilitator. We will consider practicable solutions within the Home Affairs Bureau.

**PRESIDENT** (in Cantonese): We have spent more than 21 minutes on this question. Oral questions end here.

## WRITTEN ANSWERS TO QUESTIONS

### Arrangements for Liver Transplants

7. **MR ALAN LEONG** (in Chinese): *President, the Coroner's Court recently held an inquest on the death of a patient of the Queen Mary Hospital (QMH) who died as a result of not receiving liver transplant in time. The jury of the inquest considered that the QMH had not clearly informed the patient of the arrangements for liver transplant and the details in respect of the waiting time for liver transplant. The jury and the Coroner have separately made a number of recommendations. In this connection, will the Government inform this Council whether it knows:*

- (a) *if the QMH will provide more information to patients about such operations, including a flow chart which illustrates the different stages relating to liver transplant, such as the screening tests for determining whether the patient is suitable for receiving liver transplant, the patient being listed on the Central Registry for Liver Transplants (the Central Registry), and the patient receiving the liver transplant, as well as the detailed criteria for listing patients on the Central Registry and allotting donated cadaveric livers, with a view to enhancing patients' understanding about liver transplants; if it will not, of the reasons for that;*
- (b) *if the QMH will issue to patients written or other forms of confirmation that they have been listed on the Central Registry; if it will not, of the reasons for that; and*
- (c) *given that the relative priority of patients to receive liver transplant is determined according to their scores under the MELD (Model for*



*End-Stage Liver Disease), whether the QMH will consider informing the patients listed on the Central Registry of their relevant scores, so that they will better understand the situation in respect of the waiting time; if it will not, of the reasons for that?*

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

(a), (b) and (c)

At present, the Hospital Authority (HA) distributes an information leaflet on "Liver Transplant Central Registry" to patients who are referred for liver transplant so as to enhance their knowledge about the Liver Transplant Central Registry (the Central Registry) and to help them understand the details and arrangements of liver transplant.

The Central Registry determines the priority of allocation of cadaveric livers among patients based on objective clinical parameters to ensure that donated livers are allocated to patients with the most urgent needs. The Central Registry adopts the internationally-recognized MELD and PELD (Pediatric End-stage Liver Disease) scoring systems to compute the mortality risk score of patients (that is, the probability of pre-transplant death), known as the MELD/PELD score, using objective clinical data such as the level of serum bilirubin, serum creatinine and the international normalized ratio (INR) of prothrombin time. As a higher MELD/PELD score indicates more urgent conditions, priority will be given to the patient with the highest score in the allocation of livers. When there is a potential cadaveric liver, the Liver Transplant Co-ordinator would check through the list of patients on the Central Registry with the same blood group as the cadaveric liver donor and identify, among them, the patient with the highest MELD/PELD score. The Liver Transplant Co-ordinator will then inform this patient that he or she may undergo the transplant operation.

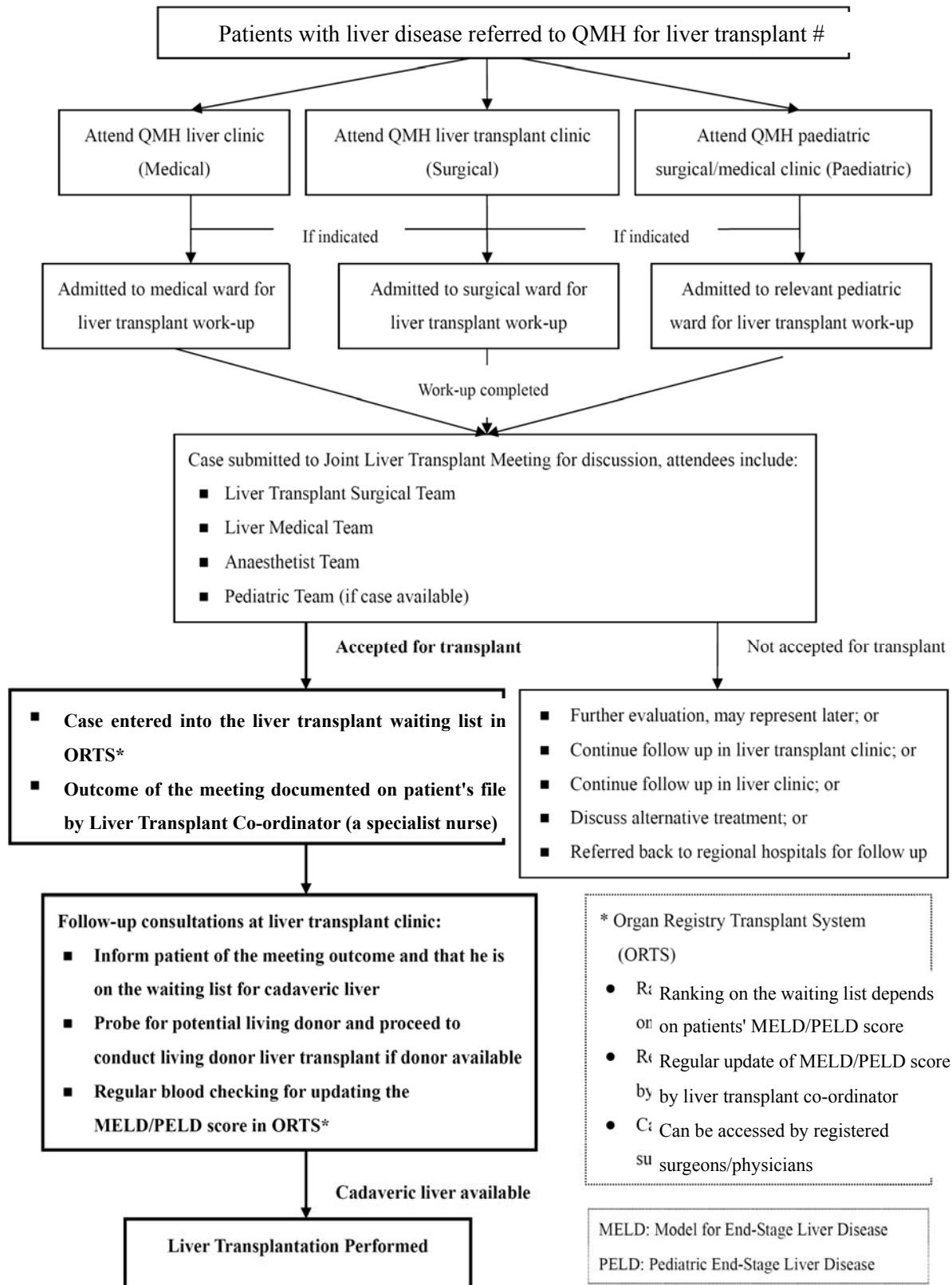
On the other hand, the HA has an established internal audit mechanism to ensure that every donated liver is allocated to the patient with the most urgent needs according to their ranking on the

Central Registry. Where a cadaveric liver is not allocated to the first patient on the waiting list under exceptional circumstances, the doctors concerned must provide a full explanation in writing. Examples of these circumstances include the patient having opted for not receiving the transplant at the time or being unsuitable for undergoing the transplant due to his or her clinical conditions at the time. This is to ensure that the process of liver allocation is conducted in a fair and objective manner. The aforesaid criteria for determining the ranking of patients on the waiting list and the criteria for allocation of donated organs are detailed in the information leaflet on "Liver Transplant Central Registry".

Patients referred for liver transplant will be listed on the Central Registry if they have gone through clinical assessment and are assessed to require liver transplant. Their ranking on the Central Registry is subject to constant changes due to changes in their own medical conditions or other patients' medical conditions, inclusion of new patients on the Central Registry or removal of existing patients from the Central Registry, and so on. Moreover, patients may be removed from the Central Registry due to improvement in their own medical conditions. For these reasons, hospitals will not issue written or other forms of confirmation to patients on their listing on the Central Registry. Nevertheless, doctors will maintain communication with their patients and keep them informed of their updated approximate ranking on the Central Registry. Patients may also contact the Liver Transplant Co-ordinator directly to enquire about their up-to-date ranking and their MELD/PELD scores.

After considering various recommendations made by the Coroner's Court, including the provision of a flow chart illustrating the stages from screening to listing patients on the Central Registry and the conduct of the liver transplant operation, detailed criteria for listing patients on the Central Registry and for allocation of donated cadaveric livers, as well as the enquiry channels, the HA and QMH will provide a liver transplantation flow chart (see Annex) to patients and further strengthen the efforts in providing relevant information to patients with a view to enhancing patients' understanding about the arrangements for liver transplant.

**Liver Transplantation Flow Chart**



# For acute deteriorating patients, will direct transfer to intensive care unit (ICU) or general ward for work-up

~ MELD score calculation uses: Serum Creatinine(mg/dl), Bilirubin(mg/dl) and INR

~ PELD score calculation uses: Albumin(g/dl), Bilirubin(mg/dl), INR, Growth failure (gender, height and weight) and age at listing

**Renewal of Tourist Guide Passes**

8. **MR IP WAI-MING** (in Chinese): *President, recently, quite a number of tourist guides have relayed to me their discontent that the Travel Industry Council of Hong Kong (TIC) requires them to take an examination again when renewing their tourist guide passes. In this connection, will the Government inform this Council whether it knows:*

- (a) if the questions of the aforesaid examination are the same every time; if so, of the reasons for requiring tourist guides to take the examination again when renewing their passes; and*
- (b) if TIC will consider cancelling the aforesaid examination;*
  - (i) if it will, of the timetable; as well as whether it will set other new requirements for renewing the passes; if so, whether it will fully consult the tourist guides in advance; if it will, of the details; if not, the reasons for that; and*
  - (ii) if it will not, the reasons for that?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, under the Continuing Professional Development Scheme for Tourist Guides implemented by the TIC since 2007, Tourist Guide Pass holders are required to pass the Hong Kong Knowledge Quiz, attend theme seminars and complete not less than 12 hours of self-selected training courses on tourism. The Scheme aims at enhancing the professional knowledge of tourist guides and encouraging them to keep abreast of the latest developments of Hong Kong so as to provide high-quality guide service to visitors. Tourist guides are required to renew their Pass every three years, and have to fulfil the above requirements from the second renewal onwards. My reply to the two-part question is as follows:

- (a) The Quiz questions are selected randomly from the TIC's database. Hence the Quiz is different every time. The database is updated from time to time to reflect the latest developments in Hong Kong. The TIC provides information in the database to tourist guides for revision purposes.

- (b) Recently some tourist guides have proposed to the TIC to cancel the Hong Kong Knowledge Quiz. After careful consideration of the justifications of the proposal, views of stakeholders and other feasible options, the Working Group on Continuing Professional Development Scheme of the TIC (which comprises non-trade members, tutors of tourist guide courses as well as representatives of major tourist guide associations, the Vocational Training Council and the Government) takes the initial view that tourist guides could be given the option to either take courses or sit for the Quiz to fulfil the objective of encouraging the guides to constantly equip themselves with up-to-date knowledge of Hong Kong. The Working Group is drawing up the implementation details for submission to the Training Committee and Board of Directors of the TIC for approval shortly.

### **Assistance for Social Welfare Service Units to Carry out Epidemic-prevention Work**

9. **DR PAN PEY-CHYOU** (in Chinese): *President, to enhance cleanliness and prevent human swine influenza (HSI), the Social Welfare Department (SWD) earlier allocated additional resources to more than 3 000 social welfare service units (SWSUs), providing each of them with supplies or \$3,000 for purchasing cleaning and disinfectant items. Yet, some groups have pointed out that non-subsidized SWSUs have not benefited, and the amount allocated is insufficient to cover the expenses for purchasing adequate epidemic-prevention equipment. In this connection, will the Government inform this Council:*

- (a) *whether it will consider providing epidemic-prevention supplies to non-subsidized SWSUs and private residential care homes for the elderly (RCHEs), and those which have participated in the Bought Place Scheme, and also assisting these organizations to carry out epidemic-prevention and cleaning work; if it will not, of the reasons for that;*
- (b) *how the Government will monitor SWSUs' use of the additional supplies and subsidies so that appropriate epidemic protection is available to every service user; and*

- (c) *whether the authorities will further provide additional supplies to SWSUs with a large number of service users and subsidize these SWSUs to purchase adequate epidemic-prevention equipment (including cleaning and disinfectant items), and whether they will assist these SWSUs in purchasing relevant epidemic-prevention equipment (such as infra-red thermometers)?*

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

- (a) In May and June 2009, the SWD on separate occasions distributed epidemic-prevention items, including cleansing and disinfectant materials, infra-red thermometers and surgical masks, to various non-subvented welfare units to assist them in carrying out cleaning work and stepping up precautionary measures against HSI. These units include 57 self-financing homes or other service units operated by non-governmental organizations (NGOs), 51 private residential care homes for the disabled and 576 private RCHEs, among which 129 are RCHEs participating in the Enhanced Bought Place Scheme.
- (b) The SWD twice allocated additional provision to subvented NGOs in May and June 2009. The NGOs may, having regard to their own circumstances, purchase cleansing and disinfectant materials as appropriate. Subvented welfare NGOs are required to submit audited financial statements to the SWD, reporting on how the additional provision is used. When conducting review visits and on-site assessment, the SWD will also assess the performance of the service units against a set of Service Quality Standards, one of which is that the service units should take all reasonable steps to ensure the provision of a safe physical environment for their staff and service users. Should there be any irregularities, the NGO will have to provide an explanation and rectify them.

The SWD also organizes briefing sessions, seminars and training workshops for both subvented and non-subvented units to raise their awareness of infection prevention and help them carry out precautionary measures. The SWD also inspects licensed homes/centres on a regular basis.

- (c) In distributing the epidemic-prevention items, the SWD had already adjusted the quantities having regard to the size of the units concerned.

In the light of the spread of HSI, the Administration will seek the approval of the Finance Committee of the Legislative Council on 10 July 2009 for additional funding of \$300 million to implement enhanced measures and further improve environmental hygiene. Of this new provision, \$95 million will go to the SWD as additional resources for some 1 800 subvented welfare services units to hire cleansing contractors or employ part-time or temporary helping hands to strengthen general cleansing service and enhance environmental hygiene.

We will monitor the development of HSI and review the need to provide additional support to the service units of welfare NGOs.

### **Information Technology Staff**

10. **DR SAMSON TAM** (in Chinese): *President, regarding the employment of information technology (IT) staff by the Government, as well as the employment of such staff by outsourced service providers for government IT projects, will the Government inform this Council:*

- (a) *of the establishment, the respective numbers of civil servants and non-civil service contract (NCSC) staff among the serving staff, the number of vacancies, and whether it knows the number of staff of outsourced service providers, in respect of each IT-related grade in each of the past three years;*
- (b) *of the names of the 10 Policy Bureaux/government departments with the highest number of serving NCSC staff in part (a), the number of such staff, as well as the longest and average periods of their continuous employment; whether the authorities will consider converting those posts which need to be filled on a long-term basis to permanent establishment posts; if they will, of the details*

*(including the government departments and posts involved) and the implementation timetable; if not, the reasons for that;*

- (c) of the Policy Bureaux/government departments to which the vacancies in part (a) belonged; the longest and average periods during which such posts had remained vacant; the reasons for not having such vacancies filled; whether such reasons were related to individual grades being classified as "controlled grades"; if so, of the grades involved, and whether these grades will be removed from the list of "controlled grades"; if they will, of the details and the earliest implementation date; if not, the reasons for that;*
- (d) of the Policy Bureaux/government departments which plan to recruit IT staff in 2009-2010, the posts and number of staff involved, the respective numbers of existing and new posts, as well as the respective numbers of staff to be employed on civil servant and NCSC terms; and*
- (e) whether the authorities will conduct a comprehensive review on the demand of the various Policy Bureaux/government departments for IT staff; if so, of the details, and whether they will formulate a long-term strategy for IT manpower to tie in with the overall needs of Hong Kong and the need to develop an e-government; if no such review will be conducted, the reasons for that?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, regarding the questions raised by Dr the Honourable Samson TAM, my reply is as follows:

- (a) There are three IT-related grades in the Civil Service, namely the Analyst/Programmer (AP), the Computer Operator (COp) and the Data Processor (DP) grades. The Government Chief Information Officer (GCIO) is the Head of these grades, and is responsible for their grade management and recruitment matters. The IT manpower position in the Government over the past three years is summarized in Annex I. Apart from civil servants and NCSC staff, bureaux and departments (B/Ds) also engage IT staff via a term



contract (commonly referred to as the T-contract) centrally managed by the Office of GCIO (OGCIO). Figures on IT staff employed for IT projects and services outsourced to the private sector either on a turnkey or assignment basis are not available.

- (b) The 10 B/Ds employing the largest number of NCSC IT staff as at 31 March 2009 are listed in Annex II. Amongst these staff, the longest length of service was nine years and nine months, while the average was about two years.

The Civil Service Bureau, jointly with B/Ds, conducted a special review on the employment situation of NCSC staff in 2006. As far as NCSC IT staff are concerned, the outcome revealed that the majority of them were employed within the ambit of the NCSC Staff Scheme. The review also identified some 40 NCSC IT positions undertaking duties that should more appropriately be performed by civil servants. Details of these positions are set out in Annex III. These NCSC positions are being phased out and replaced by civil service posts having regard to the end-dates of the employment contracts of the NCSC staff concerned and the lead-time for filling the replacement civil service posts.

- (c) Details of the vacancies in the AP, COp and DP grades in the past three years are set out in Annex IV.

In 2003, the AP grade was included in the Second Voluntary Retirement (VRII) Scheme as there was anticipated manpower surplus in the grade. Seventeen officers from the AP grade retired under VRII. To maintain the financial integrity of VRII Scheme, the grade was subject to an open recruitment freeze ending in March 2008.

There were a total of 59 civil service vacancies in the AP grade as at end March 2009. The OGCIIO has just completed a comprehensive review on the future positioning and manpower requirements of the grade. As the outcome of the review may have an impact on the long-term manpower need of the grade, the grade is categorized as a controlled grade and its open recruitment subject to the Civil Service

Bureau's approval. The Civil Service Bureau is currently considering the review report submitted by OGCIO.

On average, the AP vacancies as at end March 2009 had been vacant for one year and three months.

As far as the COp and DP grades are concerned, manpower plans from B/Ds reveal that there will be surplus staff in both grades in the coming years. There is therefore currently no recruitment plan for the grades. Vacancies in individual B/Ds can be tackled through redeployment of existing staff where necessary.

- (d) As mentioned in part (c), the Civil Service Bureau is currently considering the review report recently submitted by the OGCIO. Subject to the Civil Service Bureau's consideration, the OGCIO will work out a recruitment plan as appropriate.

With regard to NCSC staff, B/Ds employ them to meet service needs which are time-limited or do not require keeping staff on a permanent basis. Accordingly, the number and type of NCSC positions will fluctuate from time to time having regard to individual B/Ds' changing service and operational requirements. We are therefore not able to provide the information required.

- (e) The OGCIO regularly reviews the developments of the grades under its purview in terms of their composition, responsibilities and functions, qualifications and competencies in response to the changing nature of and demand for IT services over the years. Such a review was initiated in 2007 in the context of updating the Digital 21 Strategy. In 2008, the OGCIO further developed the Government IT Skills Framework (GISF), which describes the whole set of skills and competencies required by the government IT profession in all areas of work. It covers all the focus areas of the Digital 21 Strategy. For E-government, the defined mission of the government IT profession is to inspire and support B/Ds in maximizing the value of IT in achieving their policy goals and programmes. The GISF is modelled along similar practices and frameworks in countries leading in IT.

## Annex I

## IT Manpower in the Government in the past three years

*Position as at 31 March 2009*

## I. Civil Service Staff

<i>Grades</i>	<i>Establishment</i>	<i>Strength</i>	<i>Vacancy</i>
AP	759(+6)	706	59
COp	443	434	9
DP	189(+1)	182	8

## II. Number of NCSC Staff employed: 552

*Position as at 31 March 2008*

## I. Civil Service Staff

<i>Grades</i>	<i>Establishment</i>	<i>Strength</i>	<i>Vacancy</i>
AP	742(+9)	712	39
COp	450(+3)	434	19
DP	189	186	3

## II. Number of NCSC Staff employed: 512

*Position as at 31 March 2007*

## I. Civil Service Staff

<i>Grades</i>	<i>Establishment</i>	<i>Strength</i>	<i>Vacancy</i>
AP	741(+4)	714	31
COp	466(+6)	442	30
DP	193	188	5

## II. Number of NCSC Staff employed: 553

## Remarks:

Establishment figures include permanent posts, time-limited posts and supernumerary posts.

Strength includes officers on final leave.

Vacancies include frozen ones.

## Key:

( ) denotes supernumerary posts.

## Annex II

The 10 B/Ds Employing the Largest Number of NCSC IT Staff  
(Position as at 31 March 2009)

<i>B/D</i>	<i>No. of NCSC IT Staff</i>
Electrical and Mechanical Services Department	134
Hong Kong Police Force	86
Education Bureau	72
Leisure and Cultural Services Department	30
Hongkong Post	27
Rating and Valuation Department	24
Treasury	22
Hong Kong Observatory	19
Lands Department	17
Radio Television Hong Kong	15

## Annex III

NCSC IT positions identified to be phased out in the 2006 special review

<i>B/D</i>	<i>Number of NCSC positions</i>
Audit Commission	1
Auxiliary Medical Service	1
Commerce and Economic Development Bureau	1
Department of Health	2
Development Bureau	1
Drainage Services Department	1
Financial Services and the Treasury Bureau	2
Immigration Department	3
Leisure and Cultural Services Department	12
Marine Department	1
Planning Department	6
Rating and Valuation Department	5
Registration and Electoral Office	3
Total:	39

## Annex IV(a)

## Vacancy situation of the AP Grade in B/Ds

<i>B/D</i>	<i>No. of vacancies</i>		
	<i>(as at 31 March 2007)</i>	<i>(as at 31 March 2008)</i>	<i>(as at 31 March 2009)</i>
Commerce and Economic Development Bureau — Commerce, Industry and Tourism Branch			2
Customs and Excise Department			1
Development Bureau — Works Branch			1
Department of Health			1
Housing Department	2	2	3
Hong Kong Police Force	1	2	2
Immigration Department	6	2	8
Inland Revenue Department			2
Labour Department	1	1	1
Marine Department			1
OGCIO	15	20	22
Registration and Electoral Office			2
Rating and Valuation Department			1
Security Bureau	1	2	2
Social Welfare Department	1		
Student Financial Assistance Agency		1	
Transport Department		1	1
Trade and Industry Department		1	2
Treasury	4	7	7
Total:	31	39	59

Remarks:

Vacancies include frozen one(s).

## Annex IV(b)

## Vacancy situation of the COp Grade in B/Ds

<i>B/D</i>	<i>No. of vacancies</i>		
	<i>(as at 31 March 2007)</i>	<i>(as at 31 March 2008)</i>	<i>(as at 31 March 2009)</i>
Customs and Excise Department	1		
Food and Environmental Hygiene Department	1		
Hong Kong Police Force	1	1	1
Immigration Department	5		
OGCIO	18	13	6
Trade and Industry Department	1		
Treasury	3	5	2
Total:	30	19	9

Remarks:

Vacancies include frozen one(s).

## Annex IV(c)

## Vacancy situation of the DP Grade in B/Ds

<i>B/D</i>	<i>No. of vacancies</i>		
	<i>(as at 31 March 2007)</i>	<i>(as at 31 March 2008)</i>	<i>(as at 31 March 2009)</i>
Hong Kong Police Force	4		
Housing Department			1
Immigration Department			1
Inland Revenue Department	1		1
OGCIO		3	4
Treasury			1
Total:	5	3	8

Remarks:

Vacancies include frozen one(s).



- (b) *a breakdown of the cases of elderly people receiving Normal OAA or Higher OAA; and*

<i>Financial year</i>	<i>Normal OAA</i>		<i>Higher OAA</i>	
	<i>Number of cases</i>	<i>Total expenditure involved</i>	<i>Number of cases</i>	<i>Total expenditure involved</i>
<i>1999-2000</i>				
<i>·</i>				
<i>·</i>				
<i>2008-2009</i>				

- (c) *the number of cases in which discretionary approval was granted to the elderly people who lived with their children and applied for CSSA on their own, as well as the number of those which were rejected?*

<i>Financial year</i>	<i>Number of cases in which discretionary approval was granted</i>	<i>Number of cases rejected</i>
<i>1999-2000</i>		
<i>·</i>		
<i>·</i>		
<i>2008-2009</i>		

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, the CSSA Scheme is designed to bring the income of families and individuals (including elders) who cannot support themselves financially up to a prescribed level to meet their basic needs by way of an income supplement. Since families constitute the core units of our community, CSSA applicants (including elderly applicants) living with their family members are required to make their applications on a household basis. This requirement seeks to encourage family members to render assistance and support to each other. Income-earners should take up the responsibility of supporting their family members who have no financial means, instead of transferring the responsibility to taxpayers.

On the other hand, the CSSA scheme is non-contributory in nature. Applicants are subject to income tests to ensure that CSSA payments are provided to families and individuals with genuine financial difficulties. As such, regardless of whether they are living with their family members, all elders who apply for CSSA on their own must submit a "declaration" on their financial situation to verify whether they have other sources of income. The "declaration of not providing support to parents" referred to in the question and often mentioned by the public is incorrect and easy to cause misunderstanding. In fact, it is only a simple declaration on financial situation, a copy of which is at Annex for reference.



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

- (a) The number of CSSA cases with elderly recipients and the expenditure involved since 2001-2002<sup>(1)</sup> are as follows:

<i>Financial Year</i>	<i>Age of the oldest CSSA recipient is between 60-64</i>			
	<i>Cases in which recipients are living alone*</i>	<i>Cases in which recipients are living with their family members*</i>		<i>Estimated total expenditure^ (\$ million)</i>
		<i>All family members are elders</i>	<i>Others</i>	
2001-2002	8 907	735	5 618	1,078.7
2002-2003	8 922	795	6 653	1,140.5
2003-2004	9 076	819	7 515	1,199.7
2004-2005	8 992	846	7 897	1,217.4
2005-2006	9 121	847	7 668	1,202.3
2006-2007	9 801	846	7 378	1,193.5
2007-2008 <sup>#</sup>	10 397	861	7 058	1,254.6
2008-2009 <sup>#</sup>	11 077	907	6 847	1,328.7

<i>Financial Year</i>	<i>Age of the oldest CSSA recipients is 65 or above</i>			
	<i>Cases in which recipients are living alone*</i>	<i>Cases in which recipients are living with their family members*</i>		<i>Estimated total expenditure^ (\$ million)</i>
		<i>All family members are elders</i>	<i>Others</i>	
2001-2002	95 947	16 110	14 473	7,218.8
2002-2003	98 319	17 752	17 776	7,645.8
2003-2004	98 996	19 056	20 682	7,909.1
2004-2005	99 966	20 029	22 019	7,903.1
2005-2006	100 745	20 739	22 438	7,982.2
2006-2007	100 389	21 099	21 806	8,062.3
2007-2008 <sup>#</sup>	99 500	21 196	20 707	8,410.5
2008-2009 <sup>#</sup>	98 958	21 203	20 007	8,919.3

Notes:

\* Figures as at the end of the financial year.

^ There may be a slight discrepancy between the sum of individual figures and the total as shown in the table due to rounding.

# Estimated expenditure in 2007-2008 includes one additional month of standard rate payment to CSSA recipients, and that in 2008-2009 (provisional figure) includes two additional months of standard rate payment to CSSA recipients.

- (b) The number of cases in which elders receive Normal OAA and Higher OAA and the expenditure involved since 1999-2000 are as follows:

Note:

<sup>(1)</sup> The Computerized Social Security System used to process the figures has only started to operate since October 2000. Therefore only figures from 2001-2002 are available.

<i>Financial Year</i>	<i>Normal OAA</i>		<i>Higher OAA</i>	
	<i>Number of cases*</i>	<i>Expenditure on the allowance (\$ million)</i>	<i>Number of cases*</i>	<i>Expenditure on the allowance (\$ million)</i>
1999-2000	134 305	1,004.7	311 530	2,458.8
2000-2001	126 055	951.1	327 679	2,611.4
2001-2002	117 121	881.2	340 920	2,700.0
2002-2003	106 921	805.8	348 012	2,768.2
2003-2004	97 633	737.5	359 165	2,898.8
2004-2005	89 916	675.9	367 984	2,982.9
2005-2006	83 230	631.4	377 794	3,074.8
2006-2007	75 287	583.4	390 985	3,215.3
2007-2008 <sup>#</sup>	70 054	569.3	403 105	3,533.0
2008-2009 <sup>#</sup>	69 401	872.3	416 454	5,542.6

Notes:

\* Figures as at the end of the financial year.

# OAA expenditure in 2007-2008 includes one additional month of allowance to OAA recipients, and that in 2008-2009 (provisional figure) includes two additional months of allowance and a one-off grant of \$3,000 to OAA recipients.

- (c) As mentioned above, CSSA applicants are generally required to make their applications on a household basis. Under special circumstances, for example, where an elderly applicant has poor relationship with his/her family members or there are special reasons that children of an applicant cannot provide support to him/her, the SWD will consider such circumstances on a case-by-case basis and may allow an elder in need to apply for CSSA on his/her own. Staff of the SWD will normally conduct interviews with these applicants and their children to verify their financial ties and the actual situation.

A breakdown of elders living with their family members but having applied for CSSA on their own since January 2000 is set out in the following table:

<i>Financial Year (except 1999-2000, of which SWD only has figures for the last three months)</i>	<i>Number of cases approved by discretion</i>	<i>Number of cases rejected</i>
2000 (January to March)	31	7
2000-2001	63	32
2001-2002	70	10
2002-2003	44	8
2003-2004	32	5
2004-2005	31	7
2005-2006	20	13
2006-2007	18	2
2007-2008	16	0
2008-2009	19	0

Annex

Annex 143A(e)

File ref.:

**Declaration**

I, \_\_\_\_\_, (HKIC No.: \_\_\_\_\_),  
of \_\_\_\_\_ (Tel. No.: \_\_\_\_\_),  
the \_\_\_\_\_ of the applicant (Name: ) in casefile reference declare that:

- (1) I do not give any financial assistance to \_\_\_\_\_ (name).
- (2) I am giving \$ \_\_\_\_\_ per month to \_\_\_\_\_ (name) for the purpose of \_\_\_\_\_.
- (3) I gave \$ \_\_\_\_\_ to \_\_\_\_\_ (name) on \_\_\_\_\_ for the purpose of \_\_\_\_\_.
- (4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare that to the best of my knowledge and belief, the information in item(s) \*(1)/(2)/(3)/(4) (which \*has/have been read over to me and well understood by me) \*is/are true. I understand that if I knowingly or willfully make any false statement or withhold any information or otherwise mislead the Social Welfare Department for the purpose of obtaining or aiding and abetting others to obtain payments it will render me liable to prosecution.

\* Signature/Thumbprint of declarant \_\_\_\_\_  
 \* Signature/Thumbprint of witness \_\_\_\_\_  
 Name of witness \_\_\_\_\_  
 Date \_\_\_\_\_

Put a '✓' in the appropriate box.  
\* Delete whichever is inapplicable.

## **Impact of Extending Smoking Ban to Places of Public Entertainment**

12. **MR VINCENT FANG** (in Chinese): *President, the statutory no smoking areas have been extended to entertainment establishments, such as clubs, bars, mahjong-tin kau premises and nightclubs on 1 July 2009 upon the expiry of the grace period which lasted for two and a half years. The Entertainment Business Rights Concern Group has indicated that such establishments are facing a crushing blow, with an estimate of 2 600 entertainment establishments facing a crisis of closure of business, and the "rice bowls" of some 100 000 employees are in jeopardy. In this connection, will the Government inform this Council:*

- (a) *of the number of entertainment establishments which were given a grace period from the smoking ban, together with a breakdown by their types; whether it knows the current number of employees employed by such establishments; whether the Government has conducted any survey on the smoking preferences of the employees and consumers of such establishments; whether it has estimated the respective numbers of entertainment establishments which will close down and persons who will lose their jobs as a result of the extension of no smoking areas; whether the Government has studied how to assist such establishments and unemployed persons in changing business or occupation respectively;*
- (b) *whether it knows which other cities worldwide are implementing or planning to implement anti-smoking measures which are nearly as stringent as those in Hong Kong after extension of the no smoking areas;*
- (c) *given that the authorities indicated on 19 October 2006 at the resumption of the Second Reading debate on the Smoking (Public Health) (Amendment) Bill 2005 that "..... therefore the smoking room is feasible ..... The primary consideration was for the protection of the interest of non-smokers. With the new Ordinance coming into effect, many of the smokers may have to resolve to pursue their habit in open space. Non-smoking road users may probably be left without a choice but to become a second-hand smoker. The setting up of a 'smoking room' could separate smokers from non-smokers", whether the aforesaid opinion had been considered in the conclusion, drawn by the Report on findings of*

*technical feasibility study on smoking room released in April this year, that smoking rooms were not feasible in Hong Kong; if smoking rooms will not be installed, how the Government separates smokers from non-smokers in public areas so as to protect the pedestrians who are non-smokers; and*

- (d) *whether any further anti-smoking initiatives are in place; whether it will make reference to the Bhutanese Government's practice of banning the sale of cigarettes; whether hookah smoking, which is prevalent in the Middle East at present, is subject to regulation under the relevant ordinance?*

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

(a) to (c)

It is common knowledge that smoking is hazardous to health. Protection of public health through banning smoking at all indoor public places and workplaces was the objective of the amendment to the Smoking (Public Health) Ordinance as well as the consensus reached between the Administration and the Legislative Council in 2006. During the Legislative Council's scrutiny of the Amendment Bill, the Administration accepted its proposal of deferring the implementation date of the smoking ban at six types of establishments, namely, bars, clubs, nightclubs, bathhouses, massage establishments and mahjong-tin kau premises until 1 July 2009. These establishments were therefore given a transitional period of two and a half years more than all the other indoor places (including shopping arcades, restaurants, karaokes, and so on) where the smoking ban started from 1 January 2007 to adapt to the smoking ban and make necessary adjustments. It is also clearly stated in the legislation that the smoking ban will be implemented at these six types of establishments upon expiry of the transitional period in-order to protect the health of the customers and employees of these establishments as at all other indoor public places and workplaces.

According to the Department of Health (DH), there were a total of 1 346 qualified establishments temporarily exempted from the

smoking ban as at June 2009, comprising 1 004 bars, 112 massage establishments and bathhouses, 87 clubs, 79 nightclubs and 64 mahjong-tin kau clubs. On the number of employees, statistical data of the Census and Statistics Department (C&SD) indicated that there were approximately 5 100 persons employed at bars and lounges in 2008. The Administration does not have statistics regarding employees at the other types of establishments.

On the possible impact of smoking bans on the trades, both overseas and local data show that such bans have not caused any long-term direct impact on the business or employment of the catering and entertainment industries. Although some local restaurants and karaokes had expressed worries that the smoking ban might lead to business loss and layoffs, C&SD statistics showed that restaurant receipts had surged by around 30% after the smoking ban had taken effect for around two years, and that employment had also increased in the hospitality industry in the same period.

Earlier this year, the Administration has also commissioned an independent consultant to conduct a questionnaire survey on the smoking habits of the customers of the aforementioned six types of entertainment establishments and their reaction to the smoking ban at these establishments. About 1 700 persons were selected by random sampling for the survey, the findings of which revealed that 45% of the respondents had patronized bars. Among them, more than 80% were non-smokers (67%) or had already stopped smoking (16%). Only less than 20% (17%) of them were smokers. Among the 32% of respondents who said that they had patronized the five types of entertainment establishments, namely nightclubs, sauna bathhouses, massage establishments, mahjong-tin kau premises or mahjong rooms in clubs, 80% were non-smokers (62%) or had already stopped smoking (18%). Only 20% of them were smokers.

According to the same survey, 16% of the respondents said that they went to bars at least once a month on average. However, 19% of the respondents said that they would go to bars at least once a month on average after the introduction of a total smoking ban in bars. In addition, 11% of the respondents said that they went to nightclubs, sauna bathhouses, massage establishments, mahjong-tin kau

premises or mahjong rooms in clubs at least once a month on average. 12% of the respondents indicated that they would go to these five types of establishments at least once a month on average after smoking is banned at these establishments.

Taking into account overseas and local experiences with smoking bans as well as the recent survey findings, the Administration does not consider that the extension of no smoking areas on 1 July would directly lead to business closures or staff layoff in these establishments. We will continue to monitor the implementation of the smoking ban and help the industries adapt to the ban as much as we can.

In any case, greater efforts in tobacco control would only help reduce the number of smokers as well as the harm of second-hand smoke, thereby improving the health of more people in our community and cutting down on our medical expenditure. According to a report published by the School of Public Health and Department of Community Medicine of the University of Hong Kong in 2005, tobacco costs the Hong Kong economy HK\$5.3 billion each year if one counts the annual medical costs, long-term care expenditure, and productivity loss incurred by smoking and second-hand smoke. The tremendous economic benefit of tobacco control is evident if the subject is viewed in context.

As regards the feasibility of smoking rooms, the Secretary for Food and Health stated clearly during the resumption of the Second Reading debate on the Smoking (Public Health) (Amendment) Bill 2005 on 18 October 2006 and 19 October 2006 that there were no internationally recognized ventilation standards that could support the installation of smoking rooms to protect non-smokers from second-hand smoke. The Administration was nevertheless prepared to invite experts to conduct thorough scientific data collections as well as experiments to ascertain whether it is indeed technically possible for smoking rooms to protect non-smokers from the harmful effects of second-hand smoke effectively.

As reported to the Legislative Council Panel on Health Services on 20 April 2009, the findings of the study we commissioned and carried out by The Hong Kong University of Science and Technology indicated that there was as yet no conclusive evidence to substantiate the effectiveness of smoking rooms in separating smokers and non-smokers. Even with stringent room design and ventilation standards, non-smokers outside the room were still exposed to second-hand smoke as long as there was human movement in and out of the room. The findings echoed the World Health Organization's (WHO) advice that "ventilation and separate smoking rooms do not reduce exposure to second-hand smoke to an acceptable or safe level".

The installation of smoking rooms is not allowed in many major cities in the world, including London, New York, Toronto, San Francisco and Sydney. Many provinces in Canada and individual states in the United States had once allowed smoking rooms while imposing smoking bans indoors but have subsequently banned such rooms after finding the policy of allowing smoking rooms ineffective. We also note that even in cities where the building of smoking rooms is allowed in restaurants and entertainment establishments, such as Paris and Singapore, only a small number of establishments actually built such rooms. Most establishments, especially small and medium enterprises, chose to go entirely smoke-free instead. Reasons most commonly cited are the high costs involved and lack of space for building the rooms.

Given the scarcity of land and the varying building structures in Hong Kong, coupled with the need to ensure fair competition among different industries and among enterprises of varying sizes, installation of smoking rooms in Hong Kong would be fraught with problems. Moreover, under the Smoking (Public Health) Ordinance, managers of premises are not liable for acts in breach of the smoking ban on their premises. But if smoking rooms are allowed, the managers must be held legally responsible for the management of such rooms. In view of the above, the Administration considers that the setting up of smoking rooms is not a viable option in Hong Kong.



Meanwhile, we have noticed that after implementation of a total smoking ban at indoor places, some smokers have gathered around and smoked at certain spots on the streets that are close to no smoking areas, and may have affected some of the non-smoking passers-by. We are now evaluating the situation, as well as collecting relevant information and conducting research on the matter. This includes gauging public opinion and drawing reference from the experience and results of measures taken by other countries and places in tackling the issue of smokers clustering and smoking in the vicinity of no smoking areas. As in the past, the Government will take into account the actual circumstances and public expectations when considering the need to further expand the statutory no smoking areas or adopt other tobacco control measures to safeguard public health.

- (d) The WHO adopted the Framework Convention on Tobacco Control (FCTC) in May 2003, aiming at fulfilling the objective of tobacco control by reducing the demand and supply of tobacco through adoption of comprehensive measures. To date, there are more than 150 States Parties to the FCTC, each taking gradual steps to implement their tobacco control measures.

China ratified the FCTC on 28 August 2005. From 9 January 2006, the FCTC became effective in the country, including Hong Kong. In accordance with the FCTC, China has pledged to render general protection to the public from exposure to tobacco smoke and impose a comprehensive ban on tobacco advertising, promotion and sponsorship by 2011, that is, five years after the FCTC comes into effect. To implement the FCTC, the Ministry of Health has set up an Office of the FCTC Implementation Leading Groups and proceeded to amend the rules relating to the implementation of a smoking ban at all public places. Currently, there are over 150 Chinese cities that have promulgated a smoking ban at public places. In addition, China has also been organizing a number of large-scale anti-smoking activities including the "Smoke-free Olympics" and the "Smoke-free World Expo".

In line with the requirements of the FCTC, the Hong Kong SAR Government's current tobacco control policy is to, *inter alia*, reduce

the harmful effects of smoking and second-hand smoke, prevent young people from smoking and being addicted to smoking, as well as improve our smoking cessation services. To this end, we have amended the Smoking (Public Health) Ordinance in 2006 by significantly extending the statutory no smoking areas and tightening the statutory requirements for packaging and advertising tobacco products. In addition, the Financial Secretary has raised tobacco duty by 50% in this year's budget to prevent our citizens, in particular the young, from smoking and to encourage smokers to give up smoking. To strengthen publicity and smoking cessation services, we have increased the funding for the Tobacco Control Office of the DH and the Hong Kong Council on Smoking and Health from \$18.5 million in 2003-2004 to \$61.7 million in 2009-2010. Both the DH and the Hospital Authority have strengthened their smoking cessation services by setting up smoking cessation clinics, establishing a Smoking Cessation Hotline and enhancing their counselling and referral services. Since February 2009, the DH has also been in collaboration with the Tung Wah Group of Hospitals to launch a three-year pilot community-based smoking cessation programme for provision of free treatment and counselling services to smokers.

Hong Kong's current tobacco control measures are generally in line with the requirement of the FCTC and are similar to those adopted by other advanced economies such as the United States, the United Kingdom, Canada and Australia. Nevertheless, we note that in these countries and most other countries with smoking bans for indoor places, managers of no-smoking premises are legally liable for any acts of illegal smoking on their premises. There is however no such statutory requirement in Hong Kong currently. As such, there is still room for further strengthening our tobacco control efforts in Hong Kong. We will consider various feasible tobacco control measures in the light of the need to protect public health and the expectations of the community. We will also continue to take forward our tobacco control efforts through a multi-pronged approach encompassing publicity, education, enforcement and promotion of smoking cessation so as to safeguard public health.

It is stipulated in the Smoking (Public Health) Ordinance (Cap. 371) that no person shall smoke or carry a lighted cigarette, cigar or pipe in a no smoking area. Smoking a hookah in a no smoking area is therefore an offence and, upon summary conviction, the offender is liable to a maximum fine of HK\$5,000.

### **Tenancy Position of Hong Kong Science Park**

13. **MR JEFFREY LAM** (in Chinese): *President, it has been reported that some tenants of the Hong Kong Science Park (Science Park) have surrendered their tenancies recently as a result of the economic slowdown caused by the impact of the financial tsunami. In this connection, will the Government inform this Council whether it knows:*

- (a) *the number of tenants of the Science Park that surrendered their tenancies, as well as the occupancy and vacancy rates of the property concerned, in each month since September 2008;*
- (b) *the rent exemption and rent freezing measures introduced by the Hong Kong Science and Technology Parks Corporation (HKSTPC) for the Science Park in the current financial year; whether these measures are applicable to renewing tenants as well as new tenants; the estimated amount of rental income foregone because of the implementation of these measures; and whether the HKSTPC will consider further extending the rent freezing period or reducing rents, so as to help tenants tide over the difficulties; and*
- (c) *the measures of the HKSTPC to attract more enterprises, start-up companies in particular, to move into the Science Park?*

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

- (a) Between September 2008 and June 2009, 85 companies moved into the Science Park while 42 companies moved out. The occupancy rate of Science Park Phase 1 during this period increased from 90.3% to 91.7% while that of Phase 2 increased from 58.6% to

61.1%. Phase 2 of Science Park started to accept tenants in May 2007.

Monthly figures on tenants' movement in the Science Park between September 2008 and June 2009 are below.

	<i>No. of outgoing tenants</i>	<i>No. of new tenants</i>
September 2008	2	17
October 2008	5	12
November 2008	9	6
December 2008	3	9
January 2009	8	9
February 2009	2	8
March 2009	4	9
April 2009	2	4
May 2009	4	4
June 2009	3	7
Total	42	85

(b) Taking into account the prevailing economic situation, the HKSTPC announced a rent relief programme to its partner companies in February 2009 to tide over the financial crisis. The relief measures include the following:

- rental freeze in 2009;
- two months rent free in April and October 2009 for all tenants; and
- extension of rent free period up to a maximum of six months for incubatees

The HKSTPC estimated that the relief programme would involve a rental forgone of \$33 million in 2009-2010.

The HKSTPC conducts regular reviews of its rental rates to ensure the rentals are in line with market situation. It will continue to keep in touch with partner companies to understand their situation and offer assistance as appropriate.

- (c) The HKSTPC has provided state of the art technological infrastructure and various programmes to attract technology companies, including start-ups, to set up their research and development (R&D) bases in the Science Park. These include:

(i) *Incubation Programme*

The incubation programme assists technology start-ups in their inception stage. It provides low-cost accommodation as well as management, technical, marketing and financial assistance to start-up companies in their first three to four years of inception.

(ii) *Biotech Centres*

To encourage more biotech companies to enter the Science Park, two new laboratory buildings designed for life science R&D offering 200 000 sq ft lettable area were opened in April 2009. The buildings are designed for R&D laboratories and each unit is well equipped with laboratory utility provisions. There is also the Biotechnology Support Laboratory to support general biopharmaceutical R&D projects.

(iii) *New Cluster*

Further to its four clusters, namely, Electronics, Information Technology and Telecommunications, Biotechnology and Precision Engineering, the Science Park has since early 2009 been developing a new cluster on Green Technology which include renewable energy and environmental technology (including energy management) with a view to attracting more companies to benefit from the clustering effect in the Science Park.

(iv) *Small and Medium-sized Enterprise (SME) Programme*

Small units (ranging from 400 to 1 200 sq ft) of high quality furnished office space with full range facilities and amenities are targeted at SMEs wishing to set up their offices in the Science Park.

**Statutory Ban on Idling Vehicles with Running Engines**

14. **MR LEUNG YIU-CHUNG** (in Chinese): *President, in connection with the proposed statutory ban on idling vehicles with running engines (the ban), will the Government inform this Council:*

- (a) *of the latest legislative timetable;*
- (b) *whether members of the transport trades are still opposed to or have reservations about the ban; if so, of the details and the response of the authorities concerned;*
- (c) *given that some members of the transport trades have relayed to me that during hot or stormy weather, drivers simply cannot open vehicle windows and switching off vehicle engines while idling will cause great inconvenience, whether the authorities will grant, to a certain extent, exemptions from the ban under such conditions; and*
- (d) *given that some professional drivers have relayed to me that some passengers very much expect that during hot weather, the car compartment will already be cool and comfortable when they board the vehicle, of the measures the authorities have to respond to such an expectation?*

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

- (a) We are drafting the bill, with an aim to submit it to the Legislative Council for scrutiny within this year.
- (b) Overall, the transport trades express support in principle to the introduction of a statutory ban against idling vehicles with running engines (idling vehicles). However, on the exemption arrangement, some representatives of the taxi, minibuss, coach and goods vehicle trades consider that only a full exemption could cater for their operational needs.

In considering an extension of the exemption arrangement to cater for the operational needs of the transport trades, we have to maintain a reasonable balance between the operational needs and the protection of the public from nuisances caused by idling vehicles.

We do not agree to provide full exemption to taxis, minibuses, coaches and goods vehicles; otherwise the effect of the proposed ban would be greatly diminished. After careful consideration of the justifications of the trades, we have already put forward various additional exemptions, including:

- for taxis at a taxi stand, extending the exemption from covering the first two taxis to the first five taxis;
- for green minibuses at a green minibus stand, extending the exemption from covering the first two green minibuses to the first two green minibus of each route;
- for red minibuses at a red minibus stand, extending the exemption from covering the first two red minibuses to also the red minibuses with one or more passengers on board, plus the ones immediately behind each of these red minibuses;
- exempting coaches with one or more passengers on board; and
- providing a 3-in-60-minute grace period to commercial vehicles (except liquefied petroleum gas vehicles). Since these vehicles are mostly equipped with turbochargers, the proposed arrangement will allow drivers to follow the recommendations of the vehicle manufacturers to idle the engines for a few minutes before switching them off, thereby avoiding aggravation of the wear-and-tear of the engine components.

We had reported the above proposal to the Legislative Council Panel on Environmental Affairs in February this year.

(c) and (d)

We note that the transport trades (particularly the taxi trade) propose lifting the ban during hot weather and rainy days. Indeed, implementing a statutory ban against idling vehicles will cause some inconvenience to professional drivers and passengers. However, we must strike a balance between such inconvenience and environmental nuisances caused by idling vehicles. Having regard to this principle, we are of the view that the revised exemption

proposal could effectively cater for the operational needs of the transport trades. If the ban is suspended during hot weather, that is, when environmental problems caused by idling vehicles are particularly serious, pedestrians and shops at the roadside would continue to suffer from the combined effect of vehicular exhaust emissions, heat and hot weather.

In fact, according to our information, most of the anti-idling legislation of other places do not provide any exemption based on weather conditions.

To succeed in controlling environmental nuisances caused by idling vehicles, it is essential to have the support and co-operation from different quarters of the community, including drivers and passengers. To promote this good driving habit, we will continue to roll out public educational programmes and maintain dialogues with the transport trades to gather views from all sectors.

### **Working Dogs Kept by Various Government Departments**

15. **MR WONG YUNG-KAN** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the number of working dogs currently kept by various government departments, broken down by species, the type of work and the government department concerned;*
- (b) *how the relevant government departments deal with those dogs that fail to meet the work requirements after training, and of the number of such dogs in the past three years;*
- (c) *of the arrangements for these dogs after their retirement, and whether they will be adopted by their handlers; if not, of the relevant arrangements in place; and*
- (d) *whether the retired dogs which have not been adopted will be euthanized; if so, of the number of dogs euthanized in the past three years?*



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

- (a) The number of working dogs currently kept by various government departments, broken down by species, the type of work and the government department concerned is as follows:

<i>Department</i>	<i>Number of working dogs</i>	<i>Species of working dogs</i>	<i>Type of work</i>
Hong Kong Police Force	52	Belgian Shepherds	Patrol
	11	German Shepherds	
	2	Rottweilers	
	11	Labrador Retrievers	Tracking and drug detection
	18	English Springer Spaniels	Explosive search
Customs and Excise Department	36	Labrador Retrievers	Drug and explosives detection
	7	English Springer Spaniels	
	1	Golden Retriever	
Fire Services Department	2	Labrador Retrievers	Assist in fire investigation
Correctional Services Department	23	German Shepherds	Guard patrol, crowd control and tracking escapees
	19	English Springer Spaniels	Drugs and contrabands detection (for example, alcoholic substances and mobile phones)
	4	Labrador Retrievers	
	1	Beagle	
Agriculture, Fisheries and Conservation Department	1	Labrador Retriever	Assist in detecting smuggled animals, meat and animal products at border control points
	1	Beagle	
	1	Beagle Cross	
Food and Environmental Hygiene Department	3	Labrador Retrievers	Assist in detecting illegally imported raw meat at border control points
	1	Beagle	

- (b) The working dogs of the Customs and Excise Department and Fire Services Department, Agriculture, Fisheries and Conservation Department and Food and Environmental Hygiene Department have been trained and have met the work requirements as and when they were recruited. The remaining two departments (that is, Hong Kong Police Force and Correctional Services Department) would arrange the disqualified dogs to be adopted by staff members or members of the public through application if some dogs do not live up to the work requirements after training.

In the past three years, the Hong Kong Police Force and Correctional Services Department had three dogs and nine dogs which failed to meet the work requirements after training respectively.

- (c) When a working dog retires, its handler is given priority to adopt it. If the handler is unable to adopt the dog, other staff members and members of the public can apply for adopting the retired dog. The department concerned will approve the application for adoption only if it is satisfied that the adopter can take adequate care of the retired dog.
- (d) In the past three years, all retired dogs in the departments (save the Correctional Services Department<sup>(1)</sup>) were adopted. No retired dogs were euthanized because they were not adopted.

Note:

- (1) Correctional Services Department has sent two retired dogs to its Training and Support Team of the Dog Unit to assist in the training of dog handlers and to participate in performance during special events.

### **Arrangements for Students with Intellectual Disability Under New Senior Secondary Academic Structure**

16. **MS CYD HO** (in Chinese): *President, under the new senior secondary (NSS) academic structure to be implemented in September of this year, the Government will provide 12 years of education, including six-year primary, three-year junior secondary and three-year senior secondary education for students with intellectual disability (ID students). Since the authorities have set*

*the age for ID students to leave school at 18, students who start their education later than usual and those who have learning difficulties might not be able to complete their secondary school education. In this connection, will the Government inform this Council:*

- (a) given that it is stipulated in both the Code of Aid for Special Schools and the Code of Aid for Aided Schools that students of special schools may study in schools until they are 20 years old, why the authorities have set the age for ID students to leave school at 18 under the NSS academic structure; whether they have assessed if this arrangement has violated these Codes; if such an assessment has been made, of the outcome;*
- (b) why it is stipulated in the above Codes that students of special schools may only study in schools until they are 20 years old, but the age cap for students of ordinary schools is not stipulated in these Codes; whether it has assessed if the stipulation of the age cap has violated the Disability Discrimination Ordinance (Cap. 487); if the assessment outcome is in the affirmative, whether the authorities will amend such Codes, and of the details of the amendments; if the assessment outcome is in the negative, the reasons for that; and*
- (c) whether the authorities will, under the NSS academic structure, offer assistance in matters related to the further studies of ID students who have completed senior secondary education; if they will, of the details; if not, the reasons for that?*

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

- (a) According to the Code of Aid for Special Schools, if a student of a special school wishes to remain in a secondary class after the end of the school year during which he reaches his/her 20th birthday, he is required to seek the approval of the Permanent Secretary for Education. This requirement has all along been applicable to students taking the mainstream curriculum leading to the Hong Kong Certificate of Education Examination (HKCEE) in schools for children with hearing impairment (HI) and some schools for children with physical disability (PD) which offer such curriculum.

Students with PD need to receive various therapies owing to their disability and hence take longer time to learn. Students with HI also take longer time to learn as they usually encounter delays in language acquisition and expression. The above arrangements allow these students a longer period of time to prepare for the HKCEE in the light of their learning needs.

As for students studying in schools for children with intellectual disability (ID schools), owing to their limitations in intellectual functioning, ID schools are offering an adapted curriculum, which differs significantly from the mainstream curriculum. During the 12 years of education, ID schools have to set learning objectives and draw up an individualized education programme for each student with intellectual disability (ID) based on his/her development and ability. Schools will review and revise the programme regularly to reflect the actual learning progress of each student with ID and to ensure that he/she will attain the academic level corresponding to his/her ability by the time he/she leaves school.

Students with ID are normally admitted to a school at the age of six and receive 12 years of education. They are pursuing an adapted curriculum provided by the school. At present, for those students with ID who have reached the age of 18 but have yet to receive 12 years of education because of late admission to school due to various reasons, the Education Bureau approves in principle their extension of stay in the following school year.

The Education Bureau has always been flexible in handling applications for extension of stay. In accordance with the specific mechanism, students who have reached the age of 18 can apply for extension of stay due to various justified reasons. Apart from allowing an extension of stay for students at 18 or above who are absent from school for half a school year due to health or other justifiable reasons, schools can also let students with justifiable reasons to extend their stay for one year by making full use of the vacancies in the approved classes. A number of such applications are approved each year.

At the operational level, we need to plan for the number of classes to be operated in the following school year. To this end, we ask schools to submit the number of students who are leaving school at the age of 18 and the information on those who wish to extend their stay each year. Based on the existing enrolment, the estimated number of new students and the number of school leavers, we determine the number of approved classes and handle the applications for extension of stay.

The above school leaving arrangements for students with ID have been implemented for years. The NSS academic structure will be introduced in all schools on a one-grade-per-year basis starting from the coming school year. Students with ID will continue to receive 12 years of education, and the established school leaving arrangements, including the flexible mechanism for handling applications for extension of stay, will still be in place.

- (b) Other than the school leaving arrangements, special schools and mainstream schools also differ in various aspects. To cater for the abilities and special educational needs of their students, the curriculum, class structure, class size, manpower resources and other administrative arrangements of special schools differ significantly from those of mainstream schools. To make an isolated direct comparison between the school leaving arrangements of the two types of schools is inappropriate. As the judicial review of the school leaving arrangements for ID schools is underway, it is not appropriate for the Education Bureau to comment whether these arrangements have violated the Code of Aid for Special Schools and the Disability Discrimination Ordinance.
- (c) Under the NSS academic structure, special schools will continue to make school leaving arrangements for students approaching the leaving age so that they can receive vocational training or rehabilitation services provided by the Vocational Training Council, the Social Welfare Department or other organizations.

As students of ID schools are going to pursue the NSS (ID) curriculum tailor-made for them, we have to make reference to their

expected learning outcomes upon completion of the NSS curriculum in the three core subjects, elective subjects and other learning experience. We will work collaboratively with the appropriate organizations concerned to explore opportunities for their further studies and other related matters.

### **Waiting List for Public Rental Housing**

17. **MR WONG KWOK-HING** (in Chinese): *President, some organizations have relayed to me that members of the public currently encounter much difficulty in applying for and awaiting allocation of public rental housing (PRH) units. In this connection, will the Government inform this Council:*

- (a) *of the numbers of PRH units allocated to non-elderly one-person applicants by the Hong Kong Housing Authority (HA) in each of the past three years;*
- (b) *of the respective numbers of applicants on the PRH Waiting List (WL) at the end of each of the past three years and at present, broken down by their age groups (that is, 18 to 29, 30 to 39, 40 to 49, 50 to 59, 60 or above) and, among them, the numbers of non-elderly one-person applicants;*
- (c) *of the respective numbers of non-elderly one-person applicants on PRH WL at the end of each of the past three years and at present, broken down by their education levels (that is, primary, junior secondary, senior secondary and matriculated, post secondary, bachelor's degree, master's degree or above);*
- (d) *of the respective numbers of PRH units allocated to non-elderly one-person applicants in each of the past three years and the first half of this year, broken down by the waiting time concerned (that is, less than one year, one to two years, from over two years to three years, over three years);*
- (e) *of the numbers of single-person PRH units recovered by the HA in each of the past three years;*

- (f) *of the respective numbers of single-person PRH units the construction of which had been commenced and completed in each of the past three years; and the numbers of single-person PRH units which will be provided by the HA in each of the coming five years;*
- (g) *of the numbers of cases in which single-person applicants on PRH WL switched to applications for families in each of the past three years; and*
- (h) *what justifications were used by the HA when it set the criteria for determining the points scored by non-elderly one-person applicants under the points system?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, the HA introduced the Quota and Points System for Non-elderly One-person Applicants (QPS) in September 2005 to rationalize and re-prioritize the allocation of PRH to non-elderly one-person applicants. QPS was introduced to address the problem brought about by a dramatic upsurge in the number of non-elderly individuals applying for PRH on their own. The problem, if unchecked, would greatly undermine the HA's ability to provide housing assistance to families in greater need. Just like other WL applicants, non-elderly one-person applicants may apply for the Express Flat Allocation Scheme (EFAS) and those with a pressing need for housing may also apply for compassionate rehousing through recommendations by the Social Welfare Department.

My reply to the eight parts of the question is as below:

- (a) Over the past three years, the number of PRH flats allocated to non-elderly one-person applicants under the QPS were 1 323 units in 2006-2007, 1 593 units in 2007-2008 and 1 991 units in 2008-2009. Besides, over 1 000 non-elderly one-person applicants were rehoused to PRH through the EFAS and compassionate rehousing per year over the past three years. Therefore, in the past three years, around a total of 3 000 non-elderly one-person applicants were rehoused to PRH per year.
- (b) The age distribution of overall WL applicants and those under the

QPS over the past three years and at present is as below:

<i>Overall WL Applicants</i>					<i>Non-elderly One-person Applicants under the QPS</i>				
<i>Age Groups</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010 (the latest figures as at end May 2009)</i>	<i>Age Groups</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010 (the latest figures as at end May 2009)</i>
18 to 29	22 000	22 500	24 200	25 200	18 to 29	13 400	14 500	16 400	17 200
30 to 39	31 800	32 200	31 800	32 700	30 to 39	9 500	9 800	10 600	11 000
40 to 49	29 500	31 100	32 000	32 800	40 to 49	9 200	9 200	9 700	9 900
50 to 59	12 300	13 300	14 800	15 500	50 or above	4 600	5 100	6 000	6 300
60 or above	11 600	12 500	11 600	12 200					

- (c) According to the findings of the Survey on WL Applicants for PRH, the distribution of non-elderly one-person applicants in terms of education level over the past three years is as below:

<i>Education Level</i> #	<i>March 2006</i>	<i>March 2007</i>	<i>March 2008</i>
Primary or below	16%	14%	17%
Secondary	74%	72%	65%
Tertiary or above	10%	14%	17%

Note:

# In the Survey on WL Applicants for PRH, the statistics on education level are not collected in terms of the requested breakdown.

The 2009 Survey has just been completed and the statistics are being compiled.

- (d) The distribution of applicants under the QPS in terms of the waiting



time from submission of applications to PRH allocation in the past three years and at present is as below:

<i>Waiting Time</i> #	2006-2007	2007-2008	2008-2009	2009-2010* (the latest figures as at end May 2009)
Below two years ^	588	921	1 231	144
Two years to less than three years	302	336	342	28
Three years or above	433	336	418	20

Notes:

# The waiting time refers to the period between the date of registration until PRH allocation, but excluding any frozen time during the application period, such as the applicant has not yet fulfilled the requirement of the residence rule, as well as the period between cancellation of the application and its subsequent reinstatement within the specified timeframe.

^ The average waiting time for general WL applicants is currently 1.8 years. Therefore, we use "below two years" here.

\* PRH allocation for 2009-2010 is in progress and the total number of allocation is expected to be similar to that of 2008-2009.

(e) and (f)

The smallest PRH flats being constructed nowadays belong to the flat type of "1-2 person". At present, the HA does not build any units that are specifically designated for singletons only. Furthermore, apart from those Housing for Senior Citizen units which are no long under construction, the smallest units that the HA recovers are "1-2 person" flats. We are therefore unable to provide the requested information on "single-person PRH units" constructed and recovered by the HA per year. We will allocate the flats recovered to applicants/ households of appropriate sizes according to the allocation standard. Figures on flat allocation to one-person households in the past three years are provided for reference. In 2006-2007, 27% of the total number of flats allocated were for one-person households. The respective figures for 2007-2008 and

2008-2009 were 27% and 23%.

- (g) The number of one-person applicants switching to family applicants over the past three years were 5 400 cases in 2006-2007, 3 200 cases in 2007-2008 and 3 700 cases in 2008-2009.
- (h) The relative priorities for PRH allocation to applicants under the QPS are determined by the points they received. Points are assigned to the applicants on the basis of their age at the time of submitting the PRH applications, whether they are sitting PRH tenants and their waiting time. Three points would be assigned for applicants per age older when they submit the application. As PRH tenants are receiving public housing subsidies, they would be deducted 30 points. Besides, one additional point will be given for waiting on the WL for one more month.

### **Capital Investment Entrant Scheme**

18. **MR CHAN KIN-POR** (in Chinese): *President, the insurance sector has all along hoped that the Government will list particular insurance products (for example, products which are investment-linked or with saving element) as permissible investment assets under the Capital Investment Entrant Scheme, so that participants of the Scheme will have more investment options which are reliable and secure, and long-term funds may be attracted to Hong Kong. On behalf of the sector, I have put forward the above proposal to the Financial Secretary and relevant government departments respectively. In this connection, will the Government inform this Council whether it will list particular insurance products as permissible investment assets; if it will not, of the reasons for that; if it will, the expected implementation date, as well as the criteria to be met and procedure to be followed by insurance companies in applying for their insurance products to be listed as permissible investment assets?*

**SECRETARY FOR SECURITY** (in Chinese): President, in October 2003, the Government introduced the Capital Investment Entrant Scheme. The Scheme allows eligible overseas investors who do not wish to establish or operate their own business to enter Hong Kong for settlement. Permissible investment assets under the Scheme include real estate, equities, debt securities, certificates of

deposits, subordinated debt and eligible collective investment schemes.

Following further exchanges of views with the trade and deliberations among relevant Bureaux and Departments, the Government considers that investment-linked assurance schemes products can be accepted as permissible investment assets, if they fall under the definition of collective investment scheme prescribed in the Securities and Futures Ordinance and meet the relevant requirements as stated in the Rules for the Capital Investment Entrant Scheme. We will process applications received from July 2009 onwards on the above basis.

The eligibility criteria and application procedures, including the requirement that the investor must be the absolute beneficiary of the relevant assets, are the same as those regarding other collective investment schemes (for example, funds).

### **Injection of Money into MPF Accounts**

19. **MR PAUL CHAN** (in Chinese): *President, regarding the implementation of the Government's measure to inject \$6,000 into the Mandatory Provident Fund (MPF) accounts of eligible persons through the Mandatory Provident Fund Schemes Authority (MPFA), will the Government inform this Council:*

- (a) *as the authorities stated that the injection of money into the accounts of some 1.404 million eligible persons had been completed at the end of April, of the number of applications received so far for review of eligibility, the respective numbers of cases of wrongful injections and omission of injections, the respective amounts of money involved, as well as the follow-up results of the relevant cases;*
- (b) *whether it has considered identifying persons of "three have-nots" or "five have-nots" ("three have-nots" means those who do not apply for Comprehensive Social Security Assistance, do not live in a public rental housing unit and do not have to pay tax, while "five have-nots" means those who, in addition to three have-nots, do not have to pay electricity charges directly and do not need to pay rates) through the account information of eligible persons obtained from the injection measure, and introducing counter measures to relieve*

*their hardship; if it has, of the details of the measures; if not, the reasons for that; and*

- (c) *whether it knows if the relevant authorities will regularly update the account information of eligible persons obtained from the injection measure; if they will, of the details; if not, the reasons for that?*

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

- (a) As at 30 June 2009, the MPFA has received some 7 400 cases requesting for review of eligibility for receiving the injection. They include:
- (i) Six thousand seven hundred and twenty cases involving those who did not receive the notification of injection but who consider that they should be eligible; and
  - (ii) Six hundred and eighty cases involving those who received the injection but who consider that they should not be eligible.

Of the abovementioned 7 400 cases, the MPFA has completed investigation of 3 700 cases, amongst which 3 200 cases fall under the category described in paragraph (i) above and 500 cases belong to the category described in paragraph (ii) above. The investigation results of the respective categories in paragraph (i) and (ii) above are set out below:

- (i) Of the 3 200 cases with investigation completed, the review results of 1 100 cases maintain that the persons concerned should not be eligible to receive the injection and the review results of the remaining 2 100 cases indicate that the persons concerned should be eligible to receive the injection;
- (ii) Of the 500 cases with investigation completed, the review results of 320 cases maintain that the persons concerned should be eligible to receive the injection and the review results of the remaining 180 cases indicate that the persons

concerned should not be eligible to receive the injection.

The respective amounts of money that would need to be injected into MPF accounts and withdrawn from MPF accounts in the light of the above investigation results are \$12.6 million and \$1.08 million. If the persons concerned are not satisfied with MPFA's review results, they can lodge an appeal within 21 days after MPFA has issued notification of the review decision.

(b) and (c)

Section 19C of the Mandatory Provident Fund Schemes Ordinance stipulates that the MPFA may only for the purpose of paying special contributions require approved trustees, employers and other relevant persons to provide information relating to members of MPF Schemes and Occupational Retirement Schemes. In view of this legislative provision, the information collected for the purpose of this injection exercise cannot be used for other purposes that are unrelated to its implementation.

### **School-based Assessment**

20. **MR ALBERT HO** (in Chinese): *President, school-based assessment (SBA) scores are now counted towards students' results of some subjects in the Hong Kong Certificate of Education Examination (HKCEE). In this connection, will the Government inform this Council:*

(a) *whether it knows in respect of each relevant HKCEE subject since the inclusion of SBA in 2005:*

(i) *whether each year there were students whose SBA grades were at variance with their overall grades in that subject; if so, of the situation and the percentage of the number of such students in the total number of candidates sitting for the examination of that subject; and*

(ii) *whether each year there were students whose SBA scores had*

*rendered their overall grades in that subject different from their non-SBA grades; if so, of the situation and the percentage of the number of such students in the total number of candidates sitting for the examination of that subject; and*

- (b) *how the authorities summarize and assess the importance of and the need for SBA, as well as whether they will review the timetable for its mandatory implementation and will fully implement SBA only if consent has been given by the teachers and principals of the schools concerned by way of a democratic referendum?*

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

- (a) Seven HKCEE subjects, namely, Integrated Humanities, Computer and Information Technology (CIT), Science and Technology (S&T), Chinese History, History, Chinese Language and English Language, have started to include a SBA component since 2005. According to the information provided by the Hong Kong Examinations and Assessment Authority (HKEAA), among these, there are separate grades for the SBA and non-SBA parts of CIT and S&T. For the other five subjects, there are no separate grades for the SBA and non-SBA parts. It is therefore not possible to compare the overall grades with the SBA and non-SBA parts of these five subjects.

The difference between the SBA grades and the overall subject grades of CIT and S&T subjects in the past three years is set out at Annex 1 while the difference between the non-SBA grades and the overall subject grades is at Annex 2.

- (b) The main reason for including an SBA component is not to improve public examination grades. The primary rationale for implementing SBA is to enhance the validity of the overall assessment by including a variety of learning outcomes that cannot be assessed easily through public examinations. SBA typically involves students in activities such as making oral presentations, developing a portfolio of work, undertaking fieldwork, carrying out an investigation, doing practical laboratory work or completing a design project, and so on. These learning activities help students to acquire important skills,

knowledge or work habits that cannot readily be promoted through paper and pencil test.

There are some additional benefits for adopting SBA. It reduces dependence on the results of a one-off public examination, which may not always provide the most reliable indication of the actual abilities of candidates. Obtaining assessments based on student performance over an extended period of time and developed by those who know the students best — their subject teachers — also complements the reliable assessment of each student.

Another reason for adopting SBA is to promote a positive "backwash effect" on teachers and students. Students are motivated through participating in meaningful learning activities designed in accordance with the curriculum objectives. On the other hand, teachers are able to provide students with useful feedback on their strengths and weaknesses. Furthermore, for teachers, SBA can align assessment with curriculum aims so that the subjects can be better implemented when SBA becomes part of the learning and teaching.

As for the introduction of SBA for the Hong Kong Diploma of Secondary Examination (HKDSE) subjects under the new academic structure, the Education Bureau and the HKEAA have conducted several rounds of consultation with schools, teachers, educational organizations, school councils, the relevant subject committees under the HKEAA and the Curriculum Development Council (CDC) as well as other stakeholders since 2004. There is general support for the introduction of SBA as an integral part of HKDSE. Based on the views collected during the consultation, the Education Bureau and the HKEAA announced in April 2008 the strategic implementation of SBA for the 24 subjects in HKDSE (Annex 3). In essence, the SBA will be implemented in different stages to allow better preparation by schools and teachers. The Education Bureau and the HKEAA will conduct a review of the new senior secondary curriculum and assessment in the 2012-2013 school year.

The difference between the SBA grades and the overall subject grades  
of CIT and S&T subjects

<i>CIT</i>	<i>2006</i>		<i>2007</i>		<i>2008</i>	
No. of school candidates for the subject:	18 229		17 538		17 658	
No. of candidates with SBA grade lower than the overall grade (%):	5 055	(27.7%)	4 460	(25.4%)	4 558	(25.8%)
No. of candidates with SBA grade same as overall grade (%):	5 951	(32.7%)	5 978	(34.1%)	6 077	(34.4%)
No. of candidates with SBA grade higher than the overall grade (%):	7 223	(39.6%)	7 100	(40.5%)	7 023	(39.8%)

<i>S&amp;T</i>	<i>2006</i>		<i>2007</i>		<i>2008</i>	
No. of school candidates for the subject:	369		703		818	
No. of candidates with SBA grade lower than the overall grade (%):	47	(12.7%)	137	(19.5%)	195	(23.8%)
No. of candidates with SBA grade same as overall grade (%):	104	(28.2%)	175	(24.9%)	220	(26.9%)
No. of candidates with SBA grade higher than the overall grade (%):	218	(59.1%)	391	(55.6%)	403	(49.3%)



The difference between the non-SBA grades and the overall subject grades of CIT and S&T subjects

<i>CIT</i>	<i>2006</i>		<i>2007</i>		<i>2008</i>	
No. of school candidates for the subject:	18 229		17 538		17 658	
No. of candidates with overall grade higher than non-SBA grade (%):	1 826	(10.0%)	1 794	(10.2%)	1 763	(10.0%)
No. of candidates with overall grade same as non-SBA grade (%):	14 348	(78.7%)	14 029	(80.0%)	13 954	(79.0%)
No. of candidates with overall grade lower than non-SBA grade (%):	2 055	(11.3%)	1 715	(9.8%)	1 941	(11.0%)

<i>S&amp;T</i>	<i>2006</i>		<i>2007</i>		<i>2008</i>	
No. of school candidates for the subject:	369		703		818	
No. of candidates with overall grade higher than non-SBA grade (%):	57	(15.4%)	98	(13.9%)	82	(10.0%)
No. of candidates with overall grade same as non-SBA grade (%):	304	(82.4%)	566	(80.5%)	675	(82.5%)
No. of candidates with overall grade lower than non-SBA grade (%):	8	(2.2%)	39	(5.6%)	61	(7.5%)

## Strategic Implementation Timetable of SBA

Year of Exam	<i>Subjects</i>				
	<i>Chinese Language, English Language, Liberal Studies, Chinese History, Design and Applied Technology, History, Information and Communication Technology, Visual Arts</i>	<i>Biology, Chemistry, Physics, Science</i>	<i>Chinese Literature, Economics, Ethics and Religious Studies, Geography, Health Management and Social Care, Technology and Living, Tourism and Hospitality Studies, Literature in English, Physical Education</i>	<i>Music</i>	<i>Business, Accounting and Financial Studies</i>
2012	Implementation	Partial Implementation (laboratory work)	Defer Implementation	Defer Implementation	Defer Implementation
2013	Implementation	Partial Implementation (laboratory work)	Defer Implementation	Defer Implementation	Defer Implementation
2014	Implementation	Implementation	Implementation	School Trial	School Trial
2015	Implementation	Implementation	Implementation	Implementation	School Trial
2016	Implementation	Implementation	Implementation	Implementation	Implementation

Notes:

- (1) During a school trial, all schools will implement SBA and submit marks to the HKEAA for feedback, but SBA marks will not be counted towards the subject result.
- (2) There is no time-line for the implementation of SBA in Mathematics, which is subject to review in the 2012-2013 school year.

**BILLS**

**First Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: First Reading.

**ARBITRATION BILL****PUBLIC OFFICERS PAY ADJUSTMENT BILL****EMPLOYMENT (AMENDMENT) BILL 2009****MINIMUM WAGE BILL****INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2009**

**CLERK** (in Cantonese): Arbitration Bill  
Public Officers Pay Adjustment Bill  
Employment (Amendment) Bill 2009  
Minimum Wage Bill  
Inland Revenue (Amendment) Bill (No. 3) Bill 2009.

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

**Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Second Reading.

**ARBITRATION BILL**

**SECRETARY FOR JUSTICE** (in Cantonese): President, I move that the Arbitration Bill (the Bill) be read a Second time.

The Bill proposes to reform arbitration law in Hong Kong. The reform is to be implemented through the creation of a unitary regime for all types of arbitration on the basis of the UNCITRAL Model Law on International

Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law.

The current Arbitration Ordinance provides separate regimes for "domestic" and "international" arbitrations. The domestic regime is mainly based on the English Arbitration Acts, while the international regime is based on the Model Law. The parties may by agreement in writing switch from one regime to another.

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

In April 2003, the Committee on Hong Kong Arbitration Law set up by the Hong Kong Institute of Arbitrators and the Hong Kong International Arbitration Centre issued a report recommending that the current Arbitration Ordinance be completely redrawn and replaced by the adoption of the Model Law so as to keep pace with the needs of the modern arbitration community both domestically and internationally.

The Department of Justice set up a Working Group to examine the proposals in September 2005. In December 2007, the Department of Justice published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill to seek views on the proposed reform.

There is general support in the submissions received on the proposal to abolish the distinction between domestic and international arbitrations under the current Arbitration Ordinance and to adopt a unitary regime of arbitration based on the Model Law.

The purpose of the Bill is to reform arbitration law to make it more user-friendly. The Bill is therefore intended to be self-contained so that it will be easier for users to find all relevant provisions in one ordinance.

The Bill gives legal effect to those provisions of the Model Law applicable to Hong Kong. Those provisions, with such modifications or supplements where necessary, are arranged in the same order as the Model Law.

With the enactment of the Bill, the law relating to arbitration will become

clearer, more certain and easily accessible to arbitration users.

The Model Law is developed by the United Nations Commission on International Trade Law and commended for international use.

A unitary arbitration regime on the basis of the Model Law would enable the business community and other professions in Hong Kong to operate an arbitration regime which accords with international arbitration practices and development. Parties to an arbitration will be saved of the trouble of having to identify whether any particular arbitral proceeding is "domestic" or "international" and as to the law that is applicable.

One of the objectives of the proposed reform is to attract more parties to choose Hong Kong as the place to conduct arbitral proceedings and help to promote Hong Kong as a regional centre for international arbitration.

The Bill provides for a fair and speedy method of resolution of disputes by arbitration without unnecessary expense.

It limits the extent to which the Court may interfere in the arbitration of a dispute to those circumstances as expressly provided for in the Bill.

It accords a greater degree of autonomy to the parties in the conduct of arbitral proceedings.

New provisions governing the delivery of communications in arbitral proceedings have been added in the Bill to take into account the development in electronic communications.

Following the majority view expressed during the consultation exercise, the Bill specifies that, as a starting point, court proceedings relating to arbitration are to be heard otherwise than in open court. This takes into account the importance of confidentiality which is also a main reason that parties choose arbitration over litigation.

To balance the desire of parties for confidentiality against the public interest in transparency of court proceedings and further development of arbitration law, the Bill further provides that on the application of any party, or in

any particular case where the Court is satisfied that any court proceeding relating to arbitration ought to be heard in open court, the Court may make an order for an open hearing.

There are also provisions in the Bill which provide for the publication of judgments of major legal interest relating to arbitral proceedings. This may be subject to direction by the Court as to the action that may be taken to conceal certain matters in a report of a judgment.

There are special "opt-in" provisions in the Bill which allow arbitration users to continue to use certain provisions that only apply to domestic arbitration under the current Arbitration Ordinance. This is to address the concern of certain arbitration users such as the construction industry who are accustomed to the use of standard form contracts that provide for the use of "domestic arbitration" in the resolution of disputes.

As the current Arbitration Ordinance will be repealed after the enactment of the Bill, there are transitional arrangements that govern the application of the relevant laws to arbitral proceedings commenced before and after the enactment of the Bill. The Bill will be brought into force on a date to be notified in the Gazette after enactment by this Council.

The Bill represents a major milestone in the reform of arbitration law in Hong Kong. It represents years of hard work by the Department of Justice, working closely together with arbitration users in Hong Kong. It is our major initiative to make Hong Kong a friendlier place for arbitration. Its enactment will be a significant contribution to developing Hong Kong as a hub for international arbitration in the Asia Pacific Region.

Deputy President, I commend this Bill to the Legislative Council.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Arbitration Bill be read the Second time.

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

**PUBLIC OFFICERS PAY ADJUSTMENT BILL**

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Deputy President, I move the Second Reading of the Public Officers Pay Adjustment Bill.

In accordance with the established mechanism and having considered the six factors under the existing mechanism, the Chief Executive in Council decided on 23 June 2009 that civil service pay in 2009-10 should be adjusted as follows:

- (a) a pay freeze for civil servants in the lower and middle salary bands; and
- (b) a pay cut of 5.38% for civil servants in the upper salary band and above subject to the proviso that no pay point in the upper salary band should be less than \$48,700 (that is, \$300 above the upper limit of \$48,400 of the middle salary band).

When making the above decision, the Chief Executive in Council has taken into account the following six factors:

- (a) the net Pay Trend Indicators derived from the 2009 Pay Trend Survey;
- (b) changes in the cost of living;
- (c) the state of the Hong Kong economy;
- (d) the Government's fiscal position;
- (e) the state of the civil service morale; and
- (f) the pay claims from the staff sides.

Based on our legal advice, in order to implement pay reduction with certainty and to forestall possible legal challenges, legislation is required to effect civil service pay reduction. Therefore, we need to enact the Public Officers Pay Adjustment Bill (the Bill) so as to implement the Chief Executive in Council's decision to reduce civil service pay in the upper salary band and above by 5.38%. This arrangement is in keeping with the arrangements in 2002 and 2003 when pay

reductions were effected through legislation.

Deputy President, the Bill will cover the pay and allowances of the following public officers:

- (a) civil servants, including those serving in the Hospital Authority, who are remunerated within the upper salary band and above (that is, with monthly pay above \$48,400);
- (b) officers in the Independent Commission Against Corruption (ICAC) whose monthly pay is above \$48,400. This is in keeping with the established practice of adjusting the pay of ICAC officers strictly in accordance with the pay adjustments to civil servants at comparable levels;
- (c) the Director of Audit, whose pay is determined by the Chief Executive under section 4A of the Audit Ordinance by order published in the Gazette;
- (d) public officers whose monthly pay is above \$48,400 and is determined on the basis of civil service pay, and/or linked to civil service pay adjustment, other than those mentioned in (a) to (b) above; and
- (e) allowances which are linked to civil service pay adjustment.

The Bill is not applicable to:

- (a) judges and other judicial officers whose pay adjustment follows a mechanism that is independent of and separate from that of the Civil Service;
- (b) political appointees, whose pay is delinked from that of the Civil Service. In this connection, as the Chief Executive has announced, political appointees will voluntarily reduce their pay by 5.38% with effect from 1 July;
- (c) non-civil service contract staff in the Government whose



employment package is separate and different from that of the Civil Service;

- (d) staff in the subvented sector who are employed by individual organization on its own terms and conditions, and whose employment is governed by the Employment Ordinance. We consider that pay adjustment for these employees should be made in accordance with the terms of their contracts and the relevant provisions under the Employment Ordinance;
- (e) public officers whose pay is not determined on the basis of civil service pay and/or linked to civil service pay adjustment; and
- (f) allowances which bear no relationship with pay adjustments to the Civil Service, for example, housing allowances, education allowances, leave passage allowance, and so on.

According to the Bill, the pay reduction will take effect from the first date of the month immediately following the month during which the Bill commences.

Deputy President, I would like to take this opportunity to explain why it is necessary to put in place the proviso that no pay point in the upper salary band should be less than \$48,700.

Since the Chief Executive in Council has decided to freeze the pay for civil servants in the middle salary band, this means those at the top pay point of this salary band will continue to receive a monthly pay of \$48,400 in the Master Pay Scale, while a reduction of 5.38% for civil servants at the upper salary band will mean those at the bottom pay point of this salary band will receive a monthly pay of \$47,760 in the Master Pay Scale. In short, a civil servant at a higher pay point will receive a lower monthly pay than one at the immediately lower pay point. The same anomaly will also occur in the Police Pay Scale and the General Disciplined Services (Officer) Pay Scale. Such a pay scale design would be illogical and most undesirable from a staff management point of view. The proviso that no pay point in the upper salary band should be less than \$48,700 (that is, a pay "lead" of \$300 above the upper limit of the middle salary band) will overcome this problem. It will also enable the continued operation of the current demarcation of the three salary bands for the conduct of future annual

pay trend surveys.

Deputy President, this year's civil service pay adjustment decisions were made in accordance with the established mechanism and having regard to the relevant factors under the established mechanism. Therefore, I appeal to Members for their support of the Bill.

Deputy President, I so submit. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Second time.

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

## **EMPLOYMENT (AMENDMENT) BILL 2009**

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Deputy President, I move the Second Reading of the Employment (Amendment) Bill 2009 (the Bill).

The major objective of the Bill is to amend the Employment Ordinance (the Ordinance) in order to create a criminal offence relating to an employer's failure to pay any sum awarded by the Labour Tribunal (LT) and the Minor Employment Claims Adjudication Board (MECAB) with a view to fighting back justice for employees and strengthening the protection of the rights and interests of employees.

While the LT provides a speedy, inexpensive and informal forum for the adjudication of employment-related claims, the modes of execution of the LT awards are no different from the enforcement of any other civil judgments in respect of which the successful party bears the responsibility of enforcing the judgment if it is not complied with. However, some employees with little means are often deterred by the time, costs and efforts involved in seeking to have awards in their favour enforced. Some ill-intended employers will take this opportunity to refuse payment of the wages and other entitlements, and be oblivious to the LT judgments so that the employees cannot be remunerated fully

for their efforts spent.

There has been increasing concern in the community over this kind of irresponsible behaviour. A measure strongly favoured by stakeholders is to make non-payment of LT awards a criminal offence so as to achieve additional deterrence against defaulting employers. Some employer representatives also agree that irresponsible employers should be sanctioned. After examination of the proposal, the Administration decided to propose an amendment to create a criminal offence relating to non-payment of LT awards.

Although LT judgments are civil judgments, failure to pay wages and other statutory benefits as well as to comply with LT award on severance payment are already criminal offences under the Ordinance. This amendment is thus built on this basis to provide that the new offence should apply to non-payment of LT awards comprising wages and entitlements underpinned by criminal elements of the Ordinance, so as to distinguish employment-related civil debts under LT awards from other types of civil debts.

The Bill proposes that an employer commits an offence if he wilfully and without reasonable excuse fails to pay the awarded sum within 14 days from the date on which the sum is due, and is liable for a maximum penalty of \$350,000 and three years' imprisonment. We consider that the adoption of "wilfully and without reasonable excuse" as essential elements of the offence can effectively deter those employers who intend to break the law. The penalty level for this new offence is on par with the penalty level for the existing wage offences under the Ordinance. The proposed amendment can achieve deterrence and send a strong message to the community that non-payment of LT awards is a serious offence.

In cases where the employer is a body corporate, an LT award will be entered against the corporate employer. Under the existing section 64B of the Ordinance, where non-payment of award committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a director or a person-in-charge of the body corporate, that person also has to shoulder the legal liability. As many operators are body corporate nowadays, in order to ensure effective enforcement of the new offence, we see the need to adopt a similar rule of liability, where non-payment of award committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect

on the part of director, or other similar officer of the body corporate, the director or other similar officer of the body corporate commits the like offence. As the enforcement experience of the Labour Department shows, the related provision is an important deterrent against non-payment of awards committed by body corporate. This can also ensure the effectiveness of holding culpable directors or responsible persons liable while avoiding netting in those who have totally no part to play in the body corporate's default.

The proposed new offence is also applicable to the MECAB which has similar jurisdiction as the LT. The MECAB is responsible for dealing with employment-related claims made by not more than 10 claimants for a sum of money not exceeding \$8,000 per claimant.

The objective of creating this new offence is to pinpoint those employers who wilfully fail to pay the LT awards, and not those employers who have genuine financial difficulties or other concrete reasons. The proposed amendment to the Ordinance has already taken into account the interests and concern of both employers and employees, and has been discussed and supported by the Labour Advisory Board and Manpower Panel of the Legislative Council.

Deputy President, most of the employers in Hong Kong are law-abiding and only a small number of employers will evade responsibility. Nevertheless, the wages and other statutory entitlements of employees should be protected. Deliberate non-payment of wages and entitlements violates social justice and the employers concerned should be sanctioned. Criminalization of these acts is a big step forward in the work of strengthening the protection of employees' rights and interests, which is also an important milestone. Here, I would like to particularly thank the employers for their understanding and the Department of Justice and the Judiciary for their support.

Finally, I hope Members can support the proposal and pass the Bill early.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Employment (Amendment) Bill 2009 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned

and the Bill is referred to the House Committee.

## **MINIMUM WAGE BILL**

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Deputy President, I move the Second Reading of the Minimum Wage Bill (the Bill).

Today, we have honoured the undertaking of the Chief Executive made in his policy address in October last year, that a Bill on statutory minimum wage (SMW) would be introduced into the Legislative Council. The Bill is an important milestone in the work of labour rights protection in Hong Kong. It is based on the existing labour legislation and consistent with the common objectives of the existing labour legislation.

On the dual objectives of building a harmonious society and maintaining the economic competitiveness of the Hong Kong economy, the Bill strives to balance the interests of both employers and employees. The focus of the Bill is to formulate a minimum wage to be calculated on an hourly basis so as to prevent disadvantaged workers from being paid excessively low wages while at the same time, without excessively influencing the operation of the market. The important provisions of the Bill, such as the definition of wages, enforcement and penalties, are all written closely in line with the stipulations of the Employment Ordinance (the Ordinance) as far as possible, so as to avoid adding unnecessary compliance cost for employers. The Bill proposes adopting a data-based principle to formulate the SMW level so as to ensure that this will not lead to a loss of a large number of low-waged positions and affect the economic momentum of Hong Kong. We will assess all the related factors through detailed statistical surveys so that the SMW system and level formulated will be in line with the development of Hong Kong as well as in the overall interest of the community.

In regard to the range of employees being covered, the Bill has taken reference from the provisions of the Ordinance. However, after extensive consultation with the stakeholders and detailed consideration, we think that two categories of employees need to be excluded.

First of all, it is live-in domestic workers. The Bill proposes that live-in

domestic workers, local or foreign, who dwell in the employer's household free of charge should be excluded. I would like to take this opportunity to make a clarification in regard to the misunderstanding of some members of the public about this exclusion arrangement. The exclusion is also applicable to local and male employees. The determinant condition of the exclusion is the work nature of live-in domestic workers who have to "live in", rather than their places of origin or gender. Therefore, it is not discriminating against foreign and female employees.

The exclusion of live-in domestic workers is based on four major considerations. First, it is the distinctive working pattern of live-in domestic workers. The live-in domestic workers are required to have round-the-clock presence and to provide service-on-demand, while domestic duties are multifarious. Although there are practical difficulties in calculating working hours for live-in domestic workers, the SMW being calculated on an hourly basis is an important pillar in the design of the Bill. Besides, due to their nature of work, live-in domestic workers work and rest in the same place, and are often the only persons staying at the households. Therefore, it is practically not possible for a household to keep a clear record of such working hours.

Second, it is the enjoyment of distinctive terms of employment by live-in domestic workers. Since live-in domestic workers enjoy in-kind benefits not available to non-live-in workers, they therefore have a higher disposable income. What is worth noting is that live-in domestic workers are given free accommodation and thus spared of the major expenditure which other workers have to shoulder. They can also save the cost of commuting between home and workplace. Many live-in domestic workers are also provided free meals by their employers. Most of the low-income workers at present do not enjoy such in-kind benefits.

For foreign domestic helpers, the Government has prescribed a standard employment contract setting out the basic employment terms, including free accommodation with reasonable privacy, free food or food allowance in lieu, free medical treatment, free passage from and to the foreign domestic helper's place of origin, and so on. Furthermore, to provide an additional safeguard, the Government has since the early 1970s prescribed for foreign domestic helpers a mandatory minimum allowable wage (MAW) on a monthly basis. An employer has to undertake that he will not pay a level lower than the MAW before he is allowed to employ a foreign domestic helper. Under-payment of the MAW by

an employer is also a kind of wage offences under the Ordinance, and criminal liability is involved.

Third, if live-in domestic workers are not excluded, there will be possible significant and far-reaching socio-economic ramifications. We also realize that there are many families which have a genuine need for the service of live-in domestic workers, for example, working couples with children or elderly at home. Bringing live-in domestic workers, including foreign domestic helpers, under the SMW could cause financial hardship to many such families. For families that need to stop employing live-in domestic workers owing to increased cost, a working spouse would be forced to leave the workforce and stay home. Against the backdrop of an ageing population in Hong Kong, if there is any measure that may reduce the labour participation rate of those within the economically active age brackets, the socio-economic development of Hong Kong will be greatly affected. Furthermore, there is a possibility that some employers may require their live-in domestic workers to leave the household when there is not much work for the workers to do during daytime, in order to minimize the "working time" and thus wages payable. We have to be wary of and carefully consider the possible social problems this may cause.

Fourth, inclusion of live-in domestic workers will lead to fundamental erosion of the foreign domestic helper policy which has been proven. In fact, apart from inclusion in the SMW, it has been suggested by some stakeholders that the Government should prescribe "standard working hours" as the basis for calculating wages and remove the "live-in" requirement as it is practically impossible to ascertain the working hours of live-in domestic workers. However, both of these would amount to a significant departure from the existing policy of importing foreign domestic helpers, which has been put in place for good policy reasons and necessary immigration control. Also, removing the "live-in" requirement would give rise to immigration control problems. It is because if the requirement is removed, it will become difficult to ensure that foreign domestic helpers will not breach their conditions of stay in Hong Kong, including working only for designated employers at designated locations only. Since the importation of foreign domestic helpers is originally designed to meet the shortfall of live-in domestic helpers locally, some stakeholders thus pointed out that logically speaking, should the live-in requirement be no longer mandatory, the importation of foreign domestic helpers should be subject to the Supplementary Labour Scheme restrictions, on par with the arrangements for the

importation of other low-skilled workers.

Some stakeholders proposed the other option of monthly SMW rate for live-in domestic workers under the Bill. We think that this proposal is not feasible. A monthly SMW would give rise to practical difficulties and significant policy implications in the longer run. First, it is quite infeasible to set or assume the initial monthly SMW rate as the free accommodation and free food at present enjoyed by live-in domestic workers, including foreign domestic helpers, vary, meaning that they could have very different wages in real terms. Second, for foreign domestic helpers, since there is already a mandatory MAW, it will be meaningless to formulate another monthly SMW rate. Furthermore, owing to the very different policy objectives of the SMW and the importation of foreign domestic helpers, the hourly SMW and monthly MAW would call for different review mechanisms and indicators of different weightings. If they are put under the same ordinance, this will confuse the review mechanism and give rise to controversy, which would not be conducive to social harmony.

The Government thinks that given the situation of Hong Kong, exclusion of live-in domestic workers is the appropriate approach. Before making the decision, we have already widely consulted various stakeholders and comprehensively considered the views received and the situations concerned. It is also confirmed by legal advice that the exclusion has the support of sufficient legal justifications.

The other category under exclusion is student interns. At present, in individual internship programmes, an employer-employee relationship between the students and the hosting organizations may or may not be involved. Some internship programmes have the involvement of post-secondary and other education institutions, while some are arranged by students and employers. Although we understand the functions of internship programmes in training and education, we still have to seriously consider that if all student interns are excluded across the board, this may give rise to abuse. In the course of our extensive consultation, stakeholders in general have these concerns. They agree that even if there may be less opportunities for internship, the exclusion arrangement has to be properly regulated.

After careful consideration, we propose that student internships which form a compulsory or elective part of their programmes and are required for the award of the academic qualifications in full-time locally-accredited programmes as



arranged or endorsed by specified education institutions should be excluded from the application of the SMW legislation. The purpose of this exclusion arrangement is to enable students to receive workplace training as required in the curricula.

Deputy President, the Bill has, at the same time, suggested that special arrangement should be in place for persons with disabilities whose productivity is impaired due to the disabilities. Hong Kong is a caring society. We should enable more disadvantaged groups, including the persons with disabilities, to genuinely integrate into society. Although we think that legally speaking, persons with disabilities, as employees, should enjoy the same protection as their able-bodied counterparts, we also recognize the views put forward by some persons with disabilities, parent groups and rehabilitation organizations. They think that if the Bill is applicable to persons with disabilities without some flexible arrangements being in place, their employment opportunities will be affected. Therefore, the Bill suggests that there should be special arrangements. If an employee who is a person with disabilities thinks that his own disabilities will affect his productivity, he can ask for an assessment. I emphasize that the right to invoke such an assessment is vested in such an employee rather than his employer. The purpose of assessment is to determine whether a person with disabilities should be remunerated at the SMW rate or should be remunerated according to his productivity. It is believed that this arrangement can protect the employment opportunities of and the reasonable level of wages received by persons with disabilities. The formulation of this special arrangement has obtained the support of persons with disabilities, parent groups and rehabilitation organizations. I also have to thank them for the suggestions positively raised.

The extent of impact of SMW on the economy greatly depends on the level of minimum wage. The Bill suggests the setting up of the Minimum Wage Commission (the Commission) which is advisory in nature. It will conduct data study and analysis according to the data-based principle and will extensively consult the stakeholders with a view to ensuring that the overall interests of society can be taken care of in its recommendation of the SMW level. The Chief Executive in Council, having regard to the recommendation of the Commission, will prescribe the SMW level in a schedule by notice in the Gazette subject to negative vetting by the Legislative Council.

In the course of deliberation of the Bill by the Legislative Council, the

Census and Statistics Department will at the same time collect and handle the statistical data in order to facilitate the formulation of an appropriate SMW level. According to the present estimation, these data can be ready by early next year for analysis and discussion by a provisional commission, and the stakeholders will also be consulted. If everything runs smoothly while about another six months' time is given to the business sector for preparation, we expect that the first SMW can be introduced at the end of next year or early 2011.

Deputy President, in drafting the Bill, we have already undertaken an intensive and comprehensive discussion with various stakeholders and extensively consulted their views. The proposals are also generally supported by the Panel on Manpower of the Legislative Council and the Labour Advisory Board. The Bill has already taken into account the interests of employers and employees as well as the overall interests of society. I hope that, with Members' support, the Bill can be passed early so that the problem of excessively low wages can be solved and the grassroots employees can be provided with wage protection.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Minimum Wage Bill be read the Second time.

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

### **INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2009**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, I move the Second Reading of the Inland Revenue (Amendment) (No. 3) Bill 2009 to amend the Inland Revenue Ordinance (the Ordinance) so that Hong Kong is enabled to adopt the latest international standard for exchange of information (EoI) in a comprehensive avoidance of double taxation agreement (CDTA).

A CDTA would normally include an EoI article that provides for the

exchange of information necessary for the carrying out of the agreement between the two contracting parties. The EoI article currently adopted in our CDTAs is based on the 1995 version of the Organization for Economic Co-operation and Development (OECD) Model Tax Convention. According to this version, the Inland Revenue Department (IRD) may refuse to collect and supply the information requested by another contracting party if the Department does not need it for domestic tax purposes. Most economies have, however, adopted the OECD 2004 version of the EoI article. This version categorically states that the lack of domestic tax interest does not constitute a valid reason for refusing to collect and supply the information requested by another contracting party.

(THE PRESIDENT resumed the Chair)

Due to the restrictions of the existing Ordinance, the IRD can only collect taxpayers' information under the conditions related to collection of domestic tax. Therefore, Hong Kong is unable to adopt the OECD 2004 version of the EoI article. This legal constraint on the IRD's information gathering power has been a major obstacle to our CDTA negotiations. This constraint has restricted the progress of our negotiations and reduced the number of our potential CDTA partners.

In view of this situation, after the two rounds of consultation in 2005 and 2008, the Financial Secretary announced in the 2009-2010 Budget that the Government would put forward legislative proposals by the middle of this year to align our EoI arrangements with the international standard. In these proposals, the related provisions of the Ordinance will be amended so that the IRD can, under the situation when domestic tax interest is not involved, collect and disclose taxpayers' information in response to the request of our contracting partners for their own tax purposes.

The problem of "tax haven" was a topic of concern at the Summit of G20 Leaders held in April this year. We have, through various channels, explained to overseas authorities that Hong Kong maintains a simple and highly transparent tax regime. At the same time, we are very delighted to learn that the Director of the OECD's Centre for Tax Policy and Administration published an article in early May to commend Hong Kong's effort in complying with the international standards of tax transparency and EoI. He clearly pointed out in his article that under the OECD criteria, Hong Kong was not considered a "tax haven". If

Hong Kong can adopt the OECD 2004 version of the EoI article, we believe that it can further prove to the international society that Hong Kong is definitely not a "tax haven", and it can prevent the international community from forming any negative perceptions of the transparency of Hong Kong's tax regime which will be detrimental to Hong Kong's reputation as an international financial centre and will even lead to sanctions being imposed on Hong Kong by other economic jurisdictions.

Having considered the views of various sectors, in adopting the OECD 2004 version of EoI article in our CDTAs, we will include the prudent safeguards. We will protect an individual's right to privacy, right to information and confidentiality of the information exchanged through the three levels of CDTA provisions, specific subsidiary legislation and the administrative procedures of the IRD. The detailed proposals of the measures concerned have already been stated in the Legislative Council Brief submitted by us to the Legislative Council.

I hope that the Inland Revenue (Amendment) (No. 3) Bill 2009 can be scrutinized and passed by the Legislative Council as soon as possible so that Hong Kong can expand its CDTA network and further demonstrate its determination to support tax transparency, and that it definitely is not a "tax haven".

President, I so submit.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Inland Revenue (Amendment) (No. 3) Bill 2009 be read the Second time.

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

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

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Mandatory Provident Fund Schemes (Amendment) Bill 2009.

**MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2009****Resumption of debate on Second Reading which was moved on 6 May 2009**

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

**MR CHAN KAM-LAM** (in Cantonese): President, the Bills Committee has altogether held two meetings to discuss with the Administration and the Mandatory Fund Schemes Authority (MPFA) details of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bill).

The Bills Committee supports the policy objective of the Bill, that is, to enable an employee to transfer accrued benefits derived from mandatory contributions made by the employee in respect of any current employment on a lump-sum basis, to a MPF scheme of his/her own choice once a year. Members of the Bills Committee are of the view that the proposal can increase employees' control over their MPF contributions, promote greater market competition, and encourage employees to take care of their MPF investments.

Some members are concerned that the Bill will not allow an employee to transfer also accrued benefits derived from the employer's contributions to a MPF scheme of his/her own choice. They think that the Administration should further expand the scope of transfer to allow full control of MPF investments by employees. Also, some members are concerned that the high cost incurred for the transfer may discourage employees from electing the transfer. Regarding this, the MPFA has explained that the existing law has prohibited trustees from charging fees on transfer of accrued benefits except for recovery of necessary transaction cost. Members have also taken up with the Administration the issue on the annual frequency of transfers by employees allowable.

According to certain members, there should be measures facilitating the checking of MPF account balances by employees. In addition, members have also expressed the concern that some employees may maintain multiple preserved accounts across different MPF schemes, which will increase the difficulties in managing their MPF investments. In response to members' views, the MPFA

has indicated that consideration will be given to different measures to facilitate the checking of account balances by employees. The Administration is also going to move amendments to make it possible for the MPFA to take the initiative in the future to give employees information on such matters as the number of personal accounts being maintained to remind employees to make arrangements to consolidate their accounts.

The Bills Committee has no objection to the amendments to be moved by the Administration, and supports the resumption of the Second Reading debate on the Bill.

President, below are the views on the Bill held by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

Amendments to the MPF schemes involved in the Bill constitute a new breakthrough in the said system since its implementation. In 1996, when everybody was talking about the design of the MPF system, the DAB already proposed that the Government should consider progressively giving employees the right to choose their investment schemes in future. The MPF system has been in operation here for some years, in the course of which there have been vicissitudes in the investment market. Employees all along have placed a high premium on the balances of their MPF accounts. Surely, they also compare the service and investment performance of different MPF trustees. This goes without saying. At present, an employee is unable to freely transfer his own MPF benefits during his current employment. In addition to being unable to move to better-performing funds for investment, they are forced to accept some trust schemes that are not performing well and charging higher administration fees. So, the DAB all along has been advising the Government to relax the relevant policy to give employees the right to choose so as to progressively let employees have the freedom to choose trustees and trust schemes.

After years of observation, research and petitioning, the Government ultimately came up with the current proposal on the MPF system. We welcome this. We support such an approach, one of progressive liberalization allowing an employee to transfer accrued benefits derived from contributions made by the employee in respect of any current employment to a trustee other than the one chosen by the employer. We think this is the first step towards allowing employees to have full control over their own money, and it can increase their

autonomy and sense of involvement as MPF participants. Also, all along there has been little competition among MPF trustees, which has led to excessive administration fees. Because of the low transparency of management, the service of individual MPF trustees is also not satisfactory. It is hoped that the release of the right to choose can promote greater market competition and make MPF schemes better meet the people's needs.

Anyway, we also understand very well that Hong Kong is an international financial centre. There are all sorts of investment products. Have employees made proper preparations for investments based on their own decisions? If there is to be a sudden release leading to a changeover from one extreme where no selection is required to another extreme where free selection is available, we must pay attention to the inherent negative impact that might be caused. After all, MPF involves long-term investments like that of mutual funds. For more than half a year, there have been losses on the books of many mutual funds. With regard to the outcome of a total release of the right to choose to employees, it is still necessary to make further observation. At the same time, in our opinion, before implementation, it is necessary to arrive at a consensus between employees and employers in the community. It should be noted that MPF is not just about personal investment. It is a form of social security, whereby the basic principle relates to each citizen's retirement after the age of 65. In this respect, the Government still has to make holistic consideration. The question as to whether or not the people are investment-wise knowledgeable enough to be at a level capable of fully mastering the funds' investments to make sure that MPF can bring into full play its profit-earning function and see to it that employees can get their projected retirement funds when they turn 65 is an issue very much calling for attention. So, with regard to the release of the selection right, it is, in our opinion, necessary to proceed in a gradual and orderly manner.

In sum, what the Government proposes on this occasion is an Amendment Bill enabling MPF to go on a "quasi-free choice scheme". On the one hand, employees' knowledge of all the different trust funds can be enhanced, and on the other, competition in the market can also be increased. In future, when the MPF market grows more mature, the Administration should progressively relax the existing arrangements.

With these remarks, President, I support the Bill.

**MR LEE CHEUK-YAN** (in Cantonese): President, first of all, I have to clarify one thing for the Confederation of Trade Unions (CTU), because whenever MPF comes up for discussion, there are invariably people asking the question why LEE Cheuk-yan must stir up such matters.

I have to make it clear. Right from the start, I opposed the original Bill that provide for the MPF schemes. I voted against it the first day the Bill was tabled before the Legislative Council. Why? Because I think MPF is not as good as a universal pension scheme. Had we launched a universal pension scheme a decade or so ago, all the seniors would now be in a position to enjoy pensions right away. It is, however, a pity that 10-odd years ago the Government "changed course" and did not bring in universal pension. Universal pension involves tripartite contributions by workers, employers and the Government. Every senior aged 60 or over 65 may immediately receive \$2,500 or \$3,000 a month. We are still fighting for such a scheme.

President, it is a great pity that the Government "changed course" that year and launched the MPF system. The MPF system has several major problems that are fatal defects. The first fatal defect is that MPF is of little use to those on low incomes. The reason is that the sums of MPF receivable by low-income employees even over a period of 40 years cannot be very substantial.

The second problem is the existing Mandatory Provident Fund Schemes Ordinance (MPFSO), President. Whenever the MPFSO comes up for discussion, I invariably have to say this. It is impossible and unreasonable to offset MPF against severance payments. I know that the Administration is going to conduct a major review next year when we will again bring up the issue, and see to it that the arrangement of offsetting MPF against severance payments is knocked down, the reason being that such offsetting means that each time an employee collects severance payment, a sum will in fact be taken away from the money due to him when he turns 65. In reality, this is tantamount to making severance payments for employers, thus turning it into a severance payment fund, not *bona fide* pensions. At present, employees are not allowed to draw MPF benefits even when they are unemployed. However, employers laying off employees are, on the contrary, allowed to draw accrued benefits from employees' MPF accounts that are derived from employers' contributions to offset severance payments. This is utterly unacceptable.



The last fatal defect is administration fee, which is closely related to today's Bill. The issue of administration fee hinges on the manager of the MPF trust. That's it. The Government makes no mention of launching a Central Provident Fund (CPF). If it is a CPF, then the Government takes charge. However, at present the entire design of MPF is to allow speculations with the funds. It is now generally known that because of speculations with the funds, MPF has recently shrunk by 25% to 50%. Workers are already speaking to me in tears, wondering what to do when they retire in the future.

So, the whole system is not healthy. All over the globe, only Hong Kong and Chile have adopted such an approach. In the case of retirement protection in other places, there is invariably a pillar, that is, a pillar in the form of universal pension. In addition, they have MPF, in Australia for example. Only Hong Kong and Chile deliver retirement protection through private MPF.

President, let me come back and talk about another fatal weakness — administration fee. In fact it is now generally known that insofar as the administration fee of MPF is concerned, some charge 1-plus % whilst some charge 2-plus %. Let the calculation be set on the basis of 2%. To us, people who are not adept in investment or finance, an administration fee of 2% sounds more or less okay. In reality, however, someone has done some computations. If it is calculated on the basis of an administration fee of 2%, an MPF account will get 40% less in 40 years. That is to say, up to the time when an employee is to retire, the fund has in fact been sharing his wealth, taking away 40% and ultimately leaving the employee with just 60%. Hence, the administration fee is pernicious to the MPF benefits ultimately enjoyable by an employee.

Well, as the administration fee is too high, what has the Government done to solve it? The Administration has put forward one method: greater transparency. So we can now go online and see clearly the administration fees being charged by individual trustees. We, of course, support today's proposal, another way to lower the administration fees, or the so-called "quasi-free choice". What is meant by "quasi-free choice"? That is, insofar as the accrued benefits derived from employee's contributions are concerned, a transfer can be made once a year, and opting is allowed. However, that is restricted to the employee's portion. The employer's portion is still not open to such transfer. So, the employer still chooses the trustee. An employee has the option to transfer, once

a year, to another account benefits in his account that are derived from his own contributions.

The purpose of such a proposal is out of a wish to lower administration fees by means of market competition. However, I wonder if there is indeed competition in the market. This is the question. The reason is that the bottomline in this world is on the question whether there can be real competition from 19 or 20 trustees when the market is one of oligopoly. Anyway, it is always better to have options. However, such opting is, in my opinion, not enough. The CTU thinks it should not be "quasi-free choice".

So, President, I do not know whether or not I may cast "half a vote" by saying yes to half of the motion. Pity that it is not possible to do so. If it was permissible to cast a half-yes vote, I would give it halfway support because it is "quasi-free choice". What we go after is "fully free choice", that is, full freedom of choice for employees. It has got to be complete. If there is a choice, employees should be allowed to choose not just one half, but all instead. Someone has put forward the point that it is going to be miserable to the employer if the employer's portion is open to options. Why? I do not understand. The money basically belongs to the employee.

Here is the only argument available to the employer. It would be miserable when it is time for the employer to make severance payments as he is allowed to offset it against MPF. If the employee's investment goes belly-up, then the employer will have to make up for the difference. However, President, I wonder if the employee will risk his money on crazy sprees. He will not intentionally choose schemes performing particularly poorly in investment and go for investments with poor returns so as to make it necessary for the employer to make up for a greater difference when eventually it is necessary to make severance payments. This will not happen because the employee's money is also at stake. One half of the money is derived from the employee's contributions. So, this argument is logically unsound. In my opinion, if it is to be done, it has got to be "fully free choice". According to some people, there will be a lot of problems in administration. However, administration work has been computerized. I think the relevant issue can be fully solved technologically.

However, President, insofar as the whole issue is concerned, my greatest doubt conversely comes in here. Granting that we take this step to bring about

"quasi-free choice", or that there is "fully free will", a request that I now make to the Government, I still wonder if the administration fees will indeed be adjusted downward.

Finally, I think it is absolutely necessary to produce a version. In fact, at that time we also advocated imposing a ceiling on administration fees to disallow the charging of excessive administration fees. This is the only way to solve the problem completely. Of course, it is necessary to study the determination of the level of the ceiling. A lot of researches will have to be conducted in this respect. In my opinion, to lower administration fees by relying on the so-called market competition might ultimately prove to be a dead end. In the end, it might only lead to more street jobs, like those we now see selling telephones in the street. In future, they will be selling MPF schemes. More employment opportunities will be created. There will be even more gifts. However, administration fees are, after all, not bound to come down. This is the worst part. There is the possibility that prizes will take the place of administration fees. It is going to be worse still in that eventuality.

So, as regards administration fees, we want to get it done more thoroughly and have administration fees suppressed to a certain level. We should use legislation to regulate administration fees. This is a more thorough approach. President, the most thorough approach is, of course, to have a universal pension system in place of the MPF system. Thank you, President.

**MR IP WAI-MING** (in Cantonese): Today, we are going to read the Mandatory Provident Fund Schemes (Amendment) Bill 2009 for the Second time. I think the speeches of many colleagues are going to be quite similar as over the past few years or for some 10 years we have been discussing the matter. To us, the whole issue is no stranger. In my opinion, approaches proved to be practicable abroad or proven solutions found in other places invariably turn into something "freaky" or nondescript when applied to Hong Kong. There is bound to be criticisms from people. Sometimes I really cannot figure out the Government's line of thinking. Or I do not know the direction in which the Government would like our society to progress. With regard to the MPFSO, we in fact have all along been talking about a tripartite contribution scheme. The MPFSO has been around for almost 10 years. However, prior to our discussions about it, the

Federation of Trade Unions (FTU) had in fact put forward a proposal, which was the tripartite contributory retirement pensions scheme. However, the scheme gained no acceptance at all. Finally, it was the MPF system that was introduced.

In our opinion, the implementation of the scheme let in demerits before bringing in any merits. Who can really benefit from it? As stated by colleagues earlier on, this scheme brings benefits to those so-called "fund guys". Who knows how much they have made out of it? Yet, with regard to the real benefits that local workers can derive from it, I wonder how great they are. Now we seek to amend the MPFSO to provide for a so-called "quasi-free choice scheme". The FTU all along has been going after "fully free will", that is, employees to have full freedom to deal with their retirement benefits. How comes there is only "quasi free choice"? Perhaps the issues about fees, together with other administration charges — in addition to the fee of 2%, there are still many administration charges — leads to a situation where the sums payable by our employees are bound to grow. The other colleagues and I also doubt this so-called "free choice". Will liberalization to facilitate competition ultimately lead to lower fees and benefit the employees? This is the question we have been asking.

As a matter of fact, in addition to the question about contributions, our colleagues several years ago also brought up the question of the offsetting arrangement. The Government is telling us that there can be "quasi-free choice" but not "fully free choice". The reason is that MPF is used in the severance payment/long service payment (SP/LSP) offsetting arrangement. So, it is necessary to look after employers' interest. However, ever since the enactment of the MPFSO, the FTU has been opposed to this because we hold that SP/LSP have nothing to do with our retirement protection. At that time, the purpose of setting up the MPF system was to let employees get the money on termination of service. The money is just for their emergency use, having nothing to do with retirement protection. So, we hold that to use it to offset MPF has the effect of utterly reducing employees' retirement protection. The practice also debilitates the protection of their welfare.

It has been noticed that many unscrupulous employers purposely terminated their businesses to evade MPF contributions in arrears. We have found that in the case of many trades, for example, the employers of some restaurants and catering establishments, they may wind up their businesses after

operating for a short while. It is because at the time of winding-up, the price they have to pay for winding up is actually very small. Such a situation arises because there is already MPF to offset severance payments. Hence, they need not pay much. However, we have done some calculation. In the case of an employee who contributes to his MPF from the age of 20, when he starts his career, right up to the age of 65, he will in fact not be able to collect much money by the time he retires if during the period of 45 years the MPF has been used three or four times to effect offsetting. We, therefore, are of the view that the first amendment required to be made to any future revision to the MPFSO has got to be the elimination of the SP/LSP offsetting arrangement. Only in this way can we afford the workers greater protection.

Also, we often notice that some employees realize that contributions to their MPF accounts are in arrears only when they are leaving their service. To make it easier for workers to find out if employers have made contributions for them, the FTU has all along been asking for the development of a "passbook" system. At present, to find out whether or not oneself is getting contributions, one has to dial the phone, key in the password, and press 1, 2, 3, 4, 5, 6, 7. Because of this, many grass-root employees are at a loss as to what to do. They just do not know how to find out whether contributions have been made under their name, or whether the employers have made contributions for them. We, therefore, think that a simpler arrangement should be made available for employees to check, at any time and any place, to see if the employers have made contributions for them. Therefore, we think that consideration should be given to the adoption of a "passbook" system, and it should also be brought into effect as soon as possible. Otherwise, it is more often than not that employees will find out if the employers have made contributions for them only when employers wind up their businesses. Should it go on like this, in the long run employees will completely lose confidence in the system. The original purpose of the system will also be defeated.

Anyway, we think that as the MPF system is already in place, efforts of "patching up" must see to it that there is protection for every person upon retirement. In our opinion, this is something yet to be achieved. In order that there can be good retirement protection, we remain adamant on having a universal retirement protection system, something advocated by the FTU since the 1970s. In the case of many of our wage earners, their incomes will be gone upon retirement. For some of those who have children, they can probably

depend on their children for support. However, as clearly indicated by quite a few recent surveys, the children, because of financial hardship, often need their parents' assistance, not to mention asking them to look after their parents. So, we hold that a system of universal retirement protection or the old age pension scheme proposed by the FTU in the 1990s for the purpose of ensuring the maintenance of the aged still merits consideration by the Government. We also remain adamant that the Government should implement a system of old age retirement protection. Hence, we hope the Government can give this more consideration. It is also hoped that next year, when the MPF system sees its 10th anniversary, there can indeed be a comprehensive review to formulate a proper retirement protection system capable of assuring employees' welfare after retirement.

President, I so submit.

**MR WONG SING-CHI** (in Cantonese): President, even though today we are making a lot of comments on the amendment to the MPF system and giving vent to considerable sentiments of dissatisfaction, unfortunately I believe most Members today will have to support the Mandatory Provident Fund Schemes (amendment) Bill 2009 (the Bill). This is indeed most ironic, and proves that at present the MPF arrangements are riddled with problems. I hope the Government can give consideration to introducing universal retirement protection as a long-term measure. Also, efforts should be made to look into the matter and give effect to it as soon as possible.

Mentioned in the Bill is a plan of "quasi-free choice". In fact it is to let the employee exercise the right of transfer at least once a year so as to enable the employee to transfer from the MPF scheme of the employer' choice to the MPF scheme of his own choice the accrued benefits from his own MPF contributions. As stated by quite a few colleagues earlier on, at meetings of the Bills Committee on the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bills Committee), many colleagues had raised the concern that at the same time the employee should be allowed to transfer to a scheme of his own choice the accrued benefits derived from the employer's mandatory contributions. Only by so doing can it be said that an employee is allowed to have full control of his MPF investments.

In the middle of last year, when the Mandatory Provident Fund Schemes Authority (MPFA) proposed the "quasi-free-will scheme", the Democratic Party already said a lot and presented many views to point out that the plan still would not really give employees the right to choose with regard to MPF investments. It is indeed our wish that the Government can give effect to a "fully-free-choice scheme". Only in this way can employees make investment options that suit them in the light of their personal needs. Although an explanation was given by the Administration at meetings of the Bills Committee that an extension to cover transfer of accrued benefits derived from employers' mandatory contributions would likely give rise to problems that could not be resolved satisfactorily, and there was discussion on this by us at that time, in the case of many matters, the trouble in fact is just that the Government is not willing to act. For some problems, it is in fact possible to work out solutions. However, it is still hoped that the Government can actively study more methods so as to give employees more options and greater flexibility in the management of accrued benefits.

In addition to this, I also would like to say a few words about the overcharging of administration fees. Just now both Mr LEE Cheuk-yan and Mr IP Wai-ming said this has something to do with all the problems that MPF is now being riddled with. There was a survey by the Consumer Council two years ago. According to the results, some of the MPF funds that charge high fees are probably eating into the savings that the people in the future will have to use upon retirement. As a matter of fact, on several occasions the Legislative Council have brought up the issue of excessive MPF administration fees. The point is that the administration fees of MPF have much to do with the returns of MPF. The higher the MPF administration fees are, the more substantial the portions of MPF returns will be eaten up. In other words, for many employees, there will be even less money receivable from MPF upon their retirement. This will seriously affect the protection of employees' livelihood following retirement. If employees really spend all their money after retirement, must they ultimately also apply for Comprehensive Social Security Assistance (CSSA) and pass the burden onto the Government again? I wonder why the Government does not give this more thorough and in-depth consideration.

The administration fee being charged by our MPF on average stands at 1.98%, which, with a difference of about 1%, actually far exceeds that in Australia. Even Edward PRESCOTT, winner of 2004 Nobel Prize in Economics, once also commented that the 2% MPF administration fees in Hong

Kong on average was too high. He, an expert, also considered that to be excessive. According to the experience in the United States, following the opening up of the retirement fund market sometime ago, administration fees immediately went down from 2% to 1%. Why don't we do something here?

President, suppose the sum of an employee's contribution remains unchanged, that the investment return is zero, and that the MPF trustee charges an annual administration fee of 2%, after some computations, out of the MPF contributions invested by an employee, about 32% to 35% will be eaten away in 40 years. That is to say, as much as 40% of the contributions will be eaten. Is MPF put in place for the protection of people's retirement, or is it put in place in order that certain consortia can reap huge profits? Given the fact that MPF returns are rolled over for investment, the percentage of the MPF being eaten up is even higher if MPF returns are also taken into account. Why does the Government still not do something about this?

It is a pity that in mid-May, Ms Anna WU, Chairman of the MPFA, too made it known that there was no intention to force members of the industry to lower the fees by way of legislation. It was also said that the wish was to use the "quasi-free-choice scheme" to lower the fees by enabling competition in the market. Subsequently, it was already made known by certain provident fund management companies that they would not reduce prices to attract business. Where is the need for them to do so? The reason is that the people are forced to pay them administration fees. During the year and half following the survey by the Consumer Council, less than half of the MPF funds have lowered their fees. This is proof that in this respect, it is futile despite what the Government said. If nothing else is done, there is just no way out for the existing problem. Thus I wonder how the problem in connection with the overcharging of MPF administration fees can be solved. Also, how co-ordination or assistance can really be effected to lower administration fees? In my opinion, the Bureau should conduct a major comprehensive review and actively examine this system.

President, I believe many political parties and Members now present actually do not think MPF can be of much help insofar as retirement in the future is concerned. The reason is that there are so many problems now. Finally, the Democratic Party hopes the Government can actually carry out, in the near future, the study as well as the implementation of universal retirement protection because only by so doing can retirees enjoy long-term or comprehensive protection.



Also, it can pre-empt the situation where it is more often than not that, due to administration fees or the other defects that the system is riddled with, large portions of the savings supposedly to be used by the people for retirement in the end just get drained away.

Anyway, President, it does not matter how disgruntled, or clamorous we are today. Nor does it matter how strong our feelings are with regard to the existing problem-riddled system. Like the other political parties, the Democratic Party is forced to support the Bill.

Thank you, President.

**MISS TANYA CHAN** (in Cantonese): President, the establishment of a pension scheme then was mainly out of a wish to assure employees' livelihood in retirement. We, therefore, hold that any change to the MPF system should proceed in the direction of enhancing employees' protection and rights. So, in principle I support this amendment to the MPFSO, one that gives employees greater flexibility in choosing MPF trustees.

Contributions made to an MPF account, whether by the employer or the employee, ultimately go to the employee in toto. So, the bottomline is that all power of decision with regard to the operation of the MPF account ought to rest in the hand of the employee. However, the present arrangement is a far cry from this bottomline even if they are not quite poles apart. Today the Government is prepared to introduce a Bill to make an amendment. This in fact is an important step in the right direction.

Under the current system, MPF trustees are chosen by the employers. The employees' right to choose is confined to selecting different combinations of investments available from the same trustees. In other words, even if the employees are not happy with the returns, management or fees of the funds, there basically can be no change of trustees. To the employees, such an arrangement is of no merit or use.

At present, some 20 MPF trustees are registered with the Mandatory Provident Fund Schemes Authority (MPFA). They are not too few. However, it is in fact very difficult to have the service quality of MPF trustees improved

and service fees lowered through competition and market forces. It is because in the market there is no efficacious climate of competition.

Honestly, as far as employers are concerned, MPF contributions have already become an item of expenditure, not investment. There is basically no incentive for the employer to particularly choose, for the employee, an MPF trustee offering good services and high returns. MPF services are usually associated with corporate banking services offered by certain financial institutions. If an employer has all along been doing business with a certain financial institution or bank, he usually will choose the MPF services of that particular financial institution or bank. For the sake of business convenience or, sometimes, in order to save trouble, the employer will decide to use the same agency as the MPF trustee, regardless of the performance of the said financial institution or bank in MPF administration.

Besides, many banks use special offers of MPF services to lure enterprises to make use of their services, playing the publicity ploy of "offering something small in exchange for something big". Banks can maintain good business relationship just by giving the enterprises a little convenience in MPF, and then look forward to gradually earning, in future, huge returns through financing or other banking services. So, employers will not necessarily choose trustees on the basis of the quality of MPF management. Under such circumstances, there is just no market competition to speak of, and it is also impossible for market forces to come into play.

Today the Government has raised the proposal that employees' be allowed to choose the trustees for their own contributions. This can be considered an important step in the right direction. Millions of employees at last may exercise free options over the sums of their life savings in picking a trustee whom they trust. The trustee, originally accountable to the enterprises, becomes accountable to the public and individual clients instead. With more than a million pairs of eyes watching them, MPF trustees, I think, probably will not dare set crazy charges or provide substandard services.

On the other hand, with employees allowed to choose MPF trustees, members of MPF schemes, I believe, are going to exercise control over their MPF accounts with a stronger initiative and greater commitment. The relationship

between employees and trustees is not close as at present trustees are chosen by employers. So, trustees seldom take the initiative to get in touch with scheme members, not to mention giving services, such as providing advice on investment. The result is that employees basically just put the matter aside right after picking the combinations of funds and let them keep on rolling.

However, if employees have the right to choose their trustees, the trustees, in order to lure patronage, perhaps need to offer better services. Then they definitely have to take the offensive, and get in touch with scheme members more to gradually build up a relationship, even offering some more intimate services, for example, provision of investment advice. Surely, the responsible financial institutions will have to provide their staff with more professional training. Given this, employees will have more opportunities and better ability to make adjustments to their MPF investments and strike a balance between returns and risk-taking capacity, thus assuring their future retirement protection.

President, although it is already an improvement to let employees choose MPF trustees for their own contributions, this, in my opinion, only constitutes a stop-gap arrangement. Our ultimate goal is to let members of MPF schemes pick the trustees for all the MPF balances that come under their names. The reason is that, as pointed out by me at the start of my speech, the entire sums of MPF, after all, belong to the employees. Why are employees not allowed to make choices as to how to invest their total sums?

Surely, both the Government and employers have stressed that for employees to choose trustees for all MPF balances is technically difficult. The main reason is that according to the Employment Ordinance, the portion of benefits in an MPF account derived from employer's contributions can be used to offset severance payments, long service payments or contract gratuity. So it is likely to reduce employers' flexibility if employees are allowed to choose trustees for the portions of benefits derived from employers' contributions. However, I would like to point out that to hold such a view is perhaps to worry unnecessarily.

To the employees, MPF is their pension, and naturally, the more the better. So, employees definitely will try their best to pick the best funds and go for the highest possible returns. To be honest, employers' greatest worry is whether benefits derived from their contributions will suffer because of wrong MPF investments, in which case they, at the end of the day, will have to dip into their

own pockets and make additional payments to settle severance payments, long service payments or contract gratuity. I, however, think that employees will not intentionally allow their own MPF to dwindle out of a wish to make employers lose money. This is meaningless. Hence, employers need not worry too much.

What is more, if the arrangement of today is to be final, then there is the possibility of having a quite unsatisfactory situation, in the sense that if an employee is not happy with the trustee chosen by the employer, then it is going to be necessary to have at least two MPF accounts, one picked by himself and one picked by the employer. The MPFA often urges us to put MPF into the same account, the reason being that this can enhance the flexibility of investment and avoid putting all the eggs in one basket. However, the current Bill appears to be somewhat deviant from this principle. So, we indeed should progress in the direction of the final goal, and let employees choose their trustees for their MPF in toto.

It is hoped that today's Bill only represents a move or the first move in our attempt to improve the MPF system that will ultimately enable employees to make absolutely free choices of MPF trustees, and that the current one is just a stop-gap measure. It is because my firm belief is that to let employees make absolutely free choices is the approach that is the fairest, most effective and most in line with public interest.

President, having said something about principles, I would like to say a few words on administrative matters. I wish the Government, MPFA and all the trustees would pay more attention and provide appropriate assistance to make it possible to enable better enforcement of this new legislation.

The first point which I would like to raise is that there is the possibility of the new legislation bringing the employers some administrative pressure and expenses. Under the existing mechanism, an employer just has to give the monthly MPF contributions to one trustee for management. According to the new legislation, it is likely that every month an employer has to make reports and contributions to more than one MPF trustee, which undoubtedly will increase administrative pressure. There is also the risk of making mistakes. I hope MPF trustees and the MPFA can give consideration to this and help the enterprises as far as possible.

Another point is on the dissemination of information. We have browsed the website of the MPFA to look for information about trustees, past performance, fee levels, and other related matters. Such information can be helpful to employees in making suitable choices. At present, the MPFA website already offers considerable good information. However, in the future following the implementation of the new legislation, those surfing the said website are likely going to be mainly ordinary people or ordinary employees. It is hoped that the MPFA can provide more detailed information, or even offer telephone enquiry services to make it possible for people to get in touch with your staff directly when in doubt.

President, in the past, a lot of criticism was made of the MPF schemes, such as exorbitant fees and varied service quality. All these can be attributed to the lack of competition or the absence of market forces. It is hoped that, pending the introduction of a universal retirement protection scheme in Hong Kong, there can be constant improvements to the MPF system to give wage earners in Hong Kong better protection upon their retirement.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): President, even if this Bill does get passed today, it is, in fact, still a belated Bill. As a matter of fact, to let wage earners have the option to exercise their rights in respect of their own MPF contributions is something that ought to have been in effect long ago as the MPF contributions actually belong to the wage earners themselves, that is, their own assets. There is no reason for them to have no say in picking the MPF schemes into which they are to deposit their own assets. Such a practice is ridiculous and unfair.

Hence, it is only now that some effort is made to set the wrongs right for the MPF system, which has been in place for eight years since the year 2000. In my opinion, it is too late. Anyway, just as we often say, it is "better late than never". So, we today have no alternative but to support the relevant amendment.

However, while giving support, President, I have got to make it clear again and again. Just as stated by Mr LEE Cheuk-yan earlier on, he then was opposed

to the said MPF system. I was among the few Members opposing the system. At that time, our objection to the system was for based on many different reasons, one of which being our opinion that the MPF system was, in the case of ordinary wage earners, still something like "chicken ribs", definitely tasteless. What is more, this MPF system has long been riddled with problems. Some workers have even said that "to spend money on this MPF system is tantamount to spending money on a hopeless patient". The current amendment to the MPFSO is a measure allowing wage earners to pick their MPF schemes. What the Government is doing is half-baked as wage earners are only allowed to make the decision to transfer just their own mandatory contributions to other MPF schemes. However, employers still make decisions for their own contributions, over which wage earners still have no say.

However, I think it is well understood by, and clear to, the Government that all contributions, whether from employees or employers, ultimately go to the wage earners. If the law keeps on denying wage earners the right to make decisions to transfer employers' contributions, it is still, in my opinion, very, very, very unfair and unreasonable.

President, the Government insists on not allowing wage earners to determine which MPF schemes to use with regard to employers' contributions. The justification held out by the Government is that employers' MPF contributions can be used to offset severance payments or long service payments, and so on, in the future. Hence, employers have the need to know the arrangements and investment situation pertinent to their contributions. In the final analysis, it is an unreasonable arrangement to offset MPF contributions against severance payments, and so on. This is precisely the crux of the matter. It has been so stated by colleagues just now. I also agree with their views.

In my opinion, such offsetting arrangement is absolutely unjust and unfair to employees. It is especially so in the case of wage earners who have been laid off or fired on several occasions. They will be left with very little MPF benefits after all the deductions for severance payments upon layoffs, or offsetting of long service payments. There is the possibility that they will be left with very little when they grow old and have to retire. It as a so-called retirement scheme is no longer meaningful or functional. So, given this problem, this MPF system is just meaningless unless the Government makes some revisions.

At the same time, I have to again make a solemn statement calling upon the Government to immediately amend the relevant ordinance to do away with the provision on offsetting MPF against severance payments and long service payments so as to improve the protection afforded to wage earners under the MPF system.

President, the core issue of the MPF system undoubtedly is the inability of the whole plan to help wage earners effectively. To many wage earners at the grass-roots level, especially low-income workers, and those not regularly employed, for example, domestic helpers and the many working at home, the ultimate retirement protection available under the existing MPF system is still probably totally not enough to make ends meet in retirement. So, even if continuous efforts of patching-up were made in this way to the current MPF system, it is still not in a position to provide all people of Hong Kong with comprehensive and effective retirement protection.

So, here I say it again. The Government should stop dragging, and respond to the universal retirement protection scheme that for years non-government organizations have been advocating so that there can be basic support of living for every retirement-age citizen. This is to assure their living, and, at the same time, give them dignity.

President, apart from this, I would like to add a few words about some of the loopholes of the existing MPF system. I recently have received many complaints, according to which, the MPFA will, as a matter of course, recover payments for employees when employers default on their contributions. However, in the event that an employer's contributions in arrears amount to less than \$50,000, they will refer the case to the Small Claims Tribunal (SCT). As we all know, to press for payment through the SCT at most only incurs a penalty amounting to principal plus interest. Such a penalty just has no deterrent effect on the employers, because many employers think that making no contributions for one year or so does not matter much. At worst, you just sue me. In the event that you sue me, the case only goes before the SCT. In that event, I appear in court accordingly and pay the compensation accordingly. The loss is very little. Even the payment of interest as fine also matters very little, costing just tens of thousand dollars. So, this is tantamount to conniving at the non-payment of contributions by certain employers for their employees.

The MPFA says that is not the case, that it does have deterrent effect, and that if the employer adamantly refuses to make contributions, they may even initiate winding-up proceedings against his company. Notwithstanding this, President, I once handled a case, in which the SCT had already given a verdict against the employer, upon whom a fine amounting to just tens of thousand dollars was imposed. However, the employer still refused to make payment. Under such circumstances, the MPFA called in the Bailiff to wind up the company and impound its assets. Anyway, even if items of furniture of the company were to be sold, their market value was just a few thousand dollars, said the Bailiff, pointing out that it was not enough to pay off the debt. He wondered what winding-up could do, and suggested dropping it. Given this, the employers' behaviour is condoned, left to drag their feet. So, as we can see, employers making no contributions still constitute such a high ratio.

So, with regard to our efforts today to make further amendments to the provisions said to be protecting employees' interests, I wonder what purpose it can serve. With employers still making no contributions after the amendment, I wonder what purpose can be served. It just can't curb such conduct.

Pinpointing this problem, I think that the legislation must be tightened up if we really want to provide retirement protection for employees. The law must be made more stringent to make it impossible for employers to repeatedly default on their contributions, and to enable employees to really enjoy this so-called retirement protection. At present, it is possible in name, but not in reality. What is the use? The whole scheme is a sham.

Should the Secretary today wish to make amendment to the legislation, I wonder if it is possible to conduct an overhaul on the 10th anniversary of the implementation of the MPF system, just as Mr IP Wai-ming said just now. To have an overhaul is to fully respond to the people's request by setting up a universal retirement protection scheme so as to let every Hong Kong citizen of retirement age get *bona fide* support for one's retirement life and do away with the present arrangement which, in addition to wasting time to no avail, is a heavy drain on manpower and resources. In my opinion, such resources should not be wasted. Conversely, it is advisable to let our retirees enjoy the benefits direct.

President, I so submit.



**MR WONG KWOK-HING** (in Cantonese): President, the Mandatory Provident Fund Schemes (Amendment) Bill 2009(the Bill) tabled today only constitutes very limited improvement. We hold that to have "quasi-free choice" now is merely a move making half a step of improvement.

Way back in the 70's and 80's of the last century, the FTU already proposed to the Government that there should be a system of comprehensive retirement protection, and that reference should be made to the experience of Singapore to address the issues of retirement, health care and unemployment. In order to have a long-term and stable solution to the problems that society was facing, a system of comprehensive retirement protection should be established with tripartite contributions, from three parties, namely, by employees, employers and the Government. However, the then Government did not accept these ideas. What is more, our ideas still met with no acceptance following the establishment of the SAR Government. This is a great pity. The SAR Government just adopted a compromise, and set up the system of Mandatory Provident Fund (MPF). By now, the MPF system has been in operation for nine years. However, the system itself is still riddled with problems.

With today's Bill we are making half a step of progress. To give the matter its fair deal, Mr FAN, the former Chairman of Mandatory Provident Fund Schemes Authority (MPFA), did make some contribution. When he was in office, he advanced some progressive ideas on management fees and promotion of "quasi-free choice". So, when dealing with the Amendment Bill today, I think it is necessary to mention his name for fairness' sake. Although in the Bills Committee we have expressed strong views about the problems of the Bill, the Administration is still not prepared to accept all our views. Hence, in my opinion, it is absolutely necessary to vehemently bring them up today on a strong note. Also, it is hoped that both the Government and the incumbent Chairman of the MPFA can hear our suggestions.

In the first place, the current amendment is one of "quasi-free choice", that is, allowing employees to choose trustees for the parts representing their own savings. However, such an approach of "quasi-free choice" apparently sides with the interests of the business sector and employers. According to what the MPFA states in publicity, MPF is for the future, and the fruits of MPF are for employees' retirement and old age, not as employers' offset against long service payments or severance payments. The effect runs totally counter to the MPFA's

publicity. Apparently irrational, it clearly sides with employers' interests. This is the first point.

The second point is on administration fees. The fact is that even though there are already some trustees approved by the employers, I am gravely worried that a situation will arise leading, in a disguised manner, to collusive pricing of administration fees unless the Government beefs up the monitoring and draws up legislation to cap the fees. Such an approach, disguised collusive pricing of administration fees, will eat into the savings, surely turning substantial portions of later days' savings into the trustees' business profits. Both the MPFA and the Government definitely must not take this lightly. I, therefore, think that the MPFA should follow up how best wage earners' interests can be protected. This is the second point.

The third point is that currently preserved accounts make wage earners' accrued benefits suffer tremendously. The situation of employment in Hong Kong is for every person to see. In many cases, employees have no choice but to change jobs frequently, or they are forced to do so. It is not that they do not wish to work. Only that they, with no way out or with no choice, have to change jobs frequently. As a result, they have accumulated many preserved accounts. Some workers have even told me that they have forgotten how many MPF accounts they have. Under such circumstances, trustees charge each of the preserved accounts a certain amount of item fee. When these are added together, the situation is one in which expenses exceed savings. With regard to this, I wonder how the Government and the MPFA can help wage earners solve the problem.

Furthermore, in the course of discussions, we again and again strongly asked the Government to set up something similar to a "passbook" system to enable wage earners to check their balances anytime. However, as there is now no such system, it is necessary to rely on postal notifications sent by trustees at irregular intervals. Wage earners know not their accrued benefits, administration fees and the position of their investments. What is more, because of the lack of unity of the terms used, wage earners do not necessarily understand statements on their investments. So, it is very much hoped that the Government will consider setting up something like a "passbook" system so that wage earners can understand simply by taking a look, or find out their balances simply by making checks. The reason is that trustees often just state the number of units.

Well, what are the units? It is not possible to work that out directly. They are not professionals in this area. I think not even professionals in this area are necessarily in a position to instantly tell the gains or losses. So I think there ought to be follow-up on this by both the MPFA and the Government. In the past, the Government said it had no money or resources to set up a super computer. For the first year or so, the Government was probably short of money. By now, so many years have passed. Should the Government not give this problem some thoughts again? With regard to this, the MPFA has a responsibility that cannot be shirked.

In the fifth place, there should be a stronger crack-down on those defaulting on payments. During the past few years, I have gone with quite a few complainants to lodge complaints against the common practice of defaulting on payments. Many of those with MPF contributions in arrears are still unable to solve their cases. As a result, they have worked in return for "nothing". Earlier on some colleagues have mentioned these, so I am not going to repeat.

I would like to raise another new matter. It is about unscrupulous employers cheating or misleading employees by taking advantage of the loophole in the current retirement system — the co-existence of the MPF system and provident fund schemes — and saying that there is no need to join the MPF, that as MPF contributions are required to be deducted from pay whilst it is not so in the case of provident funds which only require contributions by employers, they had better join the provident fund schemes instead, and that they need have no worry. Under the provident fund schemes, however, one has to accumulate certain years of service before one can get provident fund payments according to the length of service on a pro rata basis. I have recently helped the workers of a certain cleansing service company. I am not going to disclose its name here. The said company had more than 100 workers. They were misled into not joining the MPF system. Instead, they joined the provident fund scheme. However, the so-called claim of not needing to contribute money in reality means that before there can be certain provident fund payments, it is necessary to reach a certain length of service. When the employees were about to reach the length of service making them qualified for provident fund payments, the employer terminated their service by claiming that the contract had expired. As a result, the some 100 workers "got nothing," nothing at all, not getting provident fund or anything because of non-participation in the MPF system. So, I think the Government should seriously look into the question as to how these loopholes in

the retirement system can be plugged. Apart from payments in arrears as stated above, there is also the cheating of workers by exploiting the loophole in law made available by these two different systems.

Finally, I think one thing is very important following the launch of the "quasi-free-choice" scheme. That is how the Government is to teach MPF account holders, that is, wage earners, so as to make them understand the great importance of investment, and get hold of investment information. Honestly, with the proposal of "quasi-free will" now introduced, all local wage earners who are MPF participants have to face the question as to where their savings should go. To the East or to the West? How to protect one's investments? How to get hold of information? They all do not know well. Moreover, we find that it is hard to understand the names and terms used by trustees. Those in use have no unity among the companies. There are different ways of expression even for the same category. So, in my opinion, both the MPFA and the Government are duty-bound to teach MPF account holders how to master their investments. Otherwise, I have the strong worry that later there might be another eruption of the Lehman Brothers minibond disaster following the implementation of the "quasi-free-choice" scheme. With every person wishing to enjoy their old age by relying on their savings, people invariably look forward to making higher returns on their investments. How can they get hold of such information? Regarding these investors (who are men in the street, MPF account holders), how is the Government going to teach them, such that they can master knowledge of investment? This is very important. Also very important is the ability to face the risk of investment. I think the Government is responsible for all these.

Although today we are progressing by one step with the introduction of "quasi-free will", there is yet another pitfall after that, which may be even more devastating, bringing about "a total meltdown" which may mean total losses. So, I think there must be publicity and education to make investors understand the risks and ensure that investments can indeed make provision for their future, such that no investors would be misled as to lose all their hard-earned money. Although this year the MPFA has, I know, stepped up publicity and set up a few regional offices, I wonder if that is enough. I think that is not enough. The Government now wants to issue bonds. Can the Government give some thought, from a higher level and with greater thoroughness, to see how to make sure that the hard-earned money invested by wage earners can make it possible

for them to enjoy life in retirement after the eventual implementation of the "quasi-free-choice" arrangement.

In this respect, there is a lot of good experience abroad. How can Hong Kong make reference to such experience? In the 70's and 80's of the last century, we mentioned the example of Singapore, which is good experience. The Singaporean Government really took up the responsibility. I, therefore, hold that, on this, the SAR Government today cannot afford to be a mere onlooker with a mindset thinking that it is already very nice to introduce "quasi-free choice" and that all will go well. The reality is not necessarily like that. So, I have raised this issue today. Following the implementation of the Bill, apparently there will be a more serious question to answer: Where do we go from here?

I hope the Secretary can hear my appeal. I also hope the incumbent Chairman has heard the wage earners' worries. Thank you, President.

**MS STARRY LEE** (in Cantonese): President, today we, in order to bring in "quasi-free choice", discuss the MPF Amendment Bill. To wage earners, this is a progress. So we are going to support it. However, we as wage earners also understand that what we are ultimately going after is not "quasi-free choice".

There has been just a little progress since the implementation of MPF, that is "quasi-free choice". Indeed, it can only be described as a small step forward. It is hoped that for the implementation of "fully free choice", the Government will not bring it to a halt because of the availability of "quasi-free choice". I have been a wage earner for a long time. I and the many professionals around me too have MPF accounts. In the past, we often discussed this issue. Why? Why can't we pick MPF trustees? In fact, quite a few colleagues have just mentioned this issue. That we are in fact unable to fully master all the investment options and information is precisely due to the fact that we wage earners are now not allowed to choose.

Like me, many professionals around me can be examples. Once hired, each of us will get from the employer an MPF form for completion. Then a list or a package of items will be made available for us to choose. However, we can only pick a certain trustee, but are not allowed to choose other companies. In

the area of services, these companies can in no way match insurance agents. To use my friends or myself as examples, for some 10 years, it would probably be at regular intervals ..... I think it probably has improved these days because recently there have been more talks among the public and the mass media. If my memory is correct, a statement would be sent to me biannually to let me know the position. It can be recalled that after a period of time, it — for environmental protection reason — this is also a very good excuse — would give us a password for us to make online enquiries. Ever since then nobody has been keeping us informed of the performance of our current funds or the balances of our accrued benefits. So, over casual chats among friends, we also came to the view that such a practice is very unfair to wage earners. I myself very much hope that this is just a start. It is hoped that next year, when the MPFA reviews the MPF system, discussions can be gradually held with employers so as to work out a way to bring in "fully free choice".

Just as stated by quite a few colleagues earlier on, it is believed that the market pattern will change upon the introduction of "quasi-free choice". I always love to make comparisons between insurance and MPF. Services provided to us by insurance agents are very intimate, because all the individual policy-holders are their bosses. From the perspective of MPF trustees, their bosses are proprietors of companies. We believe that with the implementation of "quasi-free choice", there will be many — in fact it is already discernible now — sale promotion stalls making their way into shopping malls or streets and advising our wage earners to transfer their MPF accounts to other banks to earn comparatively higher returns. I hope the Secretary will also learn from the lesson of the recent financial tsunami, such as the Lehman Brothers incident. In addition to educating investors, there is, in my opinion, a need to have the foresight to work on regulating intermediaries as well as pamphlet propaganda. There is, it is hoped, the memory of those Lehman pamphlets. Many victims told us that they were somehow attracted by some of those gifts. With regard to the propaganda pamphlet of MPF in the future, I hope the section on gifts will not overshadow the section on the performance of the funds. It is hoped that the Secretary can bring in correspondingly matching measures to facilitate the smooth implementation of "quasi-free choice".

I expect a lot of next year's review. First, just as stated by me earlier on, I wish that there can be gradual implementation of "fully free choice" after discussions between the Administration and employers. Also, I personally hold

that as MPF has been in operation for some 10 years, by now many options in fact can no longer measure up to the other options now available in the market. Again I want to use insurance as example. It can be recalled that, about a decade ago, if you told your insurance agent that you wanted to buy critical disease insurance by paying premium at the usual rate, he definitely would not give you the promise that after 10 years there would be no need to make further payment while the coverage would continue. However, if you now make enquiries with all the insurance companies, they in fact have already made available such investment products or insurance products for consumers to choose. Coming back to MPF, I think on account of restrictions by the legislation, over the 10 years' operation there has been no noticeable increase in the availability of choices as time passes. Come next year's review, I hope that both MPF options and legislation can be reviewed in the light of the market situation so as to give investors more options.

While doing community work in the aftermath of the financial tsunami, I was told by many kaifongs that they wanted MPF to provide an option for them to convert their investments into fixed deposits at a suitable time. It is because no such option is available now. I personally consider this a most appropriate request, the reason being that we can afford to make more risky investments when we are young, but we are unable to convert those accrued benefits into fixed deposits when we think the price is right. Withdrawal can be made only at the time of retirement. So, it is hoped that the forthcoming review can include, as one of the options, fixed deposits.

Next, I would like to say a few words on the presentation adopted for statements. Although this is just a small matter, to wage earners, I believe, this statement (that is, notification) definitely does leave much to be desired. Just as pointed out by quite a few Members earlier on, what it now shows definitely defies comprehension by ordinary wage earners. When reading insurance statements, professionals, I believe, probably also require others' help in order to understand the position of accrued benefits at different times of the year. Hence it is hoped that an approach can be taken from consumers' perspective, so that the trustees should send to consumers at regular intervals statements presented in simple formats. I myself, in fact, have a strong preference for having a "passbook". The reason is that an employee can, for the purpose of making timely complaints, use a simple method to immediately find out whether or not

his employer has made contributions. This is precisely the best way to plug the loophole in respect of MPF contributions in arrears.

Finally I would like to talk about my wish for the MPFA to consider the need to set up a MPF database in next year's review. We can still remember a relief measure introduced some time ago. The Government wanted to make a cash injection into the MPF accounts of the low-income earners, but there were a lot of problems because of the need to collect data. This precisely shows that the MPFA at present does not have a database. I think that such a database can, on the one hand, help the MPFA identify instantly employers defaulting on payments, so as to take immediate actions. On the other hand, it will make the Secretaries concerned give more thoughts to finding ways to help those low-income earners. I think that once such a comprehensive database is available, the Government can be effectively helped in identifying the low-income earners.

It is hoped that the Administration can include the aforesaid points in the agenda of the MPFA in next year's review. Thank you, President.

**MR FREDERICK FUNG** (in Cantonese): President, by now, eight and half years have passed since February 2000, when Hong Kong launched the MPF system. The management and operation of the MPF system are becoming more mature. The dimensions of its assets are growing too, with the MPF schemes' net assets totalling \$217.7 billion in March 2009. At first, in order to attract service provider' participation, the Government allowed many regulations to be relatively lax when initially setting up the new system. Also, there has been inadequate control over certain matters, such as the transparency with which MPF is run and all the different categories of fees, for example, investment manager fee, trustee fee and custodian fee. So, there is the situation of exorbitant management fees. Here is an example. If the calculation is based on the average fund expense ratio of 2%, then as high as 40% of the benefits due to an employee at retirement will be eroded by the management fee.

So, because of these measures, which are tilted in favour of the trustees, problems have gradually cropped up as time passes. Way back in 2007, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I already expressed doubts through questions asked to query the overcharging of



MPF trustees' management fees. During the motion debates that followed, there were requests to comprehensively review MPF operation, uses and management fees so as to make it live up to what it originally meant to be, and secure our retirement by providing every citizen with long-term retirement protection.

Today's proposed amendment to the MPFSO is, in the opinion of the ADPL, just one small step of progress. The Bill in main proposes that, at least once a year, an employee be allowed to choose for his own MPF contributions the trustee of another MPF scheme. The ADPL and I agree that this arrangement can, to a certain extent, give employees greater freedom to choose in selecting MPF schemes suitable for them. Also, the competition among trustees can be enhanced, thus improving the transparency of the operation and management fees of MPF service providers through market forces with a view to driving down the fees that have all along been quite exorbitant. Besides, to provide greater freedom to make choices can make it possible for employees to make their picks from a large number of trustees as well as from more MPF schemes, and provide a greater incentive for employees to take a more active interest in their MPF investments and be more concerned about their retirement protection.

In reality, the amendment to the ordinance itself can only be described as "quasi-free choice" because the MPF contributions by an employee's current employer can afford no changes. This is quite unreasonable. After all, the money ultimately goes to the employees. With employees not given the right to control, and make decisions for, as high as 50% of their accrued retirement benefits, the freedom to make choices enjoyable by employees is being cut by half. What is more, there can be no free transfers among the trustees for as much as 40% of the MPF benefits. Consequently, forces originally capable of enhancing market competition are being weakened.

Apparently, this practice of "quasi-free choice" just places emphasis on employers' interests, but ignores the top principle, namely, that employees be allowed to have full control over accrued benefits of their MPF. Advancing sophistry, the Government says this will have the effect of upsetting the arrangements made for severance or long service payments as the freedom to make transfers might render it impossible to calculate the movements in the accrued benefits derived from employers' contributions, and, consequently, it might be impossible to effect the arrangement allowing accrued benefits derived from employers to be used to offset severance or long service payments.

By nature, severance and long service payments are, in the final analysis, totally different from MPF in terms of both objectives and uses. The arrangement made at that time to provide for offsetting against MPF was just a move responding to pressure from employers in the hope of launching the MPF system smoothly. The ADPL and I consider this offsetting arrangement unfair to employees. It ought to be done away with to clear the path for the implementation of the "fully free choice" of MPF, and make it possible for employees to exercise full control over their accrued MPF benefits.

Also, in this amendment, there is a restriction on employees' freedom to make MPF transfers, President. According to the proposed amendment of the Government, trustees are required to effect the election of transfer by their members at least once per calendar year. This is a most unreasonable arrangement that likewise can curb competition among trustees. The intention is also apparently one placing emphasis only on service providers' convenience in administration. As a matter of fact, moving from one MPF trustee to another already incurs some cost by itself. Such cost already keeps employees' incentive to make transfers in check. I wonder why it is necessary for the Administration to unnecessarily impose the restriction on making transfers like one giving legs to a snake in a drawing.

Moreover, given the fact that Hong Kong has yet to bring in a comprehensive fair competition law, whether or not the present amendment by the Administration, one bringing in "quasi-free choice" is able to drive down management fees or improve operational transparency by promoting market competition remains to be seen. There is the possibility that a few mega trustees might appear in the midst and attract employees to make transfers to them with low fees in a bid to fatally cripple weaker rivals. Ultimately, the entire MPF market will come under the oligarchic control of a few mega trustees, thus giving rise to a situation smacking of collusive pricing. In the end, there will still be no protection for employees' retirement benefits. The Administration must expeditiously draw up a comprehensive fair competition law to apply sanction against any anti-competitive conduct so as to protect consumers' rights and interests.

In the long run, it is impossible to really assure the people's retirement just by patching up the existing MPF system. The financial tsunami has already amply reflected the considerable risks and unpredictability of the investment market. The people have clearly witnessed the volatility of the market. It is

possible to lose at any time a large portion of one's accrued retirement benefits. The stability that life in retirement needs is a sharp contrast to the high volatility of the investment market. It is a fruitless pursuit to look to the operation of the free market for the protection of our retirement.

The ADPL and I both think that the involvement of the Government in the plan as a whole has not been sufficient right from the start when the MPF system was first formulated to the present moment. There is a lack of commitment. At present, the problem with MPF is not just one of excessive reliance on the market. There is even inadequate coverage. For instance, the system does not look after the retirement of groups consisting of individuals like housewives, seniors and low-income workers. Although economically they make potential contribution to society, yet no protection whatsoever is available to them. As it is impossible to link them up with any conventional employment relationship, they will not fall under the coverage of the MPF system. The ultimate result is that these old, low-income women and housewives have to depend solely on the existing system of cash relief, which is unreasonable and unfair.

So, in the long run, both the ADPL and I think the Government should combine MPF with the existing welfare system and make every effort to bring in tripartite contributions, that is, a universal retirement protection scheme underpinned by joint contributions from employers, the Government and employees. This will let these people, the ones disregarded by the mainstream society, have retirement protection, too. At the same time, to lessen the impact on accrued retirement benefits arising from fluctuations in the market, it is advisable to have the Government's involvement. Thank you, President.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): President, somebody once asked me what MPF was. I said that to have such a system was still better than to have none. In fact it is believed that all those Members voting for the establishment of MPF also believed that to have was still better than not to have. President, you were then also a Member. You sat here and voted for it.

As a matter of fact, there was considerable disagreement then. Should Hong Kong legislate to set up a scheme for the protection of workers' retirement

at old age? Was it advisable to adopt the MPF system? Back then we argued over the matter for a long time. Finally, the Government still played that trick — both the Hong Kong British Government and the SAR Government are like that — saying "I am telling you, yes is to have it, no is not to have it." This is an outcome attributable to our special constitutional system. The Legislative Council is slavishly dependent on the Government. That is to say, it will work provided that it is proposed by the Government. Later, I would like to propose to lower the salaries of Principal Officials, Political Assistants and Under-Secretaries. It is also going to be necessary for you, President, to take a look to see if approval can be granted for me to do that. It is like that. Of course, you have to consult the Chief Executive.

Here, I would like to stress that, as I have found out, the philosophy of this Council in all matters is to have is still better than not to have. All reforms are heavy. I think Ms LI Fung-ying also knows that at that time the trade unions and members of the industries were not in favour of setting up the MPF. Is it right? So, the plan was described as a rotten orange. Many columnists called it a rotten orange in their articles, saying that it was still something lamentable to be able to eat it, and that it tasted bitter, puckery and sour.

Here today, we have to again bring in a reform. We have spent a lot of time here. Yet the reform is this simple. It is the implementation of the so-called "quasi-free choice". That is to say, the one making contributions may pick the investment schemes for one's own contributions. This is indeed better than not having it. Is it in fact a little better to have such an arrangement? Perhaps it is a little better. We have our debate here as commanded. After that, every person will then say this is also good as there is at least some improvement and it can after all be noted at the time of checking out that something has been done.

I think the Government, no matter the Hong Kong British Government or the SAR Government, is irresponsible. If retirement protection is to be given to a worker, what is in reality the simplest way? It is to give him wages, buddy. He, if given wages, will get the idea of saving up. If his wages are more than enough to meet his daily needs, to provide for his wife and children, and to send them to school while letting him have some money left, he will have the idea of putting that into his savings. This is the first point.

Very well, suppose someone says he knows nothing about savings, then put in place a system to help him, okay? The social security system in use includes cash relief for unemployment and old age pension, and so on. These come in a package. This is a comprehensive social security system. The trouble with Hong Kong is that ordinary workers' wages are really too low. In fact, with such meagre wages, so meagre that they can be easily blown away by the wind, how possible can contributions be made to those schemes? How come low-income workers in Hong Kong tend to become helpless as they grow old? It is because their take-home pay is too low for them to make both ends meet or address the many problems. The cost to bring up his children may cost him his retirement. The Government has already made it very difficult for fathers to support their kids. However, children supporting fathers after joining the community are running into the same difficulty. As a result, there came the banana-throwing incident. Why was there the banana-throwing incident? It is that WONG Yuk-man made an attempt to throw bananas at the Chief Executive. It was a pity that the target was missed. What was the reason for doing that? It was precisely because our Government has not taken up as its mission "the task of keeping Hong Kong people from falling into abject poverty upon retirement". Regarding the first point, wage distribution, we have already placed most of the workers in a position where they are denied any extra capacity to plan for themselves.

There is one more point. Nobody pays any attention to housewives who, working from sunrise to sunset to bring up their children to make it possible for them to propel our economy and earn money for the employers, are the mothers who provide manpower. I have lashed out at this again and again, but also got no attention. Yesterday, when I was on my way back to the Government Offices, I ran into an old man, who was working fanatically, blocking one half of the sidewalk. I had to offer a hand to pick up things for him. He was collecting carton boxes from offices. I spoke to the old man, saying that it would not work as the area was too busy. He said "Mr LEUNG, there's no way out. If I don't collect them, others will. Also, this is the only time I can collect them."

As a matter of fact, the old woman doing the same thing in my office on the third floor is over 70. Every day she collects cardboards and cart them away, making an alarmingly dangerous scene. Everybody knows that our office

is on Ice House Street. She must cart the cardboard to Prince Building from there. What if one day she gets knocked down by a vehicle for reason of being sick or weak? She used to have a job, but is now jobless. Aged over 70, she is unable to get insurance, and, consequently, she cannot join the labour market. I know not whether that is good or bad news to her. It is, of course, good news if she is being supported by relatives and need not work at such an old age, forsaking hard labour. However, it is lamentable if it is not so. She might wonder how she can live on in future. There is the probability that by the time I run into her again, she will be earning her living by collecting cardboards in the street instead of working on the third floor. We will be meeting again then, but her wage will certainly be sharply reduced.

I did ask the old man, wondering how much could be earned by collecting cardboards in that way. He said that there would be over \$50 on a day when business was good, and that on a day when business was bad, there would be just about \$30. I asked him where he lived. In reply, he said "Hollywood Road". In reply to the question about the type of building he was occupying, he said "Partitioned cubicle". I asked him why he did not apply for CSSA. He said it was very troublesome to apply for CSSA. I asked him if he was collecting the "fruit grant". He answered in the affirmative, saying both he and his old mate were getting the "fruit grant". He still has a daughter who is going to school. I wonder how he manages to get by. I think he is coming out to collect cardboards because of that. As a matter of fact, regarding the proceeds from the sale of cardboard, I doubt ..... I had better hold my tongue, so as to keep him from being caught later. The CSSA Scheme will catch him for the reason that he is "moonlighting".

Why am I talking about all this? With us here, the Government today is effecting a benevolent measure, bringing in a reform. However, all that is just (contribution) "free choice", or "quasi-free choice", that is, not to let their hard-earned money be put into the "hot pot" by those fund guys. All will just go up in steam from the boiling water. Is it right? I have to point out this. Back then, the Government was not prepared to "foot any shortfall". That is to say, it is already an offence for it to bring in a system that compels people to make savings instead of redistributing wealth as well as providing protection. It asks both employers and employees to give 5%. This is still better than not having a system. Is it right? Then this is used to effect offsetting. Those employers wonder why money is being taken from them for no reason. So, there must be

offsetting for this system. With offset coming and going, no money, would be left in the end. This is a big loophole. Why are changes not made? It claims to be ready to accept good advice. Aren't all others no "good"? We have spoken so much on other matters that our teeth bleed. We made the point that there should be no offsetting. It then said, "Buddy, this won't work as the employers made it clear back then that there has got to be the offsetting arrangement." Buddy, 12 years have passed since the reunification. Is it that no change can be made? Even employers are not necessarily unreceptive to changes. Correct?

So, today's debate is off the point. The first reform that we should heed and undertake is that there should be no offsetting. However, there is no mention whatsoever of this. Now on the second point, the one on the so-called (contribution) "quasi-free choice". Let me tell you all. This is cheating. One of the reasons for the setting up of the MPF system was, of course, the strong voice of objection in the community. Suppose nothing is done about the matter. The workers just will not let it go. Every person will condemn the Government. Anyway, what is our MPF system like? It is equivalent to a guy saying he lives because he has to eat and defecate. But it is not that he can live because he has to eat and defecate.

In fact, I wonder what it was like that day. That was the creation of a capital market. The Administration made available a sum of money for those so-called fund managers to play with, like making a hot pot meal out of it. Correct? This is the reason for such a mess. Hong Kong is a cosmopolitan city, and yet it has not got the most basic retirement protection. When making a response to this, the Government had another objective in mind, that is, thinking that it is most advisable to make available a sum of money for fund managers to play with. If it is not to be seen in this way, it is not possible to explain why the Government does not adopt the approach of footing all the shortfall and collect the administration fees itself. It seeks to avoid vying with the people for gains, buddy. Despite this, it still set up the scheme. Yet there was no reform. Even when there comes a reform, it is still the most minimum reform.

I would like to put a question to the Government. By now, does it think that it often has the worry that the workers will not be able to make their living in future? Should it reform today? Should it, being such an affluent Government, pay for some of the MPF administration expenses or even foot all the shortfall?

What is its view on whether or not this should be done in that way? If the answer is in the negative, then what is to be reformed?

Here is the second question. Does it consider the problems brought to light by MPF ..... It is impossible for an old woman not under hired labour to make a living. So she has to collect cardboard. She can be seen collecting cardboard when they come out from that Yung Kee Restaurant after meal. How can they remain indifferent? Do they think that they should be responsible for the fact that such a person is collecting cardboard? Why not reform? Why not bring in a universal retirement protection system? Why can't the MPF be expanded and turned into a system providing social security?

According to what a worker told me, he, already without money for food today, can get MPF only after killing himself by jumping down from a building. Must he? The worker has no money for food today. Someone advises him to apply for CSSA. There has got to be screening. Now he is still not allowed to draw money from his savings to buy food. What is the only solution? Finish oneself off. This will end all the troubles when it ends the main trouble. The alternative is to declare that one is to work no longer. What sort of system is this? The money belongs to the workers. Is it right? Why not reform this? Why should employers contribute more, just as in the case of the system of provident fund in the past? During the first five years, both sides have contributed 5%. As the contributions continue, the employers make contributions at 10%. Is it that there can be better labour relations with that? Harmony is all that needed. As employees add a few more years to their length of service, their employers make higher contributions for them so as to secure their retirement. Is this possible? Why is it not possible? How come that this Chamber is invariably left in a state where to have is still better than not to have? Right? There has been a lot of talking, but all that is involved is just a little bit of reform. To abstain from voting on a little bit of reform might invite the accusation of impeding the rotation of the Earth. How possibly can Hong Kong progress? How is Hong Kong to progress?

Our power to make laws is firmly vested in the hand of a government. Why did I tell Donald TSANG off yesterday? Some 800 persons of them elected the Chief Executive. Having been elected by the 800 persons, the Chief Executive appointed three "corpses" and 12 "lives" to govern Hong Kong. These three "corpses" and 12 "lives" again had to hire Under Secretaries and



Political Assistants. However, what they do is not for the 6.9 million people. Donald TSANG is shameless. He cut in suddenly. Nobody asked him, "What do you think about Long Hair just now? He told you off." He ignored these, and yet said there were words coming out from the bottom of his heart .....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please speak to the question.

**MR LEUNG KWOK-HUNG** (in Cantonese): No, it is on the topic. The Chief Executive is incompetent. He has words from the bottom of his heart. Why does he not speak to Joseph ZEN? Joseph ZEN is the Cardinal. Speak to him, make confession to him, okay? As a matter of fact, in his heart he does support universal suffrage. Is it necessary to say something insincerely in public? One saying those so-called words from the bottom of one's heart usually speaks insincerely. LIN Biao was the top whiz at this. President, I would like to say to you some words from the bottom of my heart. He is indeed the greatest Red Sun .....

**PRESIDENT** (in Cantonese): Please come back to the relevant question.

**MR LEUNG KWOK-HUNG** (in Cantonese): The reddest, reddest sun, buddy. Such a team comes with such a knack. Say to me words from the bottom of the heart. They should not be said to the public. Donald TSANG, do you understand? Hurry up, look for Joseph ZEN. Find Cardinal ZEN. Make confession to him tonight to admit your sin. Tell him you did tell lies to wrong Hong Kong people by saying that they did not want democracy. These are my words for him. President, yesterday he did not respond to questions but he said those words. Today I do not respond to questions and say the same words, right? To be fair, he came to answer questions. Was it that he should speak? Was he speaking?

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

**MR ALBERT CHAN** (in Cantonese): President, if Chief Executive Donald TSANG wants to speak from the bottom of his heart, he may make an appointment with me as well as with Long Hair and WONG Yuk-man, our leader. The three of us are ready to accept his invitation anytime. President, I say this openly. If he wants to speak from the bottom of his heart, the three of us are only too happy to go to his official residence to listen to words coming out from the bottom of his heart.

President, with regard to the "quasi-free choice" of MPF, it should in fact be renamed. It is not "quasi-free choice". Instead, it is "semi-cheat" or "semi-duping". The labouring people in Hong Kong are in reality being "cheated", or are forced to become "dupes". Long Hair, my party comrade, just now mentioned its background. Just as in the case of Disneyland we now have to sign a treaty under coercion. For the MPF back then, the former Legislative Council likewise had to sign a treaty under coercion. The one forced to yield was, of course, the former Legislative Council. The reason is that the present Legislative Council was not in existence yet. For years, many community groups and labour bodies have advocated a system underpinned by tripartite contributions. It can also be a retirement protection scheme underwritten by the Government. A number of labour bodies and individuals fighting for the interests of grassroots had waged the struggle for 20 years. Yet what turned out was a financial fraud. MPF is in fact a financial fraud. Those defrauded are our labouring people, especially members of the working class. Those defrauded are the disadvantaged and members of the lower strata in Hong Kong. Those benefited most are financial institutions, that is, institutions and financial magnates controlling the finances in Hong Kong.

Since the implementation of the MPF system, it has been pointed out by a number of studies and comments that the MPF management fees in Hong Kong are too high. Who benefit from high management fees? The managing financial institutions, of course. Who suffer from high management fees? It is the local labouring people. With their hard-earned money under the so-called management of these financial institutions for investment, they all suffer. With the eruption of the financial tsunami, many humble citizens' hard-earned money and savings intended for use in retirement has all dwindled, being forced to dwindle.

A kaifong spoke to me, "Hulk, back then I told the agent that I wanted to buy some really loss-proof products. He said that was the safest type. Yet it

still dwindled." Where is the Government? This is the responsibility of the Government. The Government gives the reins to these predators, these financial institutions, to reap huge profits and gains by cheating them of their hard-earned money. Though budgeted, humble citizens still have to make contributions as this is mandatory and compulsory. That is to say, under this ordinance, Hong Kong people are being forced to become dupes. The Government gives reins to these predators and turn humble people into dupes.

President, with regard to MPF, there are indeed a lot of problems. According to what I have heard from a number of ordinary citizens, they know not where their contributions have gone. Some of them even know not who their agents are. Some companies will not tell their employees what firms are handling their contributions. Many workers, due to ignorance or the cover-up by employers, do not know to which companies their MPF contributions are being sent. This is a very serious problem, isn't it?

Given the fact that there has already been a lot of spending and a lot of money has been taken away by financial predators, I wonder why the Government does not establish a central database. Someone at the Hong Kong Monetary Authority is enjoying high position and handsome salaries, getting more than \$10 million in annual pay and even receiving the Bauhinia Medal (GBM). I have to take this opportunity to condemn these medals. The Chief Executive responsible for the supervision of financial institutions led Lehman victims to a situation where they had to kill themselves by jumping down from buildings, but he still gets the GBM. One putting others in a fatally hopeless situation still gets the GBM. Perhaps this is the tradition of GBM. One who stirred up riots in the 1960s got the GBM. The one causing Lehman victims to go bust and consequently making it necessary for some to kill themselves by jumping down from buildings still receives the GBM. This GBM is steeped in the blood of Hong Kong people. So, it has got to be condemned. Those responsible for the promotion of MPF in future will probably get the GBM too. The Secretary too is to get the GBM. GBM will be awarded too when later MPF contributors have to kill themselves by jumping down from buildings. There will be the award of GBM upon the demise of a few more fellows. In my opinion, the system is utterly ridiculous.

President, it is indeed necessary to look into what I just said about establishing a central database, because many humble people do not know which

institutions are dealing with their MPF. Sometimes there are a lot of switches. It is institution A today. It is going to be institution B tomorrow. Sometimes there are accounts in both institutions. The balances are also not known. Even when enquiries are made, it is often necessary for us to write to the MPFA for them. With correspondences coming and going, it is time-consuming. The Government can set up a central database and give passwords to clients for them to access the database to get the information just by pressing some buttons. Institutions managing MPF should all enter data. Institutions making a bungle of management should have their payments deducted or be fined. Money from the fines should then be distributed among the workers. This is more reasonable.

At present, there is no monitoring over institutions charging exorbitant management fees. Who knows even if the management is poor? Once data have gone astray, then it is not possible to trace the whereabouts of funds. Sometimes it is really a great mess, not to mention the question whether or not employers have made contributions or are defaulting their contributions. Workers who wish to make enquiries and who do not know there is the MPFA for them to approach often really do not know the whereabouts of their money. Once there is a database, then, on the one hand, it can make available to workers data the moment they make enquiries. On the other hand, it can force managing institutions to beef up accountability. If data three months old are still not entered, then apparently there is something wrong with the institution. Where has the money gone? If there is a record, then at least there are traces for the searches. Workers can thus regain confidence and need have no worry about their hard-earned money suddenly vanishing. It is possible for bank deposits to disappear too, Secretary. The managers of the top two or top three banks in Hong Kong were able to have the deposits of a few artists moved around. The deposits that have gone missing amount to several hundred million dollars. Given the fact that it is possible for deposits to disappear, is it that it is also very easy for MPF contributions to disappear? The current system of monitoring is indeed in a great mess. Only the managing institutions will stand to benefit from that. Those senior officials continue to enjoy high positions and handsome salaries. So the suffering of humble people often goes unnoticed. The Legislative Council must, therefore, look squarely at this problem.

President, the next minor issue is about the responsibility of managers, the ones in charge of the MPF contributions of employees under the employ of

companies. In the case of some small companies, the employers are sometimes so busy that they forget to make contributions. That is not intentional. Sometimes the contributions are several months in arrears. Should the managers not remind those employers? They seemingly are not responsible for that, but just keep on collecting management fees and reaping gains from investments. However, some basic administrative duties ..... A management company is in charge of the MPF of the staff members of several small companies. In the event that an employer is one month in arrears with the contributions, it can still be said that it does not matter much. Well, in the event that contributions have been overdue for two or three months in a row, I wonder if the agent in charge of the management of MPF has the responsibility to send the employer a written reminder. If there is already a reminder to him, but he still makes no contributions, I wonder if the agent has the duty to inform the MPFA. However, it is not so in reality. Just as mentioned by some Members earlier on, even if payments have been in arrears for one year or two, the management companies still take no notice so long as there are no claims from employees.

Now, the greatest problem is that the Government gives the reins to these companies to reap huge profits by collecting exceedingly high management fees. However, the responsibility being shouldered can be said to be zero. Employees do not know where their contributions are. There are no reminders to employers defaulting on payments. However, management fees are charged all the same. So, the whole system can be described as a financial fraud. It is hoped that we can rectify the problems in this fraud so as to avert a situation rendering it impossible for the humble people, especially the toiling masses, to lose their hard-earned money for reason of staff management problems or dereliction of duties on the part of management companies.

**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 Financial Services and the Treasury to reply. This debate will come to a close after the Secretary has replied.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, first of all, I have to thank the Chairman, Mr CHAN Kam-lam, and members of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bills Committee) for their many precious views in the course of scrutinizing the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bill). At the Committee stage later, I will move a few Committee stage amendments technical in nature.

The Bill seeks to strengthen the control of Mandatory Provident Fund (MPF) investments by employees and promote greater competition in the market. The proposal concerned is based on the review by the Mandatory Provident Fund Schemes Authority (MPFA) over the past two years of this subject and the idea proposed after studying with the trustees. Last year, we introduced the proposal concerned to the Panel on Financial Affairs of the Legislative Council (the Panel), and the Panel also invited the related organizations to attend the meetings and voice their views. The general direction proposed has been recognized by various parties.

According to the existing arrangement, an employee, upon cessation of his employment with the employer, may choose to transfer the accrued benefits from his contribution account of the MPF scheme selected by his employer to his preserved account under another scheme of his own choice. The Bill proposes that employees may transfer accrued benefits derived from their employee's mandatory contributions during their current employment, from a contribution account under an MPF scheme on a lump-sum basis, to another MPF scheme of their own choice. Taking into consideration that this is a new measure introduced for the first time, the measure concerned may give rise to additional administrative burden to the trustees and the opinions of various stakeholders, the Bill proposes that employees may transfer accrued benefits once per calendar year. The Bill also allows trustees to make arrangements in respect of individual MPF schemes so that more than one transfer can be made by an employee per calendar year. A trustee has to accomplish the transfer according to the choice of the employee made under the law.

At present, there are already restrictions under the provisions of the law on the transfer charges that a trustee can levy. Based on the existing policy, the Bill stipulates that a trustee is only allowed to charge from the scheme member the investment transaction costs that are incurred when effecting the transfer

concerned, but is not allowed to charge the general administrative costs or other fees.

We welcome the support from the Bills Committee which has scrutinized this Bill in implementing the proposal, which allows employees to transfer accrued benefits derived from their employee's mandatory contributions during their current employment, so that they can have a greater right of choice. We have already explained in detail the purposes of various clauses of amendment and the ways of implementation to the Bills Committee.

Besides, members of the Bills Committee were concerned that some employees might maintain multiple preserved accounts across different schemes, and asked the MPFA to study feasible means to remind employees to consolidate their preserved accounts. The MPFA agreed that it would review the situation of multiple accounts holding after implementation of the proposal for a certain period, and would study appropriate means to remind relevant scheme members of the arrangements to consolidate their multiple accounts. In this connection, I will move a Committee stage amendment to enable the MPFA to notify scheme members in writing the number of personal accounts they have established with different trustees, and remind them to consider consolidating various accounts.

In regard to the opinion of some members that an employee should also be allowed to transfer the accrued benefits derived from his employer's mandatory contributions to a scheme of his choice, we have already conducted full discussion during the Panel meetings last year, and have reiterated the position of the Government in the Bills Committee recently. Since this proposal will seriously affect the operation of the existing system allowed under the law whereby employers could apply the accrued benefits derived from employer's contributions to offset the severance payment and long service payment, we reckon that the proposal in the Bill is more practical.

President, upon the passage of the Bill, the MPFA will immediately start a series of preparatory work to ensure that the proposal can be implemented smoothly. First of all, the MPFA will draw up operation guidelines for the trustees on the transfer arrangements. The trustees will then upgrade their systems, computer programs, control measures and other administrative arrangements according to the guidelines. Besides, the MPFA will arrange briefings for the trustees so that they can understand the content of the

arrangements. The trustees can then arrange appropriate training for MPF intermediaries so that the latter can have sufficient knowledge to explain the transfer arrangements to scheme members. At the same time, the MPFA will also step up publicity and education work to the public so as to remind them of the factors of consideration in making the transfer arrangements, including whether the choices are in line with their investment goals, risk management, and so on.

In order to ensure that the computer and administrative systems of the trustees are capable of processing accurately the transfer of accrued benefits between different schemes and accounts, after all the supportive work of the MPFA and the sector have been finished, we will formally implement the proposal in the Bill. According to the latest estimation of the MPFA, the sector may need around 18 months to finish the abovementioned preparatory work. When the MPFA confirms that everything is ready, we will immediately activate the procedures of implementing the proposal.

President, as the Acting Secretary for Financial Services and the Treasury pointed out in May this year in moving the Second Reading of the Bill, the proposal has already fully considered and balanced the views of various stakeholders and is a practicable option which can strengthen the control of MPF investments by employees. The passage of the legislative proposal will facilitate better management of accrued benefits derived from the mandatory contributions of MPF scheme members. Overall speaking, about 60% of the MPF benefits can be freely transferred among trustees. This will help promote market competition and upgrade the service level of the sector. Here, I implore Members to support the Bill and the amendments that I will move at the Committee stage.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2009 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)



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

(No hands raised)

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

**CLERK** (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2009.

Council went into Committee.

### **Committee Stage**

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

### **MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2009**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mandatory Provident Fund Schemes (Amendment) Bill 2009.

**CLERK** (in Cantonese): Clauses 1 to 9, 11 to 18, 21, 23 and 24.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 to 9, 11 to 18, 21, 23 and 24 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 10, 19, 20 and 22.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, I move the amendments to the clauses read out just now, as printed in the paper circularized to Members. I am now going to give a brief introduction of various amendments.

Clause 10 of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bill) amends section 46(1A) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) in regard to the provisions on making regulations. It specifies that regulations can be made on record keeping and the provision of any information contained in that record on request. Clause 22 of the Bill adds new section 157B to the Mandatory Provident Fund Schemes (General) Regulation (the General Regulation) which provides for the establishment by the Mandatory Provident Fund Schemes Authority (MPFA) of a register of personal accounts. The purpose of this amendment is to respond to the request of the Bills Committee members who want the MPFA to study feasible means to remind those employees who have maintained multiple preserved accounts across different MPF schemes to consolidate their preserved accounts, so as to effectively manage their accrued benefits derived from their MPF contributions.

The amendments amend section 46(1A) and new section 157B of the General Regulation to the effect that the MPFA will be allowed to notify scheme members in writing of their personal information contained in the register on its own initiative, for example, the number of personal accounts they have established with different trustees, so as to remind them to consider consolidating various accounts.

Clause 19 of the Bill amends section 153 of the Regulation. Section 153 provides for the period of time within which a trustee has to accomplish the transfer after being notified of an election by a scheme member. The purpose of this amendment is to clearly stipulate that the transferor trustee, after being notified of a transfer request under different circumstances, has to accomplish the transfer arrangements according to the period of time specified, which is within 30 days after being notified or, if the election is made by an employee whose employment has ceased, within 30 days after the last contribution day in respect of the employment, whichever is the later. This is a technical amendment, and our amendment to clause 20 of the Bill is a consequential amendment.

Chairman, all the amendments have been submitted to the Bills Committee for scrutiny and the Bills Committee has raised no objection to them. I hope Members will support the amendments concerned. Thank you.

*Proposed amendments*

**Clause 10 (see Annex I)**

**Clause 19 (see Annex I)**

**Clause 20 (see Annex I)**

**Clause 22 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 10, 19, 20 and 22 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 10, 19, 20 and 22 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Third Reading.

**MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2009**

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

Mandatory Provident Fund Schemes (Amendment) Bill 2009

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2009 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2009.

**MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Public Finance Ordinance.

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

**PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE**

**FINANCIAL SECRETARY** (in Cantonese): President, I move the motion standing in my name on the Agenda pursuant to section 29 of the Public Finance Ordinance.

In the 2009-2010 Budget Speech, I proposed launching a Government Bond Programme, under which bonds will be issued in a systematic manner with a view to promoting the further and sustainable development of the bond market in Hong Kong. We believe that a local bond market with sufficient breadth, depth and liquidity would help develop another effective channel of financial intermediation apart from our banking and equity markets. It would contribute to the financial stability of Hong Kong, consolidate Hong Kong's status as an international financial centre and as a conducive and efficient platform for capital-raising, investment and intermediation, as well as promote economic growth.

To facilitate the implementation of the Programme, we propose setting up a "Bond Fund" under the Public Finance Ordinance, to which sums raised under the Programme will be credited. The "Bond Fund" will not be treated as part of the fiscal reserves. It will be managed separately from other government accounts. The arrangement to set up a "Bond Fund" separated from other government accounts to manage sums raised under the Programme will enable clear presentation and ready assessment of the financial performance of the Programme. The "Bond Fund" will be used to repay principal, meet the financial obligations and liabilities associated with the Programme, and make investments. I will delegate the authority to the Financial Services and the Treasury Bureau to administer the "Bond Fund". The Bureau will assist me in maintaining a vigilant oversight of the "Bond Fund" to ensure that only the

financial obligations and liabilities associated with the Programme are charged to the "Bond Fund".

I would like to stress again that the purpose of the Government Bond Programme is to promote the further and sustainable development of the local bond market. And the setting up of the "Bond Fund" is a measure for meeting the operational need of the Programme. Given this, sums contained in the "Bond Fund" will not be used to cover government expenses. Under paragraph (g) of this Resolution, if there is a positive balance in the "Bond Fund" after all financial obligations and liabilities are met in relation to the Programme, the surplus funds may be transferred to the general revenue only after the Legislative Council has given the approval.

We shall adopt a long term and conservative strategy for the investment of the "Bond Fund" with a view to ensuring prudent management of the fund. This seeks to achieve the objectives of preserving capital and generating reasonable investment returns for covering the financial obligations and liabilities under the Programme. To this end, we will adopt the same investment arrangement as that for the Exchange Fund for the investment of moneys in the "Bond Fund". And the "fixed rate" sharing arrangement for investment income applicable to the fiscal reserves will apply to the "Bond Fund". That is, the investment income will be calculated on the basis of the average rate of return of the Exchange Fund's investment portfolio over the past six years or the average annual yield of three-year Exchange Fund Notes for the previous year, whichever is higher. We consider it appropriate to adopt the same investment arrangement as that for the Exchange Fund for the investment of moneys in the "Bond Fund". Such an arrangement will allow the "Bond Fund" to benefit from the economy of scale of assets managed under the Exchange Fund and risk diversification. The substantial size of the Exchange Fund can provide sufficient investment diversification for the achievement of a stable investment return for the "Bond Fund", especially during the initial phase of the Programme.

As regards the specific arrangement for implementing the Programme, I will direct the Hong Kong Monetary Authority to assist in co-ordinating the offering of the bonds under the Programme. The relevant tasks for the Authority include: (a) performing certain functions of an arranger, for example, proposing the timing, size and pricing of individual bond issues under the Programme; proposing appropriate structure for the offerings of bonds; preparing legal and offering documentation; arranging for the issuance and redemption of bonds, and

so on; (b) managing the investment of moneys in the "Bond Fund"; and (c) providing an investment income for the "Bond Fund" on the basis of the "fixed rate" sharing arrangement applicable to the fiscal reserves.

We will put in place suitable arrangements for overseeing the implementation of the Programme and provide the Legislative Council with regular reports on the progress of implementation. We will also set up a consultation committee, involving professionals active in the bond market, to tap and take into account fully market views to ensure that the Programme will be implemented effectively for promoting bond market development.

We need the sequential approval of the Legislative Council of two relevant Resolutions, one for setting up the "Bond Fund" pursuant to section 29 of the Public Finance Ordinance for managing sums raised under the Programme, and the other for authorizing the Government to borrow up to a ceiling of HK\$100 billion or equivalent for the purpose of the "Bond Fund" in accordance with section 3 of the Loans Ordinance, for implementation of the Programme.

The further and sustainable development of the local bond market will be conducive to promoting the financial and economic development of Hong Kong. Implementation of the Government Bond Programme is no doubt an important step in promoting the development of the local bond market.

President, I earnestly hope that Members will support the Resolution under section 29 of the Public Finance Ordinance. I would also like to take this opportunity to thank the Subcommittee set up to scrutinize the Resolutions for its hard work over the last month or so under the chairmanship of Mr Jeffrey Lam.

Thank you, President.

**The Financial Secretary moved the following motion:**

"RESOLVED that –

- (a) there is established a fund to be known as the "Bond Fund" in English and "債券基金" in Chinese;
- (b) the Fund is to be administered by the Financial Secretary, who may direct or authorize other public officers to



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administer the Fund and delegate the power of administration to other public officers;

- (c) the following are to be credited to the Fund –
  - (i) sums borrowed under section 3 of the Loans Ordinance (Cap. 61) that are required to be credited to the Fund by any resolution of the Legislative Council approving the borrowing;
  - (ii) sums received by way of interest, dividends or investment income earned in respect of the sums held in the Fund;
  - (iii) any appropriations from the general revenue that may be approved by the Legislative Council;
  - (iv) any other sums that may be received for the purposes of the Fund;
- (d) earnings from interest or dividends on investments of the Fund are to be retained for the purposes of the Fund;
- (e) the Financial Secretary may expend money from the Fund for the purposes of –
  - (i) repaying or, if appropriate, paying the principal of, interest on, and expenses incurred in relation to, any sums that have been borrowed under section 3 of the Loans Ordinance (Cap. 61) for the purposes of the Fund; and
  - (ii) investing in the manner the Financial Secretary considers appropriate for the prudent management of the Fund, and paying the expenses incurred in relation to the investments;
- (f) the Director of Accounting Services, under the authority of a funds warrant issued by the Financial Secretary, is to pay

from the Fund any sums that may be required to meet expenditures from the Fund; and

- (g) the Financial Secretary may transfer from the Fund to the general revenue the balance held in the Fund, if so approved by the Legislative Council, when all financial obligations and liabilities are met in relation to any sums that have been borrowed under section 3 of the Loans Ordinance (Cap. 61) for the purposes of the Fund."

**MR JAMES TO** (in Cantonese): President, I have read the Script but as Mr Jeffrey LAM is Chairman of the Subcommittee, should he speak first and make a report?

**PRESIDENT** (in Cantonese): As this motion is proposed by the Government, according to the procedures for a joint debate, the Financial Secretary who moved the motion should speak first, to be followed by the Member who proposed an amendment. You have just requested to speak a bit later and I will handle your request.

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

**PRESIDENT** (in Cantonese): Mr Albert HO, Mr James TO and Mr KAM Nai-wai intend to 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 Albert HO to speak first.

As you all know, Mr James TO and Mr KAM Nai-wai have requested to speak after other Members have spoken. In general, during a joint debate, Members who proposed the amendments will speak at the beginning of a debate to allow other Members to understand well the reasons why they proposed the amendments before the debate. However, under the present circumstances, since the amendments of Mr James TO and Mr KAM Nai-wai have already been included in Mr Albert HO's amendment, the two Members have requested to respond after other Members have spoken. I think they have their reasons and

their requests have not violated the Rules of Procedure. Therefore, I agree to accept the two Members' requests and I will call upon them to speak after other Members have spoken.

I will call upon Mr Albert HO to speak but no amendments are to be moved at this stage.

**MR ALBERT HO** (in Cantonese): The Government proposes to promote the development of the bond market through a bond issue. For this, the Democratic Party has indicated our support long ago but the prerequisite of our support is that the spirit of the rule of law must be taken as the basis in the implementation of this proposal. We must abide by the rules and work in a well-organized way, and there should be a set of explicit rules that we consider as sufficiently reasonable for the regulation of the investment in and administration of the Bond Fund.

President, the Bond Fund is to be set up through a motion moved under the Public Finance Ordinance. We all know that a motion is different from a bill; a motion is simpler in terms of wording and structure that it can handle. I find this acceptable but we think that we still need some very fundamental and sufficient rules to ensure explicit accountability and monitoring before we can render our support.

In the course of scrutinizing the resolution, the Democratic Party felt that it was very much to be regretted. Even if the aim of the Government's representative was consistent with ours, even when both parties almost agreed on the methods adopted, including a specific aim, we also agreed or planned to place moneys in the Bond Fund with the Exchange Fund for investment, and even when the Financial Secretary added in his speech draft that he would consider setting up a consultation committee, the Government was not ready to include the methods or plans mentioned above in the motion, turning these into binding rules. I felt indignant with that. The Government's representative preemptorily and stubbornly refused to accept amendments again and again. At the most, he was only willing to make verbal comments or account for that in the Explanatory Note. President, how are the two different? As we all know, if it is stated in the motion, it will have a binding effect and constitute the legal rules on the overall operation of the Bond Fund in the future. However, if it is accounted for in the Explanatory Note or only in a speech, it is only the views expressed when the proposal is made today or the Government's intentions at the moment. These

plans and intentions can be changed as they do not constitute part of the provisions.

The motion is vague and general in contents, which could turn the Bond Fund into a small vault, allowing the Financial Secretary to make wilful investments based upon his personal judgment. He can decide upon investment plans and even wilfully make changes to the investment plans on the basis of his subjective thinking. In other words, whatever the Government says will be useless; if it is unwilling to include what it has said in the rules, it is not ready to be regulated or spell out effective and binding rules. In case the Government wants to change the plan in the future, it can act according to its desires and plans without going through the Legislative Council. This is unacceptable to me. Now that there is a consensus between the Government's methods and ours at this stage, why is the Government still reluctant to accept the inclusion of the above in the motion in the form of binding rules so that it can gain our support for the implementation of the proposed bond issue? I am very dissatisfied with this. I can only say very clearly that, if all the three amendments proposed by the Democratic Party are not passed today, we can neither support the proposed bond issue nor the motion today.

President, let me briefly discuss the three amendments. First, the motion covers the purpose of the Fund but it is put very simply that the Bond Fund will be used to repay the principal and interests, and to cover all expenses. How can that be the purpose of establishing the Fund? This is like when we want to run a company, recruiting staff and renting an office are utterly necessary. Yet, how can that be the purpose of establishing a company? Let us take the Exchange Fund into consideration; nothing about the Exchange Fund is written like that. It is specified very clearly why the Fund should be established. It is established with a view to consolidating our position as a financial centre and maintaining the stability and integrity of our monetary and financial systems. Our request is very simple, and it is to specify that the purpose is to promote the development of the bond market, and these are the points in the Explanatory Note, which include promoting the development of the bond market, consolidating our position as an international financial centre and providing more investment tools. Nonetheless, the Government is reluctant to spell all this out.

Why is the Government unwilling to spell out all this? President, according to the Government's explanation, it is worried that some people may file judicial review applications, claiming that the Government has overstepped its power. If so, I would be even more afraid because it means that the

Government's actions may not be within this scope in the future. Honourable colleagues have repeatedly asked the Government if it has other ideas. If there are changes in the circumstances after borrowing money, will the Government use the borrowed sums to meet government expenses, turning them into a part of government expenditure? If it will, it will definitely go against the purpose that we have stated, that is, to promote the development of the bond market. According to the Government, that was its original intention but it does not want to spell it out lest making it specific should be dangerous. I think this is ridiculous and it makes us worry even more. The Government fears that judicial review applications will be filed, that is, it fears being bound by the law. What is the Government really afraid of? Today, the Government is unwilling to tell us what it is afraid of and it is reluctant to give specific examples to illustrate the kinds of judicial review applications it fears. For this reason, I cannot accept the Government's specifying the purpose using such vague and general words.

Actually, the Financial Secretary also agrees that a consultation committee should be set up. However, in my view, even the setting up of a consultation committee for monitoring the Fund should be specified in the motion. Even if this committee will have to hold confidential meetings to a certain extent in the future, we hope that its representativeness and accountability would be safeguarded. Thus, our proposal is that, among the seven members, the Financial Secretary should be the convener and Chairman while other members should be appointed by the Financial Secretary; and four members can be members of the professional sectors appointed by the Financial Secretary. I also hope that two representative members will be elected by Legislative Council Members from among themselves. All of us understand that the two members represent two major camps; and each camp would select one representative to monitor distinctly how the Government spends. This is going to be a good example to help the Government consider how the Exchange Fund should operate in the future with a view to monitoring whether the Financial Secretary would make high risk investments and whether the expenses so incurred in monitoring would be reasonable. Why can this not be done? The Financial Secretary has also said a while ago that he will consider setting up such a committee; why can it not be clearly stated in the motion? Why can the composition of the committee and its representativeness not be clearly specified and ensured?

On the last point in my amendment, the Financial Secretary has remarked that he finds it appropriate to place moneys in the Bond Fund with the Exchange Fund for investment as such an arrangement will allow the Bond Fund to benefit

from the economy of scale of assets managed and risk diversification. That being the case, I would of course feel much more relieved. Nevertheless, I would also like to ask why this cannot be spelled out in the motion. If it is not included in the motion, he may change his mind in the future and the matter may not necessarily have to go through the Legislative Council, which cannot make us feel relieved.

There is an interconnection between parts (b) and (c) of my amendment, and it seems that once a consultation committee has been set up under part (b), part (c) is not very essential. In my view, Honourable colleagues can make criticisms that way but the two parts are not contradictory because the consultation committee can still monitor the investment situation of the Exchange Fund. Hence, we think that, if the purpose of the Financial Secretary today ..... The future intention is clear enough, that is, to make investments through the Exchange Fund. Then, it should be spelled out clearly in the motion. We will then feel at ease in rendering our support for the motion. Based upon the past investment strategies and records of the Exchange Fund, we know more or less about what we should do in the future and we will feel relieved when the matter is handled that way. Yet, if the Financial Secretary is only saying today that the Government plans to do so but it is reluctant to put that down in the motion, I strongly believe that today's plan is not going to be permanent. The Financial Secretary may change his mind in the future, and he can withdraw the investments and make other investments. It is not necessary to go through the Legislative Council or conform to any rules. Without being monitored by a consultation committee of sufficient credibility, the Financial Secretary can make a lot of investments that we do not want to see.

During our scrutiny process, I am very thankful to Mrs Regina IP for giving some views and information about the Hong Kong Mortgage Corporation (HKMC). As we all know, when the HKMC was set up years ago, the purposes were not very extensive, and they were just to reinforce the financial market and bank credit. As the setting up of the HKMC was proposed by the Hong Kong Monetary Authority (HKMA), its purposes are no different from those of the HKMA. Yet, it subsequently issued tens of billion dollars of bonds. I am also grateful to Mrs Regina IP for giving us information which showed that the HKMC has recently engaged in high risk investments. The Financial Secretary can tell us later if that is the case. Furthermore, Mrs Regina IP may later discuss the securities investments in South Korea in detail. If the Government can do so and when the Financial Secretary has \$100 billion dollars of bonds in hand, we

absolutely have reasons to be worried for we do not know where the principal money in the Financial Secretary's hand will go.

The Financial Secretary is not ready to spell out the purposes clearly or specify that moneys in the Bond Fund must be placed with the Exchange Fund for investment, or set up a consultation committee with credibility. President, what will be the worst case scenario? Even the Financial Secretary has sincerely told us today that based upon his judgment in the future, he may change his mind and the future Financial Secretary may be another person other than John TSANG. Then this future Financial Secretary may completely change the investment strategies and withdraw the money from the Exchange Fund. He may make various kinds of investments through the Secretary for Financial Services and the Treasury whom he trusts (he has specified now that the Secretary is authorized). For example, he can buy the "three tunnels and a bridge", buy a building as what the HKMA has done, or invest in other structural products in the overseas markets. Who can stop him? If he is even unwilling to spell out clearly the purpose of the Bond Fund is just promoting the development of the bond market, we cannot rule out the possibility that it may use the Fund to meet government expenses.

Honourable colleagues, how can we support such a motion? We support the Government in a well-intentioned manner and we hope that the Government will be specific and put its pledge in black and white in the motion. Yet, the Government has failed to do so, which makes some Honourable colleagues ..... I think I have to quote Mr Paul CHAN's remark again: "it is only making a verbal promise", and how can the Government act that way? We are talking about \$100 billion and if that is not a verbal promise, why can it not be written down clearly? Why do I say that the Government "is only making a verbal promise"? It is because the Government has chosen not to adopt a legally binding method. In my opinion, this not only shows that the Government is too dictatorial, it also shows that it does not respect the rule of law.

**MR JEFFREY LAM** (in Cantonese): President, first of all, in my capacity as Chairman of the Subcommittee on Proposed Resolutions under Section 29 of the Public Finance Ordinance (PFO) (Cap. 2) and Section 3 of the Loans Ordinance (Cap. 61) (the Subcommittee), I am going to report on the main points of the Subcommittee's deliberations.

The Subcommittee has held four meetings with the Government to study the two resolutions proposed by the Government for the implementation of the Government Bond Programme (GBP) under Section 29 of the PFO (Cap. 2) and Section 3 of the Loans Ordinance (Cap. 61). The Subcommittee has no objection in principle to the implementation of the GBP to promote the further and sustainable development of Hong Kong's bond market.

The Subcommittee has noted that the institutional tranche of the GBP will be offered by way of competitive tender. A member is concerned about how the Government will ensure that this tranche of the GBP will be issued in a fair and reasonable manner. In this connection, the Government has proposed to underline in the Financial Secretary's speech for moving the proposed resolution under the Loan Ordinance that competitive tender will be adopted for conventional fixed rate Hong Kong Dollar government bonds issued under the institutional tranche of the GBP.

The Subcommittee has examined whether it is more appropriate to expressly spell out in the resolution under the PFO the purpose(s) for which the Bond Fund is established or the policy objective of the GBP. The Subcommittee has acknowledged that, in view of members' concerns, the Government will further explain in the Explanatory Note to the two resolutions that the policy objective of the GBP is to promote the development of the bond market, the Government has also undertaken to state the policy objective of the GBP in the Financial Secretary's speech for moving the motions regarding two proposed resolutions. However, some members maintain their view that to ensure the proper use of the sums borrowed under the GBP, the purpose of establishing the Bond Fund to promote the further and sustainable development of the local bond market must be spelled out in the legislation. As the Subcommittee has noted, some Members have indicated their intention to move amendments.

The Subcommittee has discussed the administration of the Bond Fund. Some members think that it should be explicitly expressed in the resolutions the public officers to whom the Financial Secretary may authorize the power to administer the Bond Fund, and the role to be played by the Hong Kong Monetary Authority (HKMA) in the implementation of the GBP. Some members agree with the Government that the Financial Secretary can decide the administration of the Bond Fund. The Subcommittee has noted that some member may propose an amendment to specify in the resolution proposed under the PFO that a Bond Fund Consultation Committee should be set up to assist the Financial Secretary in



the administration of the Bond Fund. On this point, the Government does not consider it necessary to set up a special committee for overseeing the administration of the Bond Fund, as the Financial Services and the Treasury Bureau will keep a vigilant oversight of the Bond Fund in accordance with the arrangements under the proposed framework of the GBP.

The Subcommittee is very much concerned about the expense and investment of the Bond Fund. As the moneys in the Bond Fund are raised in the market, they are not public moneys, and some members have expressed concerns about whether the investment of moneys in the Bond Fund could secure sufficient return for meeting the financial obligations and liabilities in relation to the sums borrowed under the GBP so that it is not necessary to charge upon general revenue. The Government has undertaken to state in the proposed resolutions under the PFO that the investments will be made in the manner the Financial Secretary may consider appropriate for the prudent management of the Fund. Also, the Financial Secretary would indicate the intended investment arrangement of the Bond Fund in his speech for moving the motion regarding the relevant proposed resolution.

President, I am going to express my personal views. I support the Government's GBP, and I have consulted those from the business and financial sectors about the GBP. They have expressed support for the GBP, and they think that it can promote the further and sustainable development of Hong Kong's bond market, and consolidate Hong Kong's position as an international financial centre. Hence, they hope that the GBP would be implemented as soon as possible.

President, I so submit.

**MRS REGINA IP** (in Cantonese): President, as Mr Albert HO has just said, all Members who have participated in the scrutiny of this government resolution welcome in principle the Government's development of the local bond market. We have raised some queries because we hope that the bond issue would be implemented by the Government in a better manner.

I would like to make the following points. First, I was upset when I found that the Government had proposed the resolution. Why had it been so late in

issuing the bonds? As far as I remember, at a meeting of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products last week, I asked Mr Martin WHEATLEY, Chief Executive Officer of the Securities and Futures Commission, one question. In setting up the Financial Market Development Task Force in 2001, did the Government have the purpose of allowing banks to engage in securities business at that time? He gave a negative answer. According to his understanding, it was to promote the issue of government bonds. That happened back in 2001.

Actually, I already heard that the Government intended to issue bonds before the reunification. However, as the transitional arrangements had yet to be made by the British Hong Kong Government before the reunification, there were difficulties in issuing long-term bonds. With a task force set up as early as in 2001, why has the Government waited until 2009 to implement the bond issue? What has happened during the intervening years? I think the responsibility does not lie in Secretary John TSANG; all the former Financial Secretaries should engage in self-reflection. I hope that the Government would explain to us one day what it has done over those 10 years? Was it cause due to the economic downturn? However, it was all the more necessary for new products to be launched during an economic downturn to improve the local financial market. Or, has the Financial Secretary forgotten about these essential tasks because of his devotion to the introduction of wine duty, estate duty or the transfer of the northern capital southwards to Hong Kong for making quick money?

Another thing that made me feel upset is that, if the Government had launched government bonds in early 2000 in a low interest rate environment — it is known to all that government bonds all over the world have zero risk; in particular, the credit rating of the SAR Government is very good. So, if government bonds are really linked up with the credit arrangement of the SAR Government and had the SAR Government launched these bonds early — many ordinary people would not have bought the fake bonds and minibonds. Now that the incident has caused much disturbance in society for a few months and has even caused death, the Government should ponder over this question of timing.

Second, besides the question of being too late, is the scale too small? The Government has proposed two resolutions in high profile, and also held several meetings to lobby us, but, the scale of the bond issue just covers a period of five to 10 years, and a sum of \$100 billion. Furthermore, in the first batch, only \$10 billion to \$20 billion will be borrowed, which are small amounts. As I have

pointed out at a meeting of the Subcommittee and as Mr Peter WONG, HSBC Executive Director, has said, the Government has set an excessively low target of issuing \$10 billion bonds a year. Ms Anita FUNG, HSBC Treasurer, has also remarked that, as at late 2008, there were \$230 billion exchange fund bills and bonds in circulation in the market. Given a continuous capital inflow into Hong Kong, the balance of the banking system exceeded \$250 billion. After browsing the website of the Hong Kong Monetary Authority (HKMA), I found that the liquidity of banks was \$240 billion on 6 July. In light of such a huge amount of liquidity, will the target of issuing \$10 billion bonds be too low?

The most astonishing thing is that, as just mentioned by Mr HO, the Hong Kong Mortgage Corporation (HKMC) has broken the records by issuing some \$20 billion bonds this year. In other words, while the Government is painstakingly lobbying us to endorse the resolution, it is just going to issue \$10 billion bonds while the HKMC whose establishment was proposed by the Hong Kong Monetary Authority (HKMA) has issued more than \$24 billion bonds in a year. Why is that the case? Why is the scale so small? Why has it not issued government bonds earlier and in larger amounts? The conspiracy theory inevitably comes into our minds. Is it because the HKMA does not want the Financial Secretary's government bonds to compete with the bonds of its "baby"? I am looking forward to the Financial Secretary's response.

Having said that the scale is small, I would like to say that I have met with the Financial Secretary and expressed to him my worry that the government bonds to be issued may be of secondary importance. I have also said at a meeting of the Subcommittee that some members of the banking sector have commented that the government bonds to be issued by the Financial Secretary are not a monetary base for the SAR. Hence these bonds cannot be used for borrowing from the HKMA through the discount window, so these bonds have a lower value for the bankers. On hearing that, I have had discussions with a number of bankers. A foreign banker has told me right away that he is very disappointed because this will affect the prices of the bonds sold at auctions. As a result, the Government will have to set a higher coupon rate and the costs of the bond issue will become higher. Therefore, I hope that the Financial Secretary would respond to this point. If the government bonds cannot be used like a monetary base as a collateral for borrowing through the discount window, can the Government act like the government of the United States or Singapore and put forward some repurchase agreements so as to increase the bonds' liquidity?

The fourth point is also about the purpose of the bond issue. The Subcommittee has discussed the matter and many members considered it a ridiculous thing at the time. This was because when we asked the officials why a Bond Fund should be set up, they responded that making interest repayments was the purpose. I can think of a similar scenario: my daughter borrows money from me to buy a car; when I ask her why she needs to borrow the money, she answers that she needs to fill the car with petrol. This is not an answer at all. If the open and aboveboard purpose is to promote the development of the bond market, then why does the Government not spell this out in the resolution as Honourable colleagues have suggested? Since it has not been spelled out, people will easily become suspicious. In particular, we only heard from the HKMA officials at our meetings that, out of fear for a judicial review applications; even the expression in a clause about making the best effort for the development of our bond market has not been spelled out. This sounds hopelessly stupid indeed. Unless there are some hidden agendas, or as shown in the information we have got, some private banks are afraid that the Government will do too well and take away their market shares. In a word, these reasons are very dubious and hardly convincing. The Legal Adviser of the Legislative Council has conducted some studies for us; and he has found that the five funds established under the Public Finance Ordinance, that is, the Disaster Relief Fund, the Land Fund, the Innovation and Technology Fund, the Loan Fund and the Capital Investment Fund all have specified purposes. Why can the purposes of these resolutions about the bond issue not be specified? In fact, I remain perplexed despite much thought.

I would like to make another point about investment. Why has the Democratic Party proposed setting up a consultation committee? I think that would be nice and I am very pleased to hear the Financial Secretary's response to that. Although he is reluctant to spell it out in the resolution, he is ready to consider the establishment of the committee. On the surface, the Financial Secretary has asked the HKMA to administer the proceeds from the bond issue and the HKMA has agreed to act as the "underwriter" of the proceeds. In other words, the return will not be less than that in the past three years — he has just referred to the relevant figures and we can see from the paper that it was not less than 6.8% in 2008. This appears very desirable on the surface; nothing needs to be done and the Secretary for Financial Services and the Treasury is just going to act as an accountant. Secretary Prof K C CHAN is responsible for the administration of the Bond Fund but he is just responsible for inputting

accounting information and doing calculations. The HKMA is responsible for the investment matter and it guarantees that the return would not be less than 6.8% in 2008. It looks very appealing on the surface but it may be better for a third party to be responsible, is it right? How much is the administration cost? Although the HKMA guarantees profits, what if there are losses in another area? It is just passing something from its left hand to its right because the HKMA's money comes from the taxpayers after all.

Thus, it is a great pity but we cannot help it. In view of the time constraints, I remember that Secretary Prof K C CHAN had told us not to hurry, but the Permanent Secretary corrected him and told us that there was an urgent need because the Government also wanted to implement the bond issue programme as quickly as possible. In our view, it did not matter because the last meeting was not even convened as only four members wanted to convene a meeting, so, we could not find out the reasons behind that. In the long run, would it be best for the Bond Fund to be administered by the HKMA? This is something worth rethinking.

In addition, many questions have still not been sorted out or answered. Some time after the government bonds have been issued, I hope that the Financial Secretary would expeditiously refer the bond issue to the Legislative Council for a review to ascertain if it has really promoted the development of the bond market. After the government bond issue, will bonds with different terms be issued one after another, forming an interest rate curve in the local market? Will it stimulate bond issues by more companies? Many experts from the financial sector have different opinions. Are \$10 billion bonds appropriate? Is the sum too small if \$10 billion bonds are issued in the first year? Is the sum still too small if \$100 billion bonds are issued within five to 10 years? Has the HKMC not issued \$24 billion bonds in one year? Why are the government bonds relegated to secondary importance? The Government should engage in self-reflection in this connection.

Hence, I also hope that, a year or two after the bond issue, the Government should note the market response and expeditiously refer the matter to the Legislative Council for a review of the actual situation of the bond issue.

Thank you, President.

**MR CHAN KAM-LAM** (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) proposed in 2007 that Hong Kong's bond market should be developed to consolidate our position as an international financial centre. It is because a mature bond market is very important to maintaining the viability of our financial system and consolidating our position as an international financial centre.

Developing Hong Kong's bond market helps increase the depth and breadth of its position as a financial centre and facilitate financing, giving the parties that seek capital financing an alternative. Besides, it can reduce excessive reliance on capital from banks and the stock market, diversifying capital sources and proactively deploying more hidden capital, so as to give play to the functions of local capital. Moreover, in the event of a new round of international financial crisis when enterprises and investors cannot raise capital from the international capital market, the local bond market will be able to resist the resulting impacts on the local economic activities.

In the past, the local bond market was ignored. On one hand, as the Government had a policy on break-even budgets, it was not necessary to issue bonds to make up for the financial deficits, unlike other countries that used to make up for the financial deficits through bond issue. On the other hand, most enterprises in Hong Kong were of smaller scale, and there was not a great demand for bond issuance while sizable enterprises were accustomed to raising capital through bank loans. Furthermore, the bond market in the United States is the only large market in the international arena; its size of issue, the bond circulation in the secondary market and the relevant derivatives markets cannot be outplayed by mere reliance on the market forces. Under such circumstances, the development of a bond market in Hong Kong and the Government's taking the lead to promote bond issuance will have decisive demonstrative and promotional purposes. The Government Bond Programme can guarantee the size of issue in the market and the stable and sustainable supply of bonds, which is crucially important in attracting local investors' participation in bond purchase.

Issuing government bonds to promote the development of the local bond market is an important financial measure that has been delayed for a long time and which should be implemented early. At present, given low interest rates in the market, investors tend to participate in low-risk investment programmes, so, it is a good chance to issue bonds. The resolutions on the bond issue should be concise and we think that it is not necessary to change any expressions in the resolutions. The three existing amendments have repetitive contents and are

proposed on the basis of casual speculations arising from a distrust of the Government, which will only impose unnecessary restrictions. Therefore, the DAB opposes the three amendments.

President, I so submit. The DAB supports the resolutions proposed by the Government under the Public Finance Ordinance and the Loans Ordinance to implement the Government Bond Programme. Thank you.

**MR ABRAHAM SHEK:** Mr President, the Hong Kong bond market has never been active due to the significant cost involved for businesses to issue bonds compared with borrowing from banks. Such a phenomenon is rather unusual for an international financial centre like Hong Kong, which has a thriving share market but a very small bond circulation. In light of the financial tsunami, the low interest rate environment offers a great opportunity for us to boost our bond market. Therefore, I believe that it is a good move to launch the Government Bond Programme (GBP) so as to increase the breadth, depth and liquidity of the local bond market.

As announced by the Financial Secretary, the GBP aims to promote the sustainable development of the local bond market. This will comprise bond issues for institutional and retail investors. The sums raised will be credited to the Bond Fund, while the Hong Kong Monetary Authority (HKMA) will co-ordinate the offering of bonds under the GBP and manage the investment of moneys in the Bond Fund. This must be a marriage of convenience rather than that of prudence.

As I mentioned in the House Committee meeting on 19 June 2009, despite the good intentions in launching a government bond programme, I am dissatisfied with the Administration's sloppy preparatory work for the legislative proposals. On 4 May 2009, we had our first meeting to discuss the GBP under the Panel on Financial Affairs. The Administration had only submitted an unacceptably short Legislative Council Brief for Members' consideration. We legislators shoulder the duty of examining government proposals. With such limited information, how can we possibly evaluate the pros and cons of the GBP? We cannot just trust the Government when it tells us to. Later on, we arranged another meeting under the Panel, requesting more details for further consideration. I am really disappointed with the slapdash arrangements of the SAR Government regarding the GBP.

Mr President, from 4 May till 8 July, the Administration gave this Council a mere two-month period to consider these proposals. There was definitely insufficient time to enable detailed deliberation on the GBP, and the constrained timeframe had created tremendous difficulties for Members. Yet, this Subcommittee still managed to hold four meetings within this short period. I sincerely hope that the Government will look into and correct such a counterproductive approach. Looking back to the securitization exercise of the five tunnels and one bridge in 2004, the preparatory work was much much better.

In the course of the Subcommittee's deliberation, I voiced my concern regarding the yield of the Exchange Fund Note (EFN) being used as reference in determining the coupon rate for retail tranche. The Administration explained that it is market convention for a bond issuer to use a representative interest rate benchmark to price a retail bond, and that the yield of EFN is one such benchmark commonly adopted by issuers of Hong Kong dollar bonds. The Administration also stated that the pricing mechanism of retail bonds to be issued under the GBP will follow market convention. What is it? At present, the exact interest rate benchmark to be used is yet to be determined. I sincerely hope that the Administration will make a timely report and announcement to this Council and to the public on this issue. The proposed limit of HK\$100 billion might be a small amount in terms of issuing bonds, but this amount is funded by taxpayers' money. There is no way that the Administration should diminish the transparency for the implementation of the programme simply because of the recklessness of its arrangements for the GBP.

As we all know, the HKMA will be co-ordinating and managing the future GBP. The HKMA's previous success in the investment of the Exchange Fund has been recognized by the public. Nevertheless, the proposed Bond Fund is intrinsically different from that of the Exchange Fund as it bears the responsibility of promoting the local bond market. Thus, higher levels of transparency as well as information disclosure are needed in order to maximize the circulation of the future government bonds. I sincerely hope that the Administration will provide details including a detailed assessment of the expected investment returns for the Bond Fund, the additional manpower required by the HKMA as well as the administrative costs incurred for implementing GBP so as to secure and enhance the credibility of our government bonds. I understand that some might think that Hong Kong is such a fiscally prudent place that there is no possibility that the popularity or credibility of our government bonds would go down. However, Mr President, the government bonds should be the role model for the bond market,



not the exception. As we are planning to further develop the local bond market by this GBP, we must set a good example for potential bond market participants to follow. Thus, the Administration must provide the aforementioned details in due course.

As for the amendments proposed by Mr KAM Nai-wai, Mr James TO and Mr Albert HO, I totally understand that they would like to clearly define the policy objective of the GBP. An inadvertent result of their good intentions, however, could create uncertainty about matters such as whether the policy objective stated can and will be achieved by the GBP, the Bond Fund or individual elements. Indeed, the legal adviser of the Legislative Council Secretariat briefed Members that the Disaster Relief Fund has listed its policy objective under section 29 of the Public Finance Ordinance. But we need to understand that the nature of these two funds are different. The market changes all the time, particularly the financial markets. These amendments are impractical and overly idealistic. Meanwhile, the Administration has already provided Explanatory Note for each of the proposed resolutions, which include the policy objective of the GBP. And the Financial Secretary has also stated the policy objective of GBP in his speech moving the motions regarding the two proposed resolutions. I think that these clarifications are acceptable and sufficient.

Mr President, rather than simply focusing on the GBP, we should not neglect the need to develop an active secondary bond market should Hong Kong wish to establish a mature market where further measures to encourage active trading may be required. I sincerely hope that the Administration will provide a timely report and table a subsequent proposal to this Council at its earliest convenience so as to avoid a recurrence of the disputes caused by the rushed arrangements we have just experienced with the GBP. As we all know, insufficient discussion only results in unnecessary misunderstanding and arguments. It would be a shame if our discussions on such a well-intended proposal descended into chaos because of the careless approach adopted by the SAR Government.

The Central Authorities have already authorized the mainland subsidiaries of Hong Kong banks to issue Renminbi (RMB)-denominated bonds in the SAR, and the Ministry of Finance is also considering issuing RMB-denominated government bonds in Hong Kong. I would say today's GBP is only a piece of the jigsaw and that we need to develop Hong Kong as an offshore RMB centre

and to enhance our position as an international financial centre before the coming of Shanghai. Therefore, I will support both of the proposed resolutions.

Thank you, Mr President.

**MS MIRIAM LAU** (in Cantonese): President, the SAR Government has amassed hundreds of billion dollars of fiscal reserve. In addition, it does not experience any long-term problem of insufficient revenue and excessive expenditure, so in fact, there is actually no need to issue bonds. The Government has also stressed a number of times that the issuance of bonds is only intended to invigorate the local bond market instead of using the money as government recurrent expenditure or to support large-scale infrastructure projects. However, for the sake of invigorating the local bond market, the Liberal Party agrees with the decision of the SAR Government to issue bonds, so as to consolidate our position as an international financial centre.

In fact, based on the GDP of Hong Kong of some \$1,600 billion in 2008, the scale of this programme spanning a decade to issue \$100 billion of bonds is only equivalent to about 6% of the GDP. Even if the present public debt of about 10% of the GDP is factored in, the scale of the programme is still smaller than that of other emergent countries in Asia. According to data of the local currency bond market for the first quarter in the Asian Bonds Online 2009, the proportions of the government bonds in Singapore, South Korea and Malaysia are as high as 43.1%, 48.9% and 44.7% of their respective GDP, not to say the United States.

Take the United States as an example, the amount of debts involving the Government directly or indirectly is in excess of US\$11 trillion, accounting for over 80% of its GDP. For this reason, in view of the present scale and pace of bond issuance in Hong Kong, there is still a long way to go if HK Dollar bonds are to join the ranks of global benchmark bond indices and attract major international players.

President, the Liberal Party is of the view that since the Government wants to issue bonds to promote the local bond market, we believe that if Hong Kong, as an international financial centre, does not have an invigorated bond market and only the stock market and other derivative products are available, ultimately, this situation is undesirable. For this reason, although the scale of the bond issuance

this time around is not large, if the Government Bond Programme (GBP) can be implemented smoothly, in the end, it will be able to provide quality "public debt" in the local bond market. On the one hand, this can cater to the investment needs of retail investors and institutional investors; on the other, this will help broaden the investor base by attracting more investors to buy HK Dollar-denominated bonds and increase the overall circulation of the bond market, so in the final analysis, this will have a positive effect on consolidating Hong Kong's position as an international financial centre.

President, I understand that some Members believe that efforts should be made to ensure that the issuance of bonds will not deviate from the original objective. This we understand and many Honourable colleagues also support this point. However, the Government said that it was unwilling to set this objective down in the resolution. In this regard, I once suggested that the policy objective of bond issuance be set down at the beginning of the resolution by way of a preamble. However, the Department of Justice is of the view that no matter if the objective of bond issuance is set down by way of a preamble or in the main text of the resolution, it might give rise to uncertainty in interpretation and even judicial challenges. In order to avoid unforeseen developments in the bond issuance programme, the Liberal Party accepts the authorities' proposal to set down the objective of the bond issuance in the Explanatory Note to the resolution and the Financial Secretary will also state and reiterate clearly the objective of the bond issuance in his speech on moving the motion. I think this is also an acceptable approach that is capable of stating the objective of the bond issuance clearly. We in the Liberal Party believe that since a reference is made in the Explanatory Note of the Bill and the Financial Secretary will also make a statement in his speech, with these moves, it will probably be difficult for the Government to take any action that will detract the Bond Fund from its original objective in the future because in fact, many safeguards have been set up to impose constraints on the Government. Of course, whether or not we trust the Government is another matter.

In addition, according to paragraph (e) of the resolution under the Public Finance Ordinance, the Financial Secretary can only expend money from the Bond Fund for the purposes of repaying the principal of, interest on, and expenses incurred in relation to any sums that have been borrowed and investing in the manner the Financial Secretary considers appropriate for the prudent management of the Bond Fund, and paying the expenses incurred in relation to the investments. Apart from these purposes, the Bond Fund cannot be used for

other purposes. In addition, paragraph (g) of the resolution prescribes that the balance held in the Bond Fund may be transferred from the Bond Fund to the general revenue, if so approved by the Legislative Council, when all financial obligations and liabilities are met. This provision will enable the legislature to monitor the Government effectively and mitigate concerns about any alleged government plan to put in place a private vault and squander the funds raised through the issuance of bonds.

President, in fact, bond issuance by the Government is not a business with guaranteed profits. In the event that the Bond Fund cannot cope with redemption applications or the payment of dividends, the Government will have to inject funds into it using its general revenue and it will be necessary to use taxpayers' money to fill the shortfall. Such a possibility exists. In order to avoid hurting taxpayers' interests, the Liberal Party believes that a prudent investment strategy for the Bond Fund must be adopted. According to paragraph (e)(ii) of the resolution under the Public Finance Ordinance, the Financial Secretary undertakes to invest in the manner he considers appropriate for the prudent management of the Fund.

In addition, the Financial Secretary has also pledged in his speech on the motion that the proceeds from bond issuance will be credited to the Exchange Fund for the purpose of investment and the income will be calculated on the basis of the "fixed rate" sharing arrangement applicable to the fiscal reserves at present. The Liberal Party believes that through this provision, that is, the provision in the resolution and the guarantees and pledges made by the Financial Secretary in his speech delivered to the legislature just now, significant guarantees have already been given. In view of the above pledges and the contents of the resolution, the Liberal Party believes that there is neither the need to further specify "injecting into the Exchange Fund for investment in a prudent manner" in the resolution nor the need to establish a superfluous "Bond Fund Consultation Committee", as mentioned by Mr Albert HO in his amendment.

President, finally, the Liberal Party believes that given the near-zero interest rate for savings accounts, the bonds rolled out by the Government is a piece of good news for many members of the public who have to depend on the payment of interests for their income because at least, they will not be driven into traps similar to the minibonds due to the need to maintain the purchasing power of their capital. When the authorities roll out a new tranche of bonds, it can make reference to the securitization of "Five Tunnels and One Bridge" and the

offering of past government debts by selling at a discount to retail investors, so that members of the public living on interests can have a greater margin to share the benefits of bond issuance with the Government.

With these remarks, President, I support the motion.

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

**MR RONNY TONG** (in Cantonese): President, a mature financial market can generally be divided into two parts, one being the fund-raising stock market and the other being the bond market. Although Hong Kong is a financial centre in Southeast Asia and even a global financial centre, the development of these two parts are in fact imbalanced. As Mrs Regina IP has said earlier, in fact, there had been talk of developing a bond market in Hong Kong for a long time but all along, the Government had been having discussions without making decisions and making decisions without taking action, so little has been achieved in this regard.

However, if we look at the present figures, we will find that the development of our financial market in this regard is extremely imbalanced. The amount of capital raised in the stock market is \$3 trillion in English — I hope I have got my translation of this figure into Chinese right — it should be the case that it is a market with a value of \$3 trillion. However, according to the information I have obtained, the bond market is a far cry from this figure. According to the information of the Hong Kong Monetary Authority for 2002, the bond market in Hong Kong only accounts for 35% of the GDP, increasing from 4% in 1991 to 35%. This is already a very substantial increase but if I remember correctly, Ms Miriam LAU has also pointed out earlier, our GDP in 2008 should be \$1,600 billion. If I calculate with my poor mathematical ability, 35% is only about \$400 billion and this is a far cry from the capital of \$3 trillion that I have just mentioned.

President, another undisputed point is that a sophisticated and healthy bond market can actually serve to a great extent to stabilize it. Particularly in times of financial turmoil, a sophisticated and healthy bond market can provide a safe haven to many investors. According to a very simple consultation we carried out in the financial sector and other relevant sectors, particularly in the insurance sector — the Honourable colleague of the insurance sector has not yet spoken —

we know that investors in Hong Kong long very much for an alternative investment channel. In particular, the insurance sector long very much for some highly stable and very low-risk investment products. In terms of demand, in fact, there is no doubt that Hong Kong badly needs to develop a bond market as soon as possible to secure its position as a financial centre.

President, more importantly, we have all along enjoyed quite a high status as a financial centre in Southeast Asia but at present, we are facing considerable challenges. Many Hong Kong people know, and Premier WEN Jiabao has also made it very clear, that Shanghai will catch up and all along, Singapore has been Hong Kong's arch rival. It has also surpassed us in this area. At least, they have already taken the first step in developing their bond markets and they have started earlier than us. As regards the rise of Shanghai, we hope that this will pose a benign competition but we also have to accept the challenge. I believe many people will agree with one remark made by WEN Jiabao, that is, we have to maintain our position as a financial centre and without progress, we will lag behind other people. For this reason, in fact, there is no time to lose in developing the bond market and we cannot allow other places around us, such as Singapore and Shanghai, to overtake us in our areas of achievements that we are most proud of.

President, I agree with Mrs Regina IP's remark earlier and I also think that \$100 billion is, to put it vulgarly, really "small change". However, there is always a beginning to everything and even though we are taking the first step now, Members can see from the amendments proposed by the Democratic Party that this matter is not without controversy. Similarly, after the Government has proposed the development in this area, there are also a lot of strong and different views in the Civic Party. These many different views can be classified into two types. The first one is: Since we have so much money, why is it still necessary to borrow money? This is the first ground of opposition. The second ground of opposition is: Will there be a great deal of risk and will this lead to a loss of public funds? I think these two concerns are justified and we have to think about these issues.

Regarding the first issue, I believe the answer has already been given, that is, although we do not need this sum of money, if we want to reinforce Hong Kong's position as an international financial centre, developing a bond market is essential. Moreover, we may have done so too late and the amount involved is also too small. Therefore, whether we need this sum of money is not the

decisive factor. If we look further ahead, we may not need this sum of money now but there is no guarantee that we will not have such a need in the future. Of course, we hope that we will not need it in the future either. However, I think that the goal of developing a bond market in Hong Kong or consolidating our position as an international financial centre is enough to justify my support for this proposal.

The second issue has to do with the risks. In fact, this is something that has all along bothered me very much. All along, I have been hoping to find some figures or facts to prove that there is no cause for concern. Frankly speaking, we all know that there is not any item of international investment or any financial investment product that is fool-proof. There are always risks and the question is how to evaluate the degree of risk. I think the present proposal put forward by the Government is a crucial decision, that is, this sum of money will not be kept in the Exchange Fund but will be invested together with the Exchange Fund. There is a difference between the two and later, when we talk about the amendments, I will explain further what the difference is. If we invest this sum of money together with the Exchange Fund, this move will serve the purpose of risk management because we already have some \$1,600 billion of capital out there in the market. If we only add \$10 billion to it, this sum of money will be spread so thin that it will be go unnoticed. For this reason, I think that in terms of risk diversification, this arrangement is acceptable.

In addition, judging from past figures — and I have to say "touch wood" — the return of the Exchange Fund in the past six years has stayed at 6% but of course, there were some ups and downs. With respect to the present bond market, as far as I know, if the number of short-term bonds is not too large, we may be able to receive 1% to 2% of interest. Compared with the usual rate of investment return, it seems that the risk is acceptable. For this reason, we need to strike a balance. In the face of such risks and the need to reinforce our position as a financial centre, is it worthwhile to undertake such a task? If we consider this carefully, I would think it is really worthwhile.

In addition, the foremost condition is that this proposal deserves the support of Legislative Council Members. When we scrutinized this motion in the Subcommittee, the great majority of Honourable colleagues also reached such a conclusion. Since we have such a conclusion, does it mean that if the Government adopts a wilful attitude and is unwilling to accept the amendments, we will have to vote down the resolution? When Mr Albert HO spoke a while

ago — he is not present now — he appeared to be very angry. President, I am quite familiar with such anger and it is not just today that I feel such anger. It has existed ever since I joined the Legislative Council in 2004. Frankly speaking, when the Government proposed some motions, it was for the interests of the Hong Kong public that we proposed some rational, very middle-of-the-road and moderate amendments. However, on which occasion was the Government ever willing to accept them? Talking about our anger, last year, there was the bill relating to the interception of communications and we proposed over 200 amendments. However, not a single one of them could be passed and we had a colleague who said, "Not a single one should be allowed to pass.". Mr LAU Kong-wah is not present now but this is his well-known comment. Was the anger back then greater than that today? President, the anger then was definitely far greater. I personally think that if we rule out consolidating Hong Kong's position as a financial centre merely on account of such anger, the Civic Party and I may not be able to do so. This is the first point.

President, the second point is: Are these amendments essential? If they are, I think I will probably support them. However, after looking at the amendments, I have some reservation. President, I will first talk about the issue of the objective. I believe the intentions of the Members concerned are good and I also agree with their intentions. I agree with Mr Albert HO and Mrs Selina CHOW's comment that ..... sorry, I mean Mrs Regina IP; you have perhaps taken her place ..... this is not what I mean, President, sorry, let me apologize to Mrs Regina IP first. Strictly speaking, the objective of issuing bonds is to raise capital and this is the objective of issuing bonds. In buying bonds, investors are lending their money. To us, of course, the development of the financial market is one objective but in fact, this is not the real and direct objective but one that I consider acceptable. What I wish to point out is that regarding this issue of the objective, in fact, we can have a very broad interpretation. Is it the case that without such an objective, the issuance of bonds will not really be an issuance of bonds? President, I think this is not necessarily the case. I think that it is better to have an objective than otherwise and setting it down in the resolution is certainly more certain than the Financial Secretary mentioning it in his speech. What is the difference? President, if we set it down in the resolution, it will be part of the law and all of us can judge by ourselves whether or not it will lead to judicial reviews. I think this may not necessarily happen but the question is: How should we weigh these two options? I believe that if the objective given by the Financial Secretary in his speech in the Legislative Council meeting is the same as our present objective, it is a political



pledge and not just a pledge made by Secretary John TSANG. Instead, it will be a pledge made by the SAR Government. For this reason, even if Secretary Mr John TSANG were to quit tomorrow or even if he becomes the Chief Executive, this political undertaking would still be binding to the SAR Government but of course, it is different from a pledge of the law or the effect of the law. Many people probably think that sometimes, a political pledge may be even more binding than a legal provision in actual practice and in real life. For this reason, I think that in fact, the objective does not constitute a major problem.

Perhaps I have to speak faster. Regarding the Bond Fund Consultation Committee, in fact, I have all along held that so long as we put a sum of money into the Exchange Fund, so that investments can be made through it, there should not be any problem. However, the wording of the existing provision is problematic because it states that the money has to be credited to the Exchange Fund but "credit" may mean that the money will become part of the Exchange Fund. In that case, the money will be bound by the legislation relating to the Exchange Fund and this may run counter to the approach that we hope will be adopted. If the meaning is not to credit the money to the Exchange Fund, so that it will become part of the Exchange Fund, the pledge made by the Financial Secretary earlier, that is, it will be managed by the Exchange Fund, is adequate in addressing this concern.

President, the third proposal is that we have to *(The buzzer sounded)* .....

**PRESIDENT** (in Cantonese): Your speaking time is up.

**MR PAUL CHAN** (in Cantonese): President, in order to further develop Hong Kong into an international financial centre, it is proper for the Government to issue bonds and it can even be said that this measure is taken is too late and the scale is too small. As an international financial centre, Hong Kong certainly cannot just focus on a single line of business and depend solely on the stock market. In order to invigorate the bond market, at the beginning, it is definitely necessary for the Government to take the lead in issuing bonds, so that institutional and retail investors can buy them, thereby increasing the scope and depth of the bond market in Hong Kong. Issuing bonds with various tenors can diversify the combination of bonds and arrangement can even be made to have them listed on the market, so as to promote the greater use of an electronic

transaction platform and hence promote circulation in the secondary market. Even as market demand is satisfied, it will also be possible to establish a more comprehensive and mobile "bond benchmark yield curve" with reference value. Doing so will help establish an indicator for the bond market in Hong Kong and give companies in Hong Kong a reference point when issuing bonds to raise capital. This will also give them another financing channel and give investors another investment option.

From a macro perspective, the competitors of Hong Kong as an international financial centre in Asia, that is, Singapore and Shanghai, are all eyeing a piece of the cake. In terms of the timing, at present, the interest rate is at a low level. For this reason, if the Government wants to issue bonds, it should do so as quickly as possible. Otherwise, as the saying goes, "After Suzhou, there will be no more boats to take" (This is the last chance that should not be missed). If we miss this opportunity, the interest rate will be higher if we want to issue bonds.

The credit rating of the SAR Government has been good and its finance is sound. At present, there is a large amount of surplus liquidity in the banking system. In addition, the exchange rate of the Hong Kong dollar is stable and there is no foreign exchange control. For this reason, the bonds issued by the Government will be highly popular among investors. These investors include members of the Hong Kong public, retirement funds, insurance companies and non-profit-making organizations unwilling to take high risks. For this reason, the issue of bonds by the Government will serve to broaden the investor base of the financial market in Hong Kong.

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

The ceiling of the Government Bonds Programme is set at \$100 billion and initially, bonds with tenors of two to 10 years will be offered. The sum raised will be credited to a fund to be established under the Public Finance Ordinance (the Bond Fund). The Bond Fund will be managed separately from the fiscal reserves and other government accounts. I think this arrangement is correct and necessary because through this arrangement, the Government will not be able to use the revenue from bond issuance to cover its expenditure, so the situation of reckless squandering can be avoided.

However, in order to protect the capital in the Bond Fund and secure a reasonable investment return, so as to honour the obligation of paying interest, the Government will appoint the Hong Kong Monetary Authority (HKMA) to manage the Bond Fund. As regards investment income, the "fixed rate" sharing arrangement applicable to the fiscal reserves made between the HKMA and the Government will be adopted. I believe this arrangement is appropriate and I will explain this in detail in my following speech.

My views on the amendments proposed by the three Members are as follows:

The amendment proposed by Mr KAM Nai-wai seeks to include the objective of the bond issuance in the resolution proposed by the Financial Secretary. I have all along been sitting here and listening attentively to the speeches given by Members. In the discussions of the Subcommittee, the Government conveyed the legal advice it had obtained, saying that setting out the objective of the bond issuance in the proposed resolution may give rise to uncertainty in interpretation. In that event, this may lead to litigation with unpredictable results and hinder the arrangement of bond issuance or even the development of the bond market, thereby incurring additional legal or financial liabilities to the Government. Although the likelihood of this risk is very small, if it is possible not to take such a risk, why should we do so?

Having heard Members' comments, I am also of the view that in fact, the aim of bond issuance on this occasion has been set out very clearly in the papers on bond issuance issued by the authorities, the speech of the Financial Secretary, the Explanatory Note of the resolution and the questions and answers between Members and officials. Given the abovementioned framework, if any official is so daring as not to abide by them, the Legislative Council and the public will surely not let him go easily. Therefore, should such a situation arise, the official concerned will have to take the great political risk of having to step down. Therefore, I consider the present arrangement acceptable.

As regards the amendment proposed by Mr James TO, its aim is to make the Government state its investment strategy explicitly. However, in view of the long-term nature of the programme, it may be necessary to make adjustments appropriately in response to market changes. For this reason, the Government wants to retain some leeway, so that it can do some fine-tuning in unforeseen or special circumstances. I believe that the Legislative Council will surely exercise

some oversight on the operation of the Bond Fund in the future and there will also be oversight from the Audit Commission. I believe that this arrangement is adequate, particularly given the fact that the size of the capital raised through bond issuance is quite small and this point is also relevant to the third amendment, that is, the Consultation Committee proposed by Mr Albert HO.

I believe that since the capital raised through the issuance of bonds will be handed over by the Government to the Exchange Fund for management and the abovementioned "fixed rate" sharing arrangement will be adopted, there is no need to establish another Consultation Committee. If the Government hands the funds raised through bond issuance to another team established separately for this purpose for management, it will then be necessary to establish this Consultation Committee. However, given the smaller scale of the Bond Fund and the pressure to repay the capital and pay interest regularly, this is really a risk that cannot be taken. If another team is set up to make investment, doing so is really unwise. If the funds are handed to the HKMA and the Exchange Fund for joint management and the abovementioned "fixed rate" sharing arrangement is adopted, it will be possible to enjoy the economies of scale arising from making investments through the Exchange Fund and the risk can also be diversified. This is an acceptable approach.

I believe that regarding the handling of the fiscal reserves, the surplus and the funds raised through bond issuance, what the Legislative Council has to pay attention to is what room for improvement there is under the present arrangement of having the HKMA manage the Exchange Fund. Of the assets of the Exchange Fund amounting to over \$1,000 billion, apart from the portion needed to provide backing to the reserve in US dollars, it is necessary to make extremely prudent investments with the remaining portion. However, is it possible to withdraw some of it and manage it separately by adopting a more proactive investment approach? I believe this is an important issue worthy of in-depth examination.

With these remarks, Deputy President, I support the resolution proposed by the Financial Secretary.

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

**MISS TANYA CHAN** (in Cantonese): Deputy President, just now, Mr Ronny TONG could not finish the last part of his speech in time, so I will carry on and raise this point of the Civic Party on his behalf.

Although the idea of a consultation committee is good, we have some reservation because we believe that regarding this consultation committee, its method of nomination will not really bring about genuine and independent oversight. In addition, it is possible that this consultation committee will enable the Financial Secretary to find ways to use some of the money for other purposes instead of handing it to the Hong Kong Monetary Authority. We also cannot see how, without the consultation committee, it will be impossible for us to make use of the revenue received through the Bond Fund to continue to assume our legal responsibilities and responsibilities in respect of the bonds. For this reason, the Civic Party thinks that the establishment of consultation committee is not essential. Therefore, we believe that this amendment is not of absolute importance. In this regard, we will not support the relevant amendment. Regarding the position of the Civic Party on the other issues, Mr Ronny TONG has already talked about them. I so submit. Thank you, Deputy President.

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

**MR ALBERT CHAN** (in Cantonese): Deputy President, when this Council was discussing the Mandatory Provident Fund (MPF) earlier, I have called the MPF a financial scam. But in fact, the Government's proposed arrangements for the so-called Bond Fund also smell quite "fishy". We will wait and see whether it is indeed another scam.

Deputy President, talking about bonds, I have put forward a detailed proposal on behalf of the Democratic Party way back in 1980 when Hamish MacLEOD was the Financial Secretary calling for early actions from the Hong Kong Government to issue bonds so as to promote Hong Kong's development as the centre of the bond market in Southeast Asia. Deputy President, how time flies and 19 years have passed since then. It is like finally woken up from its dream, the Government has now finalized a plan to promote the development of Hong Kong's bond market and tabled the relevant legislative amendments for our scrutiny. But I want to point out that the plan has many shortcomings, and I will not rule out the possibility that this plan could become another financial scam.

Deputy President, bonds should not be issued for the sake of building a bond market. Bonds should be issued for a specific purpose under proper regulation and the whole arrangement must be in line with some logical thinking. When I proposed the issuance of bonds back then, the Government was embarking on the 10 Airport Core Programme projects with a total expenditure of more than \$160 billion. At that time, the Airport Authority (AA) and the Mass Transit Railway Corporation (MTRC) had to borrow in the international market to meet the relevant financial requirements. The interest rates of such loans were more than 10% in some cases. I had condemned the Government then because if the construction costs were to be met by capital financing and borrowings, why did it not turn to the people of Hong Kong? At that time, interest rates offered by the banks for deposits were about 2% to 3%. If the Government could issue bonds through AA and MTRC and offer them to the people of Hong Kong, the people could earn higher interests. On the one hand, the international consortia would not stand to gain; and on the other hand, the people of Hong Kong could earn more interests, at a rate maybe even higher than what the banks offered for large deposits, while helping to finance local infrastructural projects. AA and MTRC could also save on interest costs. This was in fact a triple win solution which can help promote the development of Hong Kong's bond market, reduce interest costs of the AA and MTRC, and benefit the people of Hong Kong. Why did the Government not do so then?

What exactly is the present Government Bond Programme (GBP) about? Well, proceeds raised under the GBP would be placed under the Exchange Fund and used for investments or other speculative activities, possibly in stocks or foreign exchange. But proceeds from bonds issued by the Government should not be used for speculation. Instead, the Government should have a well thought-out plan on how the sums raised should be used, say to provide financial support for infrastructural development such as the Hong Kong-Zhuhai-Macao Bridge or the Guangzhou-Shenzhen-Hong Kong Express Rail Link which costs a hefty \$40 billion. At that time, I had suggested that the Government should establish a Tunnels and Bridges Authority to facilitate the development of infrastructure in Hong Kong in the long run. Under this proposal, the Government could put various tunnels, Tsing Ma Bridge, Shing Mun Tunnels and so on under the management of this Authority so that the proceeds from such facilities could be used to finance other infrastructural projects. This could enable better long-term planning for infrastructural development in Hong Kong because the Government would then have a clear idea about the revenue and expenditure of these facilities. Moreover, by comparing the revenue from

existing facilities with the interest payments required for the issued bonds, the Government could make better financial planning for its long-term investments and formulate a clear blueprint for infrastructural development in the long run. That was clearly the right way to go.

But instead of going down this path, the Government is saying that the proceeds will be used on speculative investments. I do not understand why the Government is acting so rashly without even considering the detailed arrangements. Why does the Government intend to use the sums raised from the GBP on speculative investments? In my opinion, this is typically going to the wrong side business, just like a useless second generation rich heir. At times, I have great difficulty understanding the mentality of the government officials. In fact, the revenue from bonds issued in overseas countries, particularly the United States, are often used to finance the construction of infrastructure or other developments. Come to think of it, as the Disneyland is not making a profit, maybe the Government can consider issuing Disney bonds and see if anyone is interested. However, there is no guarantee on the return and the bonds may become worthless.

Deputy President, I really hope the Government can learn some hard lessons from past mistakes. On 20 April, I have submitted a paper to the Government but the Government has paid no attention at all. Maybe the paper is just lying around somewhere. Anyway, those were the suggestions I have been making for many years. I have discussed those suggestions with Donald TSANG personally back then when he was working in the Treasury Bureau under Hamish MacLEOD. That was some 10 years ago. Now TSANG has already become the Chief Executive. But he is still doing things the wrong and incredible way. He just keeps on talking nonsense. Deputy President, I really hope TSANG can invite us for a good long talk someday so that we can pour our hearts out to him and ask him to do some good things for the people. My proposal was really a good one for it could promote the overall development of Hong Kong while benefiting the people and reducing the Government's burden in terms of public expenditure. Our proposal back then about issuing bonds, particularly for the purpose of raising capital to build the new airport and the airport railway, was really logical because it dovetailed with the concept of bringing benefits across the generations.

What is the concept of benefits across the generations about? According to our analysis, it is not justified for the present generation to fully pay for the construction of infrastructural projects that are to be used by future generations.

Of course, ZHU Rongji was really proud of what he had done. Upon stepping down as the Premier, he said he had left hundreds of billion dollars worth of assets for the use by future generations within his term. The beauty of issuing bonds for infrastructural development is that even though the government cannot afford the full costs of the construction projects now, the projects could still proceed with the funds raised through the bonds. Upon their completion and in line with the logic of benefits across the generations, these capital projects or infrastructure would generate annual income which can be used to contribute towards their operation or construction costs. In that sense, the then users are paying for the construction and operation of such infrastructure. This is really a very logical and sensible arrangement. Through the issue of bonds, the Government's burden in terms of financial commitment on public works projects, in particular major infrastructure, would be reduced. As a result, the Government could invest more in health services, education, child care, social welfare and so on. Under this arrangement, spending on these essential areas would not have to be curtailed due to financial pressures incurred by hefty capital expenditure for the construction of specific major infrastructure in a particular year or period. The logic is very clear indeed.

In fact, such an objective can be achieved through the present bond programme. But the Government has not done so. I do not know the reasons for the Government's present proposal, or maybe some financial experts have advised the Government that if the proceeds are placed with the Exchange Fund, then the same could be used on speculative investments. However, speculative investments may either gain or lose. Of course, with its substantial size, the Exchange Fund can more or less sustain any kind of risks. Even though substantial loss is incurred with the proposed bond programme, funds can be transferred from the Exchange Fund to make up for the "shortfall". Well, the Government has to make up for the "shortfall" in its investments on the Disneyland project. If the investment of the bond proceeds incurs substantial loss, the Government has to make up for the "shortfall" from the Exchange Fund. It seems the Government is really only good at making up the "shortfall", it is a "shortfall" government. But bear in mind, the "shortfall" is not made up by the salaries of the government officials but from the public coffer, that is, the hard-earned money from the taxpayers.

Hence, the League of Social Democrats is ..... Well, I have to say that on the surface, the Government's present proposal is just like a dream come true because the issue of government bonds is something that I have advocated for



more than a decade. But maybe the Government is so used to confusing the right and the wrong by calling a stag a horse that it simply cannot tell black from white. The Government is so used to thinking in this mentality that it has effectively turn a proposal that is, in my opinion, very practical and useful in resolving the Government's problems into a farce. It is neither a stag nor a horse. For these reasons, the League of Social Democrats is generally against the proposed resolution by the Government. Thank you, Deputy President.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I have already talked about the wonders of bonds before the Government has ever launched its bond programme. Well, the Government is quite frank with its present proposal as the Financial Secretary has just mentioned that its objective is to promote the development of the bond market in Hong Kong, that is, to build up the bond market. The proposal is clearly flawed because there is really no need for the Government to do anything to build up the bond market. Is that not the Government's belief to rely on the market? With the present proposal, are you saying that the Government is part of the market or that the market has become part of the Government?

The Secretary's favourite is CHOMSKY and he enjoys playing around with words in the name of linguistics. Why is the Government so keen on promoting the development of the bond market? It is all traceable. In the past, the Secretary had talked about developing an Islamic bond market but the Government's actions were very erratic. By now, the proposal to develop an Islamic bond market has vanished into thin air. I have already predicted that the Government would act like this. While the Government was talking about developing an Islamic bond market, there was not even one single restaurant serving dishes cooked with fresh Halal mutton in Hong Kong. How could Hong Kong develop an Islamic bond market under such circumstances? Do you expect the Islamic financiers to come here and have nothing to eat? How can the Government turn the interests of the Islamic bonds into profits?

Nowadays, we want to talk about profits, right? Yes, the Secretary had proposed to develop an Islamic bond market. He said so himself. But like the concept of Progressive Development, development had halted before it even

started. Come on, buddy, please stop fooling us anymore. Suddenly, you think of something on a whim and come here to ask for our opinion. Honestly, it is very difficult to support your proposals. Just like this case, we said we would support you and now, you are backing off. We have spoken passionately about your proposal to develop an Islamic bond market and praising it as an ingenious idea to tap into the Islamic financial market and what not. We also said the Islamic financial market was a way out in the current world economic conditions because the management of Islamic banks was not as greedy as that of the western countries. Did we not say so? But did you decide to do that? Not really. Hence, it is very difficult for us to support the Government's proposals. You treat your own proposal as a "shouzhi" (手紙) — do you know what "shouzhi" is? As someone who received his education in English, you may not know what it is. "Shouzhi" is literally "hand paper", that is, toilet paper to wipe your butt and is discarded after use.

Today, you come here to bother us again with your proposal to promote the bond market. I have asked time and time again why on earth do we need to issue Government bonds when we have no internal or external debts, and no military expenditure? Are the bonds issued for the Government to engage in speculative investments or gain from the interest differentials? If that is the case, the Government might as well engage itself directly in speculative investments. The present proposal is so incomprehensible and I really could not care less. But it is like that in this Chamber. It is always better to have something than nothing. This Council might as well be called "better than nothing Council". We always want to have something rather than nothing. So we just endorse whatever that comes along, is that right? That is what the whole thing is all about.

Financial Secretary, because your speech was so boring, I had to occupy myself with some reading. I just read a poem entitled "讀史雜感" (Random Thoughts on History) with the following four lines: "莫定三分計，先求五等封。國中惟指馬，闔外盡從龍。" I will just talk about these four lines because even if I read out the next four lines, I bet you will have no idea what they are about. The meaning of these four lines is quite simple. The first two lines, "莫定三分計，先求五等封" refer to government officials who have not yet thought about a comprehensive plan to rule the country, but are preoccupied with the thought of being awarded noble titles. As for "國中惟指馬", I think the Secretary knows the meaning all too well because it refers to someone like him, someone who calls a stag a horse. "闔外盡從龍" means all the people who are

outside the city gate want to become government officials and side with the rich and powerful. Buddy, who is the rich and powerful you are siding with? Let me tell you, you are siding with the rich and powerful in Beijing. I have said so many times in this Chamber.

The Financial Secretary proposes to issue Government bonds in Hong Kong and the Mainland is also planning to issue its sovereign bonds here. Let me put it hypothetically: the Government is issuing bonds here and plans to use the proceeds to buy the Mainland's sovereign bonds. The whole thing is really that simple. There is no hard and fast rule in the relevant provisions because the Government wants to make it easier to buy the Mainland's sovereign bonds later. Buddy, the Mainland is also using the hard-earned money of the people to buy sovereign bonds of other countries. Buddy, you might as well directly buy US Treasury bonds instead. Buddy, what are you talking about? In the past, bonds had been issued to obtain loans from the Asian Development Bank for the construction of the Mass Transit Railway (MTR). At that time, the British Hong Kong Government had yet to come under the helm of Mrs Margaret THATCHER and was still practising Keynesian economics by building the MTR and creating employment. Finally, the MTR was built in Hong Kong.

At present, the Government has a huge fiscal reserve. So why does it have to issue bonds? I am asking you why. The answer is the "Big Brother". The "Big Brother" is saying that now is the time to develop the bond market and issue sovereign bonds. But why do we have to let you do so? If the Government really believes in market forces, then should it induce the market to do something it has not done so far? If the Government is to issue bonds, how come such money from the Hong Kong people is not used to build more hospitals and schools but instead used to buy the sovereign bonds of the Mainland? Let us remember that we have to pay interests for the bonds issued. If the bonds are issued to raise funds for speculative investments, that means our money is being gambled away. I have said so many times before that the present plight of the victims of the Lehman Brothers incident arises out of their belief that they would partake the profits from international speculative investments. They are just like LIU Bang who would feed on his father's flesh — this is to partake in one's own flesh and blood. That is what you are trying to do.

Today, the Financial Secretary has moved this resolution at the last meeting of the present legislative session. We are just too exhausted to deal with you. That is why you are so fearless. I just want the Financial Secretary to tell me why do we need to issue government bonds now? If the bonds are issued

because of orders from the Central Authorities, then can they do one thing for us? Can we implement dual universal suffrage in 2012? Buddy, the Central Authorities are always asking us to do things. They want to develop an Islamic bond market . . . . . In fact, I do not know whether this is an order from the Central Authorities, or maybe this is just a whim of some particular person in the Central Authorities.

So, what is the whole point that I am driving at? That is our Government is illogical. With so much money put in reserve, it is now proposing to issue bonds. I am really at a loss. Do we not have money? Should the bonds be issued to finance the construction of infrastructure or to engage in speculative investments? If the Government is saying that the purpose of the bond programme is to finance infrastructural development, create employment or build more hospitals in the community, I will let you do so. But buddy, that is not what you are going to do. The Government has so much money but it is unwilling to spend any of it. The matter is really very simple. So far, the Financial Secretary has not explained why the Government needs such hefty fiscal reserve. There is enough reserve to meet our expenditure for 12 months even without any income from taxation. Why does the Government propose to issue bonds when it has so much money already? Do you not have anything better to do?

Having said so much, I am just driving at one point, that is, all these are because you have been ordered to do so by the "Big Brother". That is why the Financial Secretary is here today and talks about nothing but nonsense. You might as well ask ZHOU Xiaochuan to come here today and talk about how the issue of bonds can benefit the people of Hong Kong. But it is simply not true. Financial Secretary, if you want my support, yes, you can. If you want to issue \$100 billion of bonds, then you should do good things with this \$100 billion by establishing a fund to implement a universal retirement protection scheme. If you do not have \$100 billion, you can issue \$100 billion of bonds and use the proceeds to establish a fund to implement an unemployment financial assistance scheme.

Would you use the proceeds to set up these funds? No, you would not. You only want to engage in speculative investments. Then, why should I let you do so? Financial Secretary, you have said you are a fan of CHOMSKY. So let me read you a passage about CHOMSKY's reflections on the Kennedy rule. The year was 1992 when Bill CLINTON was running for presidency. Were you

in the United States at that time? CHOMSKY was criticizing a billionaire candidate. As we all know, this billionaire candidate, Ross PEROT, was funding his own campaign for presidency, and he had even beaten George BUSH. Chomsky said, "It seems more than coincidental that fascination with tales of intrigue about Camelot lost reached their peak in 1992 just as discontent with all institutions reached historic peaks, along with a general sense of powerlessness and gloom about the future, ....." Of course, BUSH was sending troops to Iraq. "..... and the traditional one-party, two faction candidate-producing mechanism was challenged by a billionaire with a dubious past, a 'blank slate' on which one's favourite dreams could be inscribed. The audiences differ, but the JFK-Perot movements share a millenarian cast, ....." So what is this cast? Well, you just keep on listening. I am not sure if you have read the book. Since you always tell the *Hong Kong Economic Journal* that CHOMSKY is your hero, I wonder if you have read this book. I wonder if you understand what he was saying. If you can say it out, I will stop reading.

But of course, you do not understand. I will now read this for you, "..... reminiscent of the cargo cults of South Sea islanders who await the return of the great ships with their bounty." Buddy, "these developments tell us a good bit about the state of American culture at a time of general malaise, unfocussed anger and discontent, and effective dissolution of the means for the public to become engaged in a constructive way in determining their fate."

That is exactly what Hong Kong is like, buddy. We cannot determine our fate now. You have nothing better to do, and you blindly follow the order from the "Big Brother" to engage in speculative investments. Have you thought about the grass-roots in our society? The \$100 billion is like flying around and you have specifically said that the funds would not be used for the development of infrastructure. What are you talking about really? There is no hospital in Tin Shui Wai. Thanks to you, I am now painting there everyday to comply with my community service order and I know all the problems in the district. Do you know the Government should allocate more resources to Tin Shui Wai? Why engage in speculative investments instead? Are you not working under the concept of Progressive Development? Where is it now? Everything the Government does are just one-off moves.

If you really have no money, just tell it to me, "Long Hair". You can tell me the Government has no money because the Central Authorities are strangling our neck us with various provisions under the Basic Law such as the principle of

keeping expenditure within the limits of revenues, and so on and so forth. If that is the case, I will lend you money and you can defy the "Big Brother". But that is not what you are doing. You just follow the orders from the "Big Brother" to develop a bond market in Hong Kong so that everyone in the country will engage in speculative investments and the Taiwanese are also invited to buy the bonds and also the mainland sovereign bonds as such bonds are to be issued in Hong Kong soon.

Buddy, how dare you call CHOMSKY your hero? CHOMSKY will never do something like this. He will never agree to be the Treasury Secretary for REAGAN or BUSH. Buddy, is that right? At least he will speak his mind out like Paul KRUGMAN, and make some effort to decline, right? You always say one thing and do another. I bet not too many people understand what I am saying to you today. But there is nothing I can do. Deputy President, those words really come from the bottom of my heart, and I have to let them out. A political regime must have ethics, principles and a mission before it can gain public power through general elections. In fact, John KENNEDY was a bad guy but he was handsome and eloquent. So he could do whatever he wanted after he had defeated Richard NIXON.

Buddy, but is that what you are doing? No. We are lashing out on you today and all our criticisms are justified. We criticize you for calling a stag a horse but still you are safe and sound because you have got enough support votes. Buddy, I have never seen a more shameless government. Even with hefty fiscal reserve, the Government is insisting on issuing bonds to encourage speculative investments. Is that not what your proposal about, buddy? Is it really necessary?

Financial Secretary, go back and read more CHOMSKY because language is very powerful and it must be logical. Today, you have no logic, and it is just like my repeated criticisms on the Government. It has no logic, no shame and no remorse. I have said so just now, I meet an old man who makes his living by picking up discarded cardboards. But you choose to put icing on the cake by developing the bond market to create more wealth for the rich. If the Government is not trying to do more on social welfare, what else could it do? The Secretary should just go home and reflect on his mistakes, or he can join the confession team led by Donald TSANG. Instead of pretending to be the good guy here, he can confess to Cardinal Joseph ZEN.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up. Does any other Member wish to speak?

**MR JAMES TO** (in Cantonese): Deputy President, as Mr Albert CHAN said earlier, as early as the British Hong Kong era, HUANG Chen-ya, SIN Chung-kai and I in the Democratic Party had along been urging the Government to issue bonds for almost 20 years. Of course, our purposes were indeed not the same. As Mr Albert CHAN said, we proposed to issue bonds for the sake of developing infrastructure. It was what we said back then. However, in the present situation, as SIN Chung-kai told me a few years ago, the purpose of issuing bonds was to issue bonds. It was because we felt a need to promote the development of the bond market. Naturally, owing to different purposes, the whole set of regulations would not be the same. We cannot keep from others, especially those bond purchasers, the purpose, regulation framework and the governing provisions for issuing bonds.

I still remember Premier Zhu Ronji said (the economic situation was not so good then) that if Hong Kong were to issue bonds, he would be the first one to buy them. I think Members should still remember that. Thought he may not have too much wages after he has retired, if Hong Kong is going to issue bonds now, I think he would buy some if he has the chance.

A lot of Honourable colleagues took part in the debate today. My response to their views is: We have to ask ourselves whether or not we have a whole set of regime in risk management. Why do I say this? For example, after obtaining the money, we have to ask the Administration what it is going to be used for. For this reason, we have to ask it to state clearly the policy objective. If bonds are really issued for the sake of issuing bonds, and not for — for example, not for developing infrastructure as some Members suggested. If it is not the case, then the Administration has to make its investment prudently. Though there is the so-called tenor of two to 10 years, in fact, such term is not stipulated in the provisions. According to the provisions, the bonds will exist until the Fund is to finish running its natural course. As it is a resolution with legal effect, unless it is repealed, otherwise the bonds can theoretically be issued with a tenor as long as 30 years, 50 years or even 100 years, provided that there are people who buy them, and it just depends on whether people want to buy them. The American Government also issues bonds with a tenor of 30 years.

However, will the Hong Kong SAR Government do so? That is not for me to know.

Yet, as it is not stipulated in the provisions that the tenor of bonds shall be within the range of two to 10 years, theoretically speaking, the Administration can issue bonds with longer or shorter tenors, and it can revise the ultimate investment portfolio and objective accordingly. The Administration may also argue that, "It seems that infrastructure is an investment providing stable income, we may as well invest our income in infrastructural projects." Some Honourable colleagues even wondered if our money would be invested in mainland bonds. Nonetheless, if that is the case, then it will be very funny. It is because the mainland bonds invest in American bonds. In the end, we will have nothing but bonds. We have to pray for each other, hoping that none of us will die. Otherwise, it will be the end for both countries. Apparently, we must have a whole set of regulations.

Nevertheless, with regard to codifying it in the law, the Government's argument is: Firstly, there is an uncertainty in the law. About the uncertainty in law, we have no detailed discussion on the topic yet. When the Government said so, some Honourable colleagues just took its words without asking any question. If the Government does have its justification and can explain it in detail, I would prefer it to hold a closed-door briefing. If the Government thinks that it is legal advice that should not be disclosed to the public, then it would have no other choice. However, it has not done even that. Before we have any thorough discussion, the Government has concluded that it would give rise to legal uncertainty.

This may of course make us recall that at the time of the listing of the Link REIT, someone instituted a judicial review. Therefore, the Government may be too panicky and get unnecessarily scared (that is our guess) that it refuses to adopt this kind of approach thereafter — just as Mrs Regina IP has said — to codify these basic provisions in the law. It should have been the best effort to make, which means to include it in the law with the best intention. According to the experience in past judicial review cases, if the basic provisions are set down in a very broad manner, the Court usually would not play the role of the Administration by interfering or administering government affairs in such a trifling manner. However, as the Government has this worry, it refuses to include in the law some basic legal principles, even with the examples that have



been cited by other people about the objective of other funds. We can see that we have law on one side, and risk management on the other.

I believe that in a community, the Government cannot not tell people that it has certain worry, therefore nothing can be written down in the law. Let me make a great compromise, if the Programme is indeed delayed several months (the listing of Link REIT was also delayed several months) as a result of judicial review, then what should we do? Let us think and we must remember, we are not pressed for time, at least the Government did not say so. It is not because other banks or institutions are taking advantage of the prevailing low interest rate to issue bonds earlier that we have to press ahead with it, so that we will not be lagging behind others and we do not have to catch up after they have issued bonds.

Let me make another great compromise, if there are indeed banks or other institutions jealous of the Government for issuing bonds, then we must bear in mind one thing, that is, if the market is so vibrant that everyone wants to issue bonds at this moment, it means that we have too much cash around, why bother to issue bonds then? If banks have so much money, do they need to issue bonds? Honestly speaking, the issuance of Renminbi bonds by the Bank of East Asia was only a gesture to support the promotion of the Renminbi bond market.

Therefore, the Government neither has any justification, nor has it explained in its paper that we have to get ahead of others in doing that. Let me make yet another compromise, even if there are certain obstacles resulting in a delay of several months, what is the problem? You have to bear in mind that, in the investment environment as a whole, if there is an increase in the price, that is, the base point, does it mean that there will be problems that the Government cannot overcome? Besides, if it means to boost the bond market, given that the bond market is already like that, do we really need to be the first one to do it? That is why some people, including those in the banking and investment sectors, are asking the same question. However, it is not the case for the Administration. If so, why can it not include these basic provisions and information into the law?

In addition, someone mentioned about flexibility, investment and so on, asking why we have to include the objective into the provisions. First of all, I want to explain to Mr Ronny TONG. In fact, the Government is trying to tell us that, if we stipulate that the sums raised under the Programme will be injected into the Exchange Fund, there will be technical problems in taking the money out.

However, I want you to look at it clearly, the present wording is "injecting for investment", it does not mean that it cannot be taken out. The sums are only placed with it for investment. For this reason, "injecting for investment" is not the same as giving it the money. Technically speaking, it is not like water draining into a large reservoir. It is certainly not the case.

The Government would say that these sums are not used for plugging up holes. Other Honourable colleagues may say that if it is so set down, then the money cannot be used for other purposes. If I just look at it from the legal angle, it is not impossible. Why is it so? It is because, firstly, it is never said that these bonds will necessarily have a tenor of 10 years. In other words, the bonds can be issued with a longer tenor. As such, as far as it is managed in a prudent manner to repay the interest on a regular basis, the tenor can be longer. The tenor of bonds does not necessarily have to be so short.

Secondly, the meaning of plugging up holes is not injecting the sums in the Bond Fund for social welfare purposes permanently. Under the present provisions, it is definitely impossible. Nevertheless, as we do not want it to be used too broadly, we therefore spell out that the money should be used for investment. However, we should bear in mind that, as seen from this angle, we are talking about investment to be determined by the Financial Secretary. That is to say, if it is written in the provisions, it should state that it is about investments that the Financial Secretary thinks should be made under certain circumstances. If it is not included in the provisions and it is only mentioned in the Explanatory Note or policy, different Financial Secretaries and Chief Executives may revise the policy. As such, he said he was an accountability official, I do not know whether the Civic Party thinks that ..... He just got hold of the Financial Secretary, saying that even if the Financial Secretary becomes the Chief Executive, he would still have to subject to restraints. The worst thing is, if the Financial Secretary is not going to become the Chief Executive, I do not know, the post may be taken up by another person. If his successor changes the entire management, can we pursue the matter with the person in charge of the relevant office, saying that John TSANG said so at a certain time? That person may say, sorry, I do not share the same view. Honestly speaking, many policies implemented by Antony LEUNG were different from that of his predecessors. For this reason, if it is not legal binding, problems will arise.

Members may say that the Government may require some flexibility. From the government papers, we can see that it says there is sufficient room to

cater for some fine-tuning in its investment strategy under unpredictable and special situation. We should bear in mind that if a fine-tuning is indeed sufficient, then any revision made is not necessarily urgent. If it says, no, we are talking about some major unforeseen incidents which require abrupt changes. If it is so, then it may say that the Legislative Council will not have enough time to amend the resolution. It may be the case. However, that is not what the Government is saying. It is only talking about the fine-tuning arrangement under unpredictable and special situation. If it is the case, then there is no question of not having enough time to submit a resolution to the Legislative Council for amendment.

Another danger is, when it comes to investment, if it is decided by the Financial Secretary, as long as he considers it as prudent, he is capable of reaching anywhere. Many Honourable colleagues quoted a number of examples earlier, are these examples in line with ..... Even if he is politically accountable, can we be sure that he would not be able to live up to his pledge? It is difficult to say. But everything should be alright as the pro-government camp must have enough votes. If you talk about accountability, he would say that he has been acting in a prudent manner. For certain places, such as the Mortgage Corporation mentioned by Mrs Regina IP, you may believe that theoretically, they would not act rashly. However, it still made a mess in Korea, right? Are we supposed to buy certain assets of our country? He would say that if it is a Hong Kong dollar denominated bond, then we will have to repay the interest in Hong Kong dollars, it may not be possible if it buys assets of Renminbi value. However, it is not necessarily so. Why is it so? It is because if the investment is safe enough, then why can you not do it? Of course, someone may argue that if the money is injected into the Exchange Fund, it may also be used recklessly. Yet, we have to bear in mind that the Exchange Fund is also subject to restrictions. Besides, as the amount involved is enormous, any change in the investment portfolio may cause turbulence in the entire community. It is completely different from the changes brought about by the proposed sum of \$100 billion.

When he takes the first step, he will certainly not proceed through the Exchange Fund. He will first step back, then tell people that there is something good before proceeding to make arrangement. If that thing looks safe and sound, no one is going to stop him. Why do we need to have the Legislative Council to act as the final gate-keeper? It is in fact very simple. Constitutionally, the Legislative Council is always the final gate-keeper for the

budget and all the fiscal expenses. As such, if the sum of \$100 billion is really raised under the Programme, the money may be used to make investment that is considered prudent. As representative of the public, the Legislative Council has along been acting as the final gate-keeper in finance matters at the constitutional level. Therefore, it has to discharge its duty in making the final decision. The questions it should ask include whether the deal is in the best interest of creditors and the public? Whether the money is going to be used for plugging up any hole in future? Remember, what I am talking about is making the public to plug up holes. Why do I say so? According to the resolution — when the Programme is launched, I do not know whether the Financial Secretary would say that it is a principal protected product. It will be really interesting. In a meeting of the Lehman Brothers Incident, I asked him whether he had the guts to say that the notes were principal protected. This is really important because he is going to prepare the Budget. If he says it is principal protected, when the investment income is insufficient to meet the principal or even the principal plus its interest, can he guarantee that the Legislative Council will approve to transfer money from the general revenue to fill up the hole of \$100 billion? If it is not the case, can he say that it is principal protected?

As such, as the final gate-keeper in finance matters, why does the Legislative Council — while the Government is the proponent, the final decision rests with the Legislative Council, has to fight for this power? Why is it necessary to specify this power in the provisions more specifically? Furthermore, why does the Financial Secretary say that the approval of the Legislative Council would be sought when amendment is proposed to this resolution? There should be certain logic behind it.

Deputy President, my last point is, some Honourable colleagues have said that this resolution is not that perfect because we should instead issue Renminbi denominated bonds. If we issue Renminbi bonds, I think it would be another ..... If I were the SAR Government, it would mean that we have to repay interest and principal in Renminbi. In other words, we may have to purchase Renminbi assets. Though the future of Renminbi looks promising, when it is going to come true? Where will it lead us to? What is going to be the situation? I only feel that, if we adopt the present mode that is so lax and not in line with the principle of rule of law, and to issue bonds for the sake of issuing bonds, then it is tantamount to saying that the purpose of life is eating and excreting. It will be really funny, why would people live for this purpose?

**MR KAM NAI-WAI** (in Cantonese): Deputy President, two Honourable colleagues of the Democratic Party have just pointed out that the Democratic Party is in support of the issuance of government bonds. But then we feel that the approach adopted by the Government this time is highly inappropriate at the technical level. We therefore put forward three amendments to the resolution.

As we all know, if we issued bonds at an earlier time, it would be in fact a very good timing. In view of the low interest rates, many people may wish to earn more interests by investing in some financial instruments. This can be seen from the robust sale of minibonds. Under the prevailing low interest rates, it is understandable that people would tend to look for investment tools in the retail market.

Nevertheless, I would like to respond to the remarks raised by some Honourable colleagues just now. They asked if the amendments moved to the resolution indicated that we had no confidence in the Government. It is not that we did not trust the Government, but as Mr Abraham SHEK just said — Mr SHEK basically supports the Government — neither the time allowed for scrutiny, nor the information provided was enough. As the Government failed to provide us with enough information, we found it difficult to scrutinize the resolution.

If we can have great confidence in the Government, then we would not see the following situation: after the minibonds had been approved by the Government, the Chief Executive told us all of a sudden that minibonds were not bonds at all. As such, how can Mr CHAN Kam-lam of the Democratic Alliance for the Betterment and Progress of Hong Kong ask us to trust the Government? I trusted the Government, so I bought the minibonds, but then we were told all of a sudden that minibonds were not bonds. To whom should we trust? We must adopt a critical attitude towards the Government's words, to find out if they are true.

As we can see, the three amendments today, including Mr Albert HO's amendment, Mr James TO's amendment and my amendment, represent in fact three steps. My amendment merely adds the purpose of the establishment of the Fund, but the amendments of my two other colleagues include the setting up of a Bond Fund Consultation Committee and injecting the Bond Fund into the Exchange Fund for investment. There are all together three elements. Even if

we think that we should not inject the Bond Fund into the Exchange Fund for investment or set up a Bond Fund Consultation Committee, we should at least look at the fact that why we do not have any purpose for establishing the Bond Fund.

I hope Members can take a look at the original resolution. I do not know whether Members or Mr CHAN Kam-lam has read about it. In relation to the purposes, according to paragraph (e)(ii) of the resolution, the Financial Secretary may expend money from the Fund for the purposes of repaying or, if appropriate, paying the principal of, interest on, and expenses incurred in relation to, any sums that have been borrowed under section 3 of the Loans Ordinance for the purposes of the Fund. The Financial Secretary is in fact only pointing out the use of the money of the Fund, but not the purpose for setting up the Fund.

Besides, paragraph (e)(ii) also mentions that the Financial Secretary should invest in the manner the he considers appropriate for the prudent management of the Fund, and pay the expenses incurred in relation to the investments. This part is in fact about the attitude and manner the Financial Secretary adopts in managing the investment of the Fund and paying the expenses. This is also not the purpose for setting up the Fund.

Some Honourable colleagues have mentioned just now that the Government did have its purposes for setting up various Funds, and such purposes would be laid down clearly. Let me quote the example of the Exchange Fund Ordinance.

Section 3(1) of the Exchange Fund Ordinance provides that: "There shall be established a fund to be called "the Exchange Fund" (外匯基金) which shall be under the control of the Financial Secretary and shall be used primarily for such purposes as the Financial Secretary thinks fit affecting, either directly or indirectly the exchange value of the currency of Hong Kong and for other purposes incidental thereto." The purpose of setting up this Fund is in fact clearly laid down here. It is explicitly set down in the Ordinance. In addition, it also mentions that "the Financial Secretary may, with a view to maintaining Hong Kong as an international financial centre, use the Fund as he thinks fit to maintain the stability and the integrity of the monetary and financial systems of Hong Kong." As a matter of fact, the purpose of the Exchange Fund has been clearly stipulated in the Exchange Fund Ordinance.

If we approve the issuing of bonds, just as some Members have said, I believe that the Government would not call them minibonds. Yet, would the Government change them into other types of bonds? Earlier on, a Member questioned whether these bonds would be used to plug up holes. Would they be used to securitize our infrastructure? In fact, we only want the Government to set down clearly the purpose of issuing bonds.

I hope Honourable colleagues can deal with the issue of funding in a prudent manner. As we all know, we will proceed to the next resolution later, which is a resolution moved under the Loans Ordinance in relation to the funding of an amount of \$100 billion. This is what we understand. In the bond market, if we spread the \$100 billion over a number of years, it is not considered a huge sum. However, if the Legislative Council is to approve the funding of \$100 billion under the Loans Ordinance, it is not a small sum of money. We must act cautiously. We do not want the resolution to become a funding that is unregulated, uncontrollable and not under the supervision of the Legislative Council.

Thus, I hope Members can support the amendments moved by the DP, including adding the purpose of the establishment of the Fund, the setting up of a Bond Fund Consultation Committee and injecting the Bond Fund into the Exchange Fund for investment. Thank you, Deputy President.

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): Financial Secretary, you may now speak on the three amendments.

**FINANCIAL SECRETARY** (in Cantonese): Deputy President, I would like to thank Members for the valuable views they have expressed on the Resolution under section 29 of the Public Finance Ordinance. First of all, I would like to stress that, at the Subcommittee meetings, my colleagues have been explaining the Government Bond Programme to Members in a very professional and assiduous manner, and not in a savage and unreasonable attitude as Members

have just said. As to Mr HO's accusation against the Hong Kong Mortgage Corporation (HKMC), it is absolutely incorrect. The investment policy of the HKMC is subject to the approval of its board of directors and has all along been very prudent. As the topic today is related to Government Bond which has nothing to do with the operation of the HKMC, we can discuss it in detail on an appropriate occasion. I now .....

(THE PRESIDENT resumed the Chair)

(Mr Albert HO raised this hand)

**PRESIDENT** (in Cantonese): Mr Albert HO, what is your question?

**MR ALBERT HO** (in Cantonese): I want the Financial Secretary to clarify if he is denying that the HKMC has invested the principal of the bonds in securities in South Korea.

**PRESIDENT** (in Cantonese): You have raised your request for clarification. However, it is up to the Secretary to decide whether or not to make the clarification. Secretary, please go on with your speech.

**FINANCIAL SECRETARY** (in Cantonese): I would like to respond to the amendments moved by Mr Albert HO, Mr James TO and Mr KAM Nai-wai. As stressed in my earlier speech, the purpose of the Government Bond Programme is to promote the further and sustainable development of the bond market in Hong Kong, and not like what Mrs IP has said. The Government has all along been doing a lot of work in relation to the bond market. Other than offering the necessary financial infrastructure and tax concessions, the Government did in the past provide more alternatives to investors through bonds of different natures. Though we rarely launch bonds, the latest one was the securitization exercise of "Five Tunnels and One Bridge" in 2004 and another issuance of government bonds.



The launching of the Programme this time is another step to further promote the development of the local bond market. In regard to the amendments moved by Members, I want to reiterate that the setting up of the Bond Fund is a measure for meeting the operational needs of the Programme. Sums contained in the Bond Fund will not and cannot be used for other purposes. I hope the above remarks reflect clearly our policy objective.

According to the legal advice sought, if the policy objective of the Programme is spelled out in the resolution, it may give rise to uncertainty in the interpretation of the resolution and unnecessary debates in the implementation of the Programme in future. For instance, in relation to the assessment of the Programme or its components (including whether the tenors, scale, timetable of each issuance, as well as other relevant arrangement can meet the required policy objective), different people may not have the same view. We should remove these uncertainties as far as possible, as legal proceedings arising from that may impede the smooth progress of the Programme, and may also discourage people from investing in the Programme. It does not do any good to the development of the local bond market.

The smooth operation of the Bond Fund is one of the prerequisites for the timely and effectively implementation of the Programme. The financial market is fluctuating. The timing of implementing the Programme will have substantial impact on the cost and effectiveness of the Programme. If the implementation of the Programme is delayed as a result of uncertainties in the interpretation of the resolution and risks of legal challenges, it may give rise to additional liabilities and financial obligations for the Administration. In response to Members' views on spelling out the policy objective, we have made amendment to the first paragraph of the Explanatory Note of the two resolutions, to further emphasize the policy objective of the Programme. We believe that the Explanatory Note can provide support to the interpretation of the two resolutions.

As I have stated in the outset, to ensure the prudent management of the Bond Fund, we shall adopt a long term and conservative strategy for the investment of the Fund. To this end, we consider it appropriate to adopt the same investment arrangement as that for the Exchange Fund for the investment of moneys in the Bond Fund. In our anticipation, it is unlikely that we will need to make adjustment to this investment strategy.

In our opinion, the approach of spelling out the investment strategy in the resolution as proposed by Mr HO and Mr TO is undesirable. First of all, for the

investment of moneys in the Bond Fund, we do not agree to transfer it to the Exchange Fund. It is because it is clearly set out in the Exchange Fund Ordinance that the objectives of the Exchange Fund include, affecting the exchange value of the currency of Hong Kong, maintaining the stability and the integrity of the monetary and financial systems of Hong Kong, with a view to maintaining Hong Kong as an international financial centre. Any charges on and transfer to the Exchange Fund are subject to the restrictions of the above objectives.

Moreover, in view of the long-term nature of the Programme and frequent changes in the investment market, it will be impossible and undesirable to rule out the need for making appropriate and timely adjustment on its details in response to market changes under some unexpected and special market circumstances. In view of this, we consider it necessary to reserve sufficient room to cater for some fine-tuning in our investment strategy under unpredictable and special situation. The above .....

**MR ALBERT HO** (in Cantonese): I demand the Financial Secretary to clarify the remarks he has just made. The Secretary said that the investment of moneys in the Bond Fund could not be transferred to the Exchange Fund as it involved a series of legal issues, and that the Exchange Fund was subject to the restrictions of its objectives. However, in his earlier speech, the Secretary mentioned that the moneys would be placed with the Exchange Fund for investment. Does it mean that it will also have to face the same problem as he has just mentioned? Can the Secretary clarify on this point? What is the difference between placing with and transferring to?

President, can the Secretary clarify the matter? Can he state clearly why he does not make any clarification or explanation?

**PRESIDENT** (in Cantonese): Mr HO, we should not turn Member's request for clarification into a debate. According to our Rules, if Members would like to seek clarification from the public officer who is speaking or clarify his own remarks, it is up to the public officer concerned to decide on his own whether or not to make the clarification. Mr HO, your request is very clear. However, it is entirely up to the Secretary to decide whether or not to make the clarification.

**MR ALBERT HO** (in Cantonese): President, can the Secretary explain why he does not make the clarification?

(Mr LEUNG Kwok-hung stood up)

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, what is your question?

**MR LEUNG KWOK-HUNG** (in Cantonese): I hope the Secretary would clarify that whether he would make a clarification. It is a question about clarification.

**PRESIDENT** (in Cantonese): Please sit down. Secretary, please go on with your speech.

**FINANCIAL SECRETARY** (in Cantonese): President, the above arrangement is also conducive to ensuring a stable investment return for the Bond Fund. Nevertheless, I stress that we will still adopt a long-term .....

(Mr James TO stood up)

**PRESIDENT** (in Cantonese): Mr James TO, what is your question?

**MR JAMES TO** (in Cantonese): President, I hope that through you, the Secretary would clarify the point raised by Mr Albert HO earlier. If the Secretary is not going to clarify, and his speech earlier on is in conflict what he has criticized on the issue we have just raised, it would jeopardize ..... after the Fund is set up, it is possible that there would be some serious legal issues. As it is a major consideration, I therefore hope to seek the Secretary's clarification through you. I hope he can think about it.

**PRESIDENT** (in Cantonese): I repeat again, for Members' request for clarification, it is entirely up to the public officer who is speaking to decide on his own. Financial Secretary, please go on with your speech.

**FINANCIAL SECRETARY** (in Cantonese): Let me repeat, the above arrangement is also conducive to ensuring a stable investment return for the Bond Fund. Nevertheless, I stress that we will still adopt a long-term and conservative investment strategy.

We appreciate Members' concerns about the necessity for setting down an investment strategy in a prudent manner. To address concerns in this area, and as I have just said, we need sufficient room to fine-tune the actual investment strategy under unpredictable or special scenario, we have to strike a proper balance between the two. To this end, we have made an amendment to paragraph (e)(ii) of the resolution, spelling out clearly that the Financial Secretary should invest in the manner considered appropriate for the prudent management of the Fund.

Under the framework proposed by the Programme, I will delegate the authority to the Financial Services and Treasury Bureau to administer the Bond Fund. The responsibilities of the Bureau will be in three areas:

- (a) to ensure that only the financial obligations and liabilities associated with the Programme are charged to the Bond Fund;
- (b) to ensure the investment returns credited to the Bond Fund are in line with the "fixed rate" sharing arrangement as agreed by the Hong Kong Monetary Authority; and
- (c) to prepare report on the Bond Fund in the light of its annual budget and to include it in the Estimates to be submitted to the Legislative Council.

The Financial Services and Treasury Bureau will assist me in maintaining a vigilant oversight of the Bond Fund in accordance with established procedure. As I have said in the outset, apart from putting in place suitable arrangements for overseeing the implementation of the Programme, we will also provide the Legislative Council with regular reports on the progress of implementation. Also, like other government accounts, under the Audit Ordinance, the Bond Fund is subject to the oversight of the Director of Audit.

We consider the above arrangements sufficient in effectively monitoring the operation of the Bond Fund. Therefore, there is no need to set up a consultation committee for the Bond Fund to monitor its management.

We appreciate Members' concerns about the Programme and their considerations given to the amendments. We have carefully and thoroughly considered various views, in particular the views of the Subcommittee before coming up with the proposed framework of the Programme. We believe that the proposed framework has struck a proper balance among various factors relating to the protection of public interest, fostering market development and ensuring appropriate monitoring and transparency of the Programme. After the implementation of the Programme, we will continue to listen to market opinion, so as to review and adjust the arrangements of the Programme. Thank you, President.

**PRESIDENT** (in Cantonese): I now call upon Mr Albert HO to move his amendment to the motion.

**MR ALBERT HO** (in Cantonese): President, I move that the amendment proposed by me as set out in the Agenda, be passed.

**Mr Albert HO moved the following amendment:**

"RESOLVED that the motion to be moved by the Financial Secretary under section 29 of the Public Finance Ordinance (Cap. 2) at the Legislative Council meeting of 8 July 2009 be amended –

(a) by adding –

"(aa) the purpose of the establishment of the Fund is to promote the further and sustainable development of the local bond market;"

(b) in paragraph (b), by adding ". The Financial Secretary may from time to time consult the Bond Fund Consultation Committee. The Committee must be made up of 7 persons. The Financial Secretary must be the Chairperson of the Committee, other members are to be appointed by the Financial Secretary, and at least 2 persons elected by the Members of the Legislative Council from among their own

number for recommending to the Financial Secretary for appointing as committee members" after "to other public officers";

- (c) in paragraph (e), by deleting "for the purposes of –" and substituting "for –";
- (d) in paragraph (e)(ii), by deleting "investing in the manner the Financial Secretary considers appropriate for the prudent management of the Fund" and substituting "injecting into the Exchange Fund for investment in a prudent manner".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to the Financial Secretary's motion, be passed.

**PRESIDENT** (in Cantonese): Before I put to you the question on Mr Albert HO's amendment, I wish to remind Members that if the amendment is passed, Mr James TO and Mr KAM Nai-wai may not move their amendments to the Financial Secretary's motion because Mr Albert HO's amendment has already included the proposals in Mr James TO's and Mr KAM Nai-wai's amendments.

**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 Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Dr Margaret NG abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mrs Regina IP voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Miss Tanya CHAN abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, two were in favour of the amendment, 24 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 11 were in favour of the amendment, nine against it and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**MS MIRIAM LAU** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on the resolution under the Public Finance Ordinance or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)



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

I order that in the event of further divisions being claimed in respect of the motion on the resolution under the Public Finance Ordinance or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr James TO, you may move your amendment.

**MR JAMES TO** (in Cantonese): President, I move the amendment to the Financial Secretary's motion about the purpose clause and injecting into the Exchange Fund for investment, but the part about the consultation committee is not included.

**Mr James TO moved the following amendment:**

"RESOLVED that the motion to be moved by the Financial Secretary under section 29 of the Public Finance Ordinance (Cap. 2) at the Legislative Council meeting of 8 July 2009 be amended –

(a) by adding –

"(aa) the purpose of the establishment of the Fund is to promote the further and sustainable development of the local bond market;"

(b) in paragraph (e), by deleting "for the purposes of –" and substituting "for –";

(c) in paragraph (e)(ii), by deleting "investing in the manner the Financial Secretary considers appropriate for the prudent management of the Fund" and substituting "injecting into the Exchange Fund for investment in a prudent manner"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to the Financial Secretary's motion, be passed.

**PRESIDENT** (in Cantonese): Before I put to you the question on Mr James TO's amendment, I wish to likewise remind Members that if the amendment is passed, Mr KAM Nai-wai may not move his amendment to the Financial Secretary's motion.

**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:

Mr CHEUNG Man-kwong and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Dr Margaret NG and Ms LI Fung-ying abstained.

#### Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mrs Regina IP voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Miss Tanya CHAN abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, two were in favour of the amendment, 23 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 11 were in favour of the amendment, nine against it and four 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): Mr KAM Nai-wai, you may move your amendment.

**MR KAM NAI-WAI** (in Cantonese): President, I move the amendment to the Financial Secretary's motion. My amendment mainly adds "(aa) the purpose of the establishment of the Fund is to promote the further and sustainable development of the local bond market;" after part (a).

**Mr KAM Nai-wai moved the following amendment:**

"RESOLVED that the motion to be moved by the Financial Secretary under section 29 of the Public Finance Ordinance (Cap. 2) at the Legislative Council meeting of 8 July 2009 be amended by adding –

"(aa) the purpose of the establishment of the Fund is to promote the further and sustainable development of the local bond market;"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr KAM Nai-wai to the Financial Secretary'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 and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Ms LI Fung-ying and Dr Joseph LEE abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Sing-chi and Mrs Regina IP voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin 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, 27 were present, three were in favour of the amendment, 22 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the amendment and nine 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): I now call upon the Financial Secretary to reply.

**FINANCIAL SECRETARY** (in Cantonese): President, I would like to thank Members for many valuable views they have expressed on the resolution under section 29 of the Public Finance Ordinance. As I mentioned at the beginning of my speech, the further and sustainable development of the local bond market will be conducive to promoting the financial and economic development in Hong Kong, and the implementation of the Government Bond Programme is an important step in promoting the development of the local bond market. I earnestly hope that Members will support the resolution under section 29 of the Public Finance Ordinance, so that we can implement the Programme.

Thank you, President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will be rung for one minute.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Ms Audrey EU, did you cast your vote?

(Ms Audrey EU pressed the voting button)

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Miss Tanya CHAN, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr LEE Wing-tat, Mr LEUNG Kwok-hung, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr WONG Yuk-man voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 54 Members present, 40 were in favour of the motion and 13 against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**PRESIDENT** (in Cantonese): Proposed resolution under the Loans Ordinance.

I now ask the Financial Secretary to speak and move his motion.

### **PROPOSED RESOLUTION UNDER THE LOANS ORDINANCE**

**FINANCIAL SECRETARY** (in Cantonese): President, I move the motion standing in my name on the Agenda.

This resolution seeks to authorize the Government to borrow up to a ceiling of HK\$100 billion or equivalent in accordance with the Loans Ordinance.

First of all, I would like to thank Members for supporting the motion I have moved just now, which concerns the authorization for the Government to set up the "Bond Fund" under the Public Finance Ordinance to manage sums raised under the Government Bond Programme.

As I have mentioned earlier, implementation of the Government Bond Programme is an important step in promoting the development of the local bond market. Upon careful consideration of relevant factors, we propose that authorization be given to the Government to borrow up to a ceiling of HK\$100 billion or equivalent for the purpose of the Bond Fund.

We believe that the total size of the Programme is an important indicator for the market to assess the determination and effort of the Government in promoting the development of the local bond market. The proposed borrowing ceiling is reasonable and necessary. It fully reflects the long-term and ongoing nature of the Programme. It also provides enough room for the public bond



market to grow and become substantial in size, thereby enabling the Programme to bring about its intended effect. The proposed ceiling represents a long-term target over a period of five to 10 years. It can provide the necessary flexibility for the Government to make necessary adjustments to the issuance size and tenor of individual tranches in response to market needs when implementing the Programme.

Upon the passage of this resolution by the Legislative Council, we will proceed full-steam ahead with the preparatory work for launching the Government Bond Programme within the confine of the relevant borrowing ceiling, including hammering out the details of the Programme such as the size of individual issues, tenor, frequency of issues, and so on. The Programme will comprise bond issues for institutional and retail investors respectively. We will determine the exact offering mechanism for specific types of bonds targeting different investors under the Programme. For the conventional fixed rate Hong Kong dollar bonds issued for institutional investors under the Programme, the bonds will be offered by way of competitive tenders open to the primary dealers. We will appoint the primary dealers based on objective, quantitative and open criteria. To facilitate access by individual investors, we shall distribute fixed rate Hong Kong dollar bonds under the retail tranche of the Programme through an extensive network of placing institutions. These will include placing banks, the Hong Kong Securities Clearing Company and securities brokers.

In-depth preparatory work was conducted in preparation for the implementation of the Programme. One crucial task is to have extensive discussions with market participants (including banks, securities brokers, and participants from the insurance and retirement funds sector) on issues relating to the Programme.

We will further solicit market views in the implementation process, and take into account relevant factors such as prevailing market conditions and impact of the planned issuance amount on other bond issuers in the market before formulating the relevant details.

President, I earnestly hope that Members will support the resolution in order to facilitate early implementation of the Programme.

Thank you, President.

**The Financial Secretary moved the following motion:**

"RESOLVED that –

- (a) the Government be authorized to borrow from any person from time to time for the purposes of the Bond Fund established by a resolution made and passed under section 29 of the Public Finance Ordinance (Cap. 2) such sums not exceeding in total \$100,000 million or equivalent, being the maximum amount of all borrowings made under this paragraph that may be outstanding by way of principal at any time; and
- (b) sums borrowed under paragraph (a) are to be credited to the credit column of the Bond Fund account."

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

**MR JAMES TO** (in Cantonese): President, let us look at the resolution of the Loans Ordinance. I will read it out once; I believe you will find it highly interesting. It is stated in the content that "the Government be authorized to ..... (and then borrow, that is) borrow from any person from time to time ..... for the purposes of the Bond Fund (the Fund has been established) established by a resolution made and passed under the Public Finance Ordinance (as mentioned in the resolution raised just now) such sums not exceeding in total \$100,000 million or equivalent."

Two observations may be made here. Firstly, just now, the Bond Fund was established by a resolution made and passed under the Public Finance Ordinance; however, the Government has to be authorized to borrow under this Ordinance, the sum of which would of course be managed by the Bond Fund. Nevertheless, wordings of the resolution are: borrow "for the purposes of" the Bond Fund, which is bad enough. What are the purposes? If we look at the Bond Fund established just now by the resolution passed, its purpose is to repay money. That is to say, to borrow for the sake of repaying.

Certainly, it has been indicated by some Members that that is not the case — bond issuance is actually bond financing, which, as far as I remember, has been stated by Mr Ronny TONG; however, please bear in mind that various Members have, in today or on different occasions, expressed their views on our policy concerning bond issuance. Just now, Members from League of Social Democrats expressed emphatically that bond issuance can only be made for infrastructure or social welfare purposes; but they did not gain the support of other Members who were of the views that the purpose of bond issuance is for the sake of issuance.

However, currently, what is worst is that none of the views expressed by us has been written down in law. It is not that I would like to have the case overruled, but that this \$100,000 million resolution has to be passed. Earlier on, towards the end of his speech, the Financial Secretary has indicated that there is indeed some Explanatory Note to the resolution in which were written some of the purposes. Please bear in mind that what is currently written here is the purpose of setting up the Bond Fund and that is for the setting up of the Bond Fund under the resolution.

As he has mentioned the Explanatory Note, as a reason, as stated by the Government just now, this can explain the purpose and can be quoted. Nevertheless, that is not feasible. The wordings used are for assisting us in comprehension or explanation, which, we have to bear in mind, have no binding effect in law. In other words, this is the resolution passed today. Certainly, as stated by Mr CHAN Cham-lam, it would be suffice for us to believe in the Government, that is, it would be fine to believe in the Administration, right? Or, to quote the words of Mr Ronny TONG, the Secretary has to be politically accountable, if he becomes the Chief Executive, he has to be even more accountable; but if he does not become the Chief Executive and the existing team is fully replaced, what should we do? For what has been passed today, how should there be accountability? How are we going to make the person concerned be held accountable? Only with the availability of legal provisions would there be binding effect. I hope Members would pay attention to the decision made.

Secondly .....

(Mr Ronny TONG stood up)

**PRESIDENT** (in Cantonese): Mr Ronny TONG, what question do you have?

**MR RONNY TONG** (in Cantonese): President, I thought that he has finished his speech. *(Laughter)* I wish to clarify the comments he made about me just now.

**PRESIDENT** (in Cantonese): You may clarify only after Mr James TO has finished his speech.

**MR JAMES TO** (in Cantonese): President, secondly, in paragraph five of his speech earlier, the Secretary expressed that the proposed ceiling represented a long-term target over a period of five to 10 years. However, I hope Members can look clearly that according to the resolution, he can be authorized to borrow from any person from time to time such sums not exceeding in total \$100,000 million, that is, such sums may not exceed \$100,000 million at any time. But there was no mentioning of five to 10 years, not even in the Explanatory Note.

In other words, as long as the resolution moved today under the Loans Ordinance still exists, that is, the resolution involving the Bond Fund mentioned earlier still exists, there is absolutely no restriction in law specifying the time when the Fund or the loan is made or whether there is any scale attached to them. Certainly, I would like to remind Members that since there is no restriction, that is to say, the bond may be issued for any duration if someone makes the purchase. When fitting into the resolution just now and the so-called prudent investment matched with the corresponding tenor, and to invest prudently within the tenor, that is to say, to be able to repay the interest. After 30 or 50 years, if profits have been gained by the Administration, the principal could be repaid, whereby the original purpose of issuance of the bonds for the sake of issuance as we think would be changed to issuance for the sake of infrastructure, filling up the shortfall or various other purposes.

I hope to point out the crux of the matter and have it put down on record.

Thirdly, earlier on, I requested the Financial Secretary to clarify about the provision "allocate to the Foreign Exchange Fund ..... invest" which he mentioned as proposed by the Democratic Party. In the content of his resolution, it is stated that the sum raised under the Programme would be

deposited in the Foreign Exchange Fund for the purpose of investment. In his speech, if it was stated that the sum would be deposited in the Foreign Exchange Fund so as to have it under its restrictions, frankly speaking, I would really begin to doubt whether legally, the sum can be drawn out again for repaying the principal. If the Financial Secretary is likewise in doubt of his own view point, a high degree of uncertainty would exist in law. Furthermore, there would be the problem of whether the sum can be drawn out again for the purpose of repaying the principal and interest.

Hence, if sufficient direction cannot be provided by the Secretary with technical analysis today, he has to clarify at the appropriate moment; otherwise, how can bond-holders be repaid once judicial review is filed (I have no idea by whom) and the sum can really not be drawn out from the Foreign Exchange Fund for principal or interest repayment? This is a very unusual situation. Certainly, he may make use of the general revenue, that is, to allocate a sum of general revenue to the Foreign Exchange Fund and then to have the gap of this \$100,000 million filled up through the clause resolved and passed by the Council just now. However, at that time, this would become a highly embarrassing and uncertain measure.

President, just now, arguments regarding the resolution authorizing the borrowing of up to a ceiling of \$100,000 million as stated in the clauses of the Loans Ordinance attached to the Fund have been raised by the Democratic Party. However, in the light that such grounds raised by the Secretary as the justification, we are unable to support the Resolution.

**MR RONNY TONG** (in Cantonese): President, I have to clarify that just now, Mr TO has misunderstood my speech.

President, I said in my earlier speech that the political pledge made by Financial Secretary John TSANG today would not be a personal one, but the pledge of the SAR Government. I believe the pledge would still be valid until there comes a day of universal suffrage, whereby the Government would become replaceable.

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

**MR ALBERT HO** (in Cantonese): President, I think we have to reiterate several points to make it clear why we are unable to support this motion. I do not know how many of us will stay on in this Council after eight or 10 years. At that time, probably all the people here would have changed, right? Personnel matters are just like the flow of water; certainly, this Council will still exist. Today, we have expressed much through our speeches, each with different view points or interpretations; but in future, it is this motion that really regulates the Fund operation. There are only a few words to the motion, which is only a motion under the Public Finance Ordinance — there is not even any formal legislation to cater for it. Not only are we asking for clear and detailed stipulations on the purposes of setting up the Fund by the Government, but also on prescriptions which the Fund would be subject to, including those which the pledge it would be subject to as well. Are these genuine pledges? This is a question. If these are genuine and effective pledges, why not render them as binding provisions that are beyond dispute and form part of the motion? Therefore, I deeply believe these are not pledges and wonder why Mr Ronny TONG stated that these were pledges.

I have studied a lot of motions in the past and found that pledges had indeed been made by the Government. I remember very clearly that in 1997, when we expressed the wish for having a hearing on the alignments to be made under the Railways Ordinance, the Government replied in the negative, saying that it was afraid that the timetable would be too tight. Therefore, the Government indicated that there would not be any clear-cut statutory hearing. At that time, the Democratic Party proposed an amendment and in the resumption of the Second Reading debate of the Council, Gordon SIU, the then Secretary for Transport, came to me and told me that he believed our words carried certain reasons as well, since it would not be possible for those people whose lands are affected by the alignment to be deprived even of the right to hearings. However, due to certain reasons, he could not have that introduced into the law, so a pledge was made for a non-statutory hearing to be held. This was his pledge. At that time, the word "pledge" was clear enough, that is, the Government pledged that administrative measures would be adopted for recruiting different people to be responsible for the so-called hearings beyond the statutory framework. They would offer reasonable explanations in the event that opposition to the alignment arose. That had been made absolutely clear at that time. I had seen the relevant wordings, so I dare to say it out. Only these could be termed "pledges".

It is rare for pledges to be made by the Government. Merely discussing our views on policies in the Council does not amount to pledges, and I do not

believe that the words of the Financial Secretary John TSANG today could be retained and last forever. If this Ordinance indeed exists, his words would become the authority on its interpretation. However, that could not be the fact as this system of ours does not operate in this manner. Today, it is absolutely clear that in light of him being an official accountable to the public, that is only his policy and the view he holds for the blueprint he advocates; but that could not become part of law, not to mention becoming a pledge that is binding. Please do not make it wrong, for that would be highly improper.

Moreover, when he spoke earlier, the Secretary has adopted different standards in his speech, which is due precisely to the unclear way things are written. On one hand, he said if the sum was transferred to the Exchange Fund for investment as per the way written by the Democratic Party, it would be even worse because the sum would be subject to regulations of the Exchange Fund Ordinance once it has been transferred to the Fund. However, in the following part of his speech, it was clearly indicated that the sum would be deposited into the Exchange Fund for investment. What is he actually saying? Why is it that he can do it this way but not the others? Why is it that regulation of the Exchange Fund Ordinance would not apply when he does that? Is it the case that only those in official capacities can have the privilege of doing anything they desire, while the general public would not be allowed to do the same? A lot of disputes will arise if these issues are brought to the Court in future.

The Democratic Party has been holding meetings seriously with him and put forward all our views in the hope that he would have the matter performed well and have regulations set out. We hope he would be responsible for what he has said and refrain from empty talks and lip services. When he leaves the service in future, his successor would have to know clearly what is going on. Just now, I ask the Financial Secretary for clarification because I am worried that the Financial Secretary himself may not know where our differences lie. However, he was not willing to clarify and had not displayed the basic politeness. In fact, the most important thing in the Council is that we have to communicate; if the point of view that I raise is found not to be agreeable or wrong, that could be pointed out for rectification; the "point of departure" should even be clearly raised for differences that exist between us or issues that cannot be agreed upon. However, he did not say it out, nor did he reply or clarify when he was asked. When I say that the officials are strong-willed and unreasonable, I do not mean his attitude, which is a very good one. I have all along appreciate civil servants and accountable officials for their merit in common which should be praised —

that is — they are good tempered and would not (or only rarely) lose their temper and scold the others. However, this does not mean that they are reasonable. What meaning is there if they cannot reply at all but only repeat what has been said previously every time when we reason with them? The conclusion is that in fact, they have a hardliner stance and are unreasonable.

President, I have finished with the reasons I want to raise. If we persist in the importance of law and insist that the Government be subject to the rule of law, there is no reason for us to keep on supporting this resolution.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, when I was taking part in the Lehman Brothers minibond incident investigation, I found that the Government was rather sly and shameless. Mr Albert HO said earlier that if a government wanted to put restraint on itself, it should restrain itself by way of legislation, right? In fact, we have lost all the ability to resist the Government, then, it will be fine for the Government to legislate on its own and let us take a look at how it restrains itself. If the Government does not abide by the law, we may seek help from others — we can seek help from Andrew LI, right? However, the Government has not done that.

In fact, I have also thought of summoning the Financial Secretary to give evidence in the Lehman Brothers minibond incident hearing session, with a view to finding out what he had really done. Let me also share my experience here, it is something related, President. When this Council passed the securities legislation — I was of course not here, I was demonstrating on the public gallery above, and the legislation was passed by the people down here, but I might have also been lured by the Financial Secretary into voting for the legislation at that time. And then, others called the Financial Secretary to improve the provisions. After one year, it was Joseph YAM (that is, the one who got the medal) while other people have died. He managed to get a medal .....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, are you speaking on the proposed resolution under the Loans Ordinance?

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes I am. I am trying to explain that if the Government acts without credibility, then the law must provide for



some kind of restrictions and it is necessary to explicitly set out in the legislation. This is what I have learned from Dr Margaret NG in the course of performing our legislative duties. That is, first, we should specify the conduct and criteria and whatsoever concerned, whatsoever consequences and so on. I am also just learning and if it does not set down such .....

**PRESIDENT** (in Cantonese): Please speak on the resolution itself.

**MR LEUNG KWOK-HUNG** (in Cantonese): Some say that it is "oral betting", and in the gambling dens, gamblers' fingers will be chopped off, it is really not kidding. I once saw people gamble on a construction site, a worker betted with his finger, and afterwards his finger was chopped down as he lost the game. However, the Government is now so sly and shameless that it even has no integrity of a construction worker — if one bets with his finger ..... in the past when people gambled and had no money to place the bet, they would bet with their own fingers, and if they lost, their fingers would be chopped off. But if the gambling den's owner spared that person, it would be fine for not chopping down his finger.

Has the Government shown its fingers? No. There is some sort of relationship between them. President, your good self was here at that time and you had participated in the scrutiny of the passage of the securities legislation, did you not feel that you had been used by others? Let me tell you why the remarks I have made today are related to the resolution. The Government is playing the same trick again today. In fact, I do not want to speak originally, I just want to go home and do some readings, but there is no way, I am forced to do the readings here because I have to listen to what he says.

What has Mr Albert HO said just now? What he has said is that the Financial Secretary has said this himself, that is, he betted with his own finger in this Council, then he should honour his words and show us his finger now. Now that the Financial Secretary puts on some gloves and he is reluctant to show his fingers, then what should we do? We have asked him to write a post-dated cheque, if things do not work out, then he should take out his finger. Now this is the case. As a result, I have to talk about the securities legislation caused by the Lehman Brothers minibond incident. President, do you know what has

happened next? Because you need not join our investigation work on the recent Lehman Brothers minibond incident, and you have not seen the report, so I have to repeat that to you now.

**PRESIDENT** (in Cantonese): Please speak on the proposed resolution under the Loans Ordinance.

**MR LEUNG KWOK-HUNG** (in Cantonese): The day after the securities legislation was passed ..... it is okay as long as you like it this way. Under the Loans Ordinance, at that time when Lehman ..... they are related, right? About the things that Mrs FAN forced me to do, under the Loans Ordinance, during the time when this securities legislation was passed .....

**PRESIDENT** (in Cantonese): What is the relationship between the Loans Ordinance and the securities legislation?*(Laughter)*

**MR LEUNG KWOK-HUNG** (in Cantonese): I have said that there was a relationship between them. I moved a motion in accordance with the Loans Ordinance, and the example of the Loans Ordinance told us that had the Government not restricted itself by way of legislation after making pledges at the meeting of this Council, it would not work at all because the legislature is only asking it to issue a blank cheque, then what can be done? If it has not issued any blank cheque, we cannot pursue even if we want to. But if we are given an empty promise, we will still be able to pursue John TSANG for the empty promise made by him, he has to pay for it. If he has enacted a piece of legislation or if he has written down those pledges he made to this solemn legislature in the law or in the relevant ordinance, then we will be able to pursue him for that. We will be able to tell Andrew LI what the Financial Secretary has said, that is, he betted with his own finger, and he would bear the consequences of having his finger chopped if he loses.

Why has it turned out like that? In 2002, after the securities legislation was passed, Andrew SHENG and Joseph YAM made private deals of the powers under the securities legislation. Now we are talking about ..... President, you

know, I have asked eight times in a row, I raised all of my questions to Joseph YAM and Martin WHEATLEY targeting at this problem. But all of the answers were so contradictory and they just shirked their responsibilities. If these things are not written clearly today, when we ask him in future, he will answer in the same way as Joseph YAM: "I have shown you the Memorandum of Understanding (MOU) on day one, and the Legislative Council did not say anything after scrutinizing it. Now you have no comments on that MOU. I am making a mess of it and this is like you are also making a mess of it, right?"

Therefore, today is meaningful, President, because if the Government is willing to take the responsibility, then it should not always criticize others for having a poor attitude towards it or throwing things at it, right? Today, I have a good attitude towards him and I have been making sensible discussions. Does this Government have any respect for the Legislative Council? When Members of the Legislative Council tell it: "I believe in you", it should write out a post-dated cheque on its finger when it bets with its finger, and when it loses, it should take out the finger. But now it says that there is no need, then, just now .....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, your argument seems to have been made already in the previous debate on the other resolution.

**MR LEUNG KWOK-HUNG** (in Cantonese): Could it be said that it is no longer valid when the truth is unveiled after two years?

**PRESIDENT** (in Cantonese): As to the remarks you have just made, I consider that they should belong to the debate of the previous resolution which has just been passed.

**MR LEUNG KWOK-HUNG** (in Cantonese): Perceptions of different people may vary, if you feel that way after listening to that, that is something I cannot help. I am now telling the Financial Secretary directly, I am telling him through you .....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, I would like to remind you .....

**MR LEUNG KWOK-HUNG** (in Cantonese): Financial Secretary, do you understand? It does not matter if the President does not understand it, I just wish tell you via the President. However, it does not work if the President does not understand it. President, do you not understand what I am saying? Is it necessary for me to teach you?

**PRESIDENT** (in Cantonese): I would like to remind you that this Council is debating on the proposed resolution under the Loans Ordinance moved by the Financial Secretary.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes ....., I would like to make it a little bit clearer to my fellow Members, that is, if the Government refuses to write down its pledges in the legislation, that is to say, it is tantamount to deceiving the legislature if the Government is reluctant to write down its pledges in the legislation. It is very simple, if you have read the *Social Contract*, then you should have found such comments. It applies to any constitution, and it also applies to any post-constitution law. It is impossible not to write them down. Why have these solemnly made pledges not been written down? If the Government says it does not know how to write them down, let me teach it how, I bring a pay cut bill and give it to the President tomorrow. President, in fact, it is the Government which forces us to do such things, do I need to draft a Private Member's Bill to put it under restraint? Should your good self tell the Chief Executive that someone is raising these issues again? It is not right to throw things at somebody, and this has evoked words from the bottom of my heart.

Today, I am informing him in a gentle way that there are historical analyses and concrete examples to prove that if this Government does not legislate to exercise its sovereignty, it is just deceiving members of the public. If a government is not elected by the people, that is, it has not stood for public election and it is not elected by the people, it is not a government of the people, by the people, but it still has to be a government for the people. On for the people, who tells it to do that? It is this Council. So, this Council urges it to

write it down clearly in the contract. What should we do now as it does not want to write it down?

President, I know that you want us to discuss the proposed resolution under the Loans Ordinance, but honestly speaking, when it comes to these issues, as even the premise does not exist, how can we debate on it? My premise is very clear. Today, I urge Members to support the question raised by Mr Albert HO, that is to say, it is the Government which is irresponsible in the first place, and as the duty of this Council is to monitor it, therefore this Council should strive for the most favourable conditions to monitor the Government. There is no need for banal formalities, as we are simply not relatives at all. The electoral bases between us are simply very different; we have a mandate from the voters to monitor it in accordance with the Basic Law, why should I give it face?

Now that it is reluctant to do this, if Members of this Council do not wish to repeat the mistake they have made in passing the securities legislation by allowing Joseph YAM and Andrew SHENG to shirk their responsibilities by way of a MOU — at that time, they were assigned by Antony LEUNG according to the relevant legislation, but the MOU signed by them did not have any legal basis at all, and everyone knows that that the transfer of power and the transfer of discretionary power are not allowed under the common law. Today a complete mess has been made, do we still need to repeat it?

Of course, I am crude and unlearned, I do not know whether we should do this, but we feel that there are sufficient doubts. When people ask you to clarify and you do not clarify, it is just like the scene in the movie "IP Man". When Master IP Man was questioned by the Japanese army officer, he challenged the Japanese army officer by telling the aide of that officer that he would rather be killed. However, the Japanese army officer said: "Are you kidding, someone is going to challenge you, of course, he thinks that he is stronger than you. If you kill him today and do not accept his challenge, would it not be a coward?" Even an army official from militarist Japan is aware of the logic and cannot be so embarrassing, right? This is what IP Man said when he challenged the Japanese soldier on that day. He said, come on, it will be fine if you can convince me, you should not always rely on violence, you should use soft-core power. On the same day, the Japanese Imperial Army employed hardcore violence, it used soft-core power. What exactly is soft-core power? That is, I have got the votes, why should I have the logic? I just have the votes.

President, I know that you like debating a lot, but as I join the legislature too late, there is no way for me to fight hand to hand with you. How did you debate at that time? You said at the time that the democrats were sidetracking from the subject matter, right? It is because a person has feelings; he is emotional and rational. Emotions will turn into rational reasoning, then he will rebut. I found that rather unreasonable. Let me tell you one more time, Financial Secretary, you should not have fallen asleep yet. It is very simple, Albert HO asked you, what is the difference between giving the money and allocating the money? Can you answer that? Please do not act like that Japanese Imperial Army officer, my brother, he is not IP Man, he cannot beat you to death.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, this issue has been debated in the previous resolution.

**MR LEUNG KWOK-HUNG** (in Cantonese): Since he does not answer, I certainly have the right to raise my question.

**PRESIDENT** (in Cantonese): The previous resolution has already been voted.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, then, SOCRATES asked a person, that person did not understand the question, he would ask someone else. He would not say because a President told him that SOCRATES has already asked the question .....

**PRESIDENT** (in Cantonese): SOCRATES did not debate in accordance with our Rules of Procedure. *(Laughter)*

**MR LEUNG KWOK-HUNG** (in Cantonese): However, there is gravity here, right? Universal gravitation, in any case, exists ..... when we come here, unless the President declares that there is no universal gravitation, it is impossible for people to go up even if they jump down here, right? The President studied logic before, right? You cannot declare there is no universal gravitation.

It is very simple, I am not going to say it now, because the President has warned me several times and it is unnecessary. There were conflicts yesterday. In fact, it is very simple; you only have to show your sincerity by answering our questions. If you need the time to write it down in the law, then we will give you the time. Next time when you come back after writing those words in the law, we will certainly vote for you. Do not embarrass my Honourable colleagues. When we try to be reasonable, you cannot answer, does it mean that the people supporting you are supporting you for no good reason? You must understand this, even if you are not considering in my interest, you still have to consider it for the sake of those who support you, understand? The situation is like you are the lord of a cult, right? You attend the Hua Shan sword forum, your winning or losing is no big deal, but your disciples will feel very bad, buddy.

President, I am not going to argue with you, I now declare that universal gravitation continues to exist.

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

(Mr Ronny TONG raised his hand to indicate his wish to speak)

**PRESIDENT** (in Cantonese): Mr Ronny TONG, according to the Rules of Procedure, Members may only speak once in this motion debate; if he/she has to speak a second time, it would be for clarification of the part of his/her speech previously delivered in the same motion debate but has been misunderstood. However, I understand you were responding earlier to Mr James TO's comments on the speech you previously made.

**MR RONNY TONG** (in Cantonese): I have not spoken on this resolution.

**PRESIDENT** (in Cantonese): Earlier on, after Mr James TO has spoken, you said .....

**MR RONNY TONG** (in Cantonese): President, is that to be counted as well? I was only clarifying at that time. *(Laughter)* That was not my speech.

**PRESIDENT** (in Cantonese): I will let you speak now.

**MR RONNY TONG** (in Cantonese): President, originally, I did not intend to disturb your honour and I did not intend to stand up, but I think there are several matters of principle that have to be clearly stated.

Firstly, I wish to state clearly that our stance is in principle consistent with that of the Democratic Party, the only slight difference being our views concerning the procedures. However, President, there are three points which I have to state clearly.

Firstly, as I understand it, in tabling the bills to the Council, legal effect would, to a certain extent, be attached to the statements made by principal government officials. However, the legal effect would not be the same as the effect of written provisions. An indisputable principle laid down in the "Pepper and Hart" case of the Supreme Court of the United Kingdom is that if problems of interpretation arise in law, the Court can, and even should, refer to the statements made by principal officials during the tabling of the bills, and the law should be comprehended and enforced on the basis of those statements.

Secondly, what is more important is that .....

(Mr Albert HO stood up)

**PRESIDENT** (in Cantonese): Mr Albert HO, what is your question?

**MR ALBERT HO** (in Cantonese): If it is agreeable to Mr Ronny TONG, could he be asked to clarify whether, in the case he has quoted just now — which I am also aware of — he meant to say that statements made by officials may only be referred to when vagueness and ambiguities arise during the interpretation of the provisions? If that does not arise, does it mean that reference should not be made? In that case, does he mean that vagueness arises in this resolution and hence we would be forced to review the speeches made by the officials?

**MR RONNY TONG** (in Cantonese): President, as I have just said, if problems arise during the interpretation of the provisions, reference can be made of the



speeches made by Principal Officials. Hence, firstly, this functions to a certain degree in law.

Secondly, even that is not the case in law, I deeply believe that every one who speak in the Council would be responsible for what they say, especially the officials. I do not wish to see and do not believe any official would just say something casually when they stand up and speak in this Council. Officials have to be responsible for their own speeches — which is not an individual responsibility, but the responsibility of the Government that they represent. I believe this to be a crucial part of parliamentary culture all over the world. Hence, I hope that all officials can think twice before they stand up and speak.

Thirdly, President, today, I voted for the Government because the Financial Secretary stood up in the Council and made a solemn statement which I reckon will bring political consequence to him. If someone states that no political consequence would arise from what he has said, I believe that should come from the Financial Secretary himself. Perhaps he would deny the existence of political consequence, but I would say I hold you responsible, that is, I take it that there would be political consequence upon him. Since we vote for him upon this statement of the Government, I would not say here that he should be let go and that there would not be any political consequence arising from the words he has said. That being the case, how can there be no political consequence?

Hence, President, under parliamentary culture, I would definitely not accept that statements made by officials are free of consequence, whether the officials are engaged in specious arguments or just making a claim.

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

**MR ALBERT CHAN** (in Cantonese): President, when it comes to pledges made by the Government, I call on Members to look back to the time when the Link REIT was listed. Government officials made pledges in this legislature a number of times, saying that after the listing of the Link REIT, the services for public housing estates would basically remain unchanged but in the end, the situation was in tatters. Members who gave their support back then, including Members of the DAB, all put up banners and posters and make petitions everywhere. Even Members of the royalist camp have come out to stage

protests. Mr Ronny TONG has said that the officials in office at that time have to assume responsibility. However, they all left their posts and were almost hired by the New World Development Company Limited. For this reason, instead of demanding that officials assume responsibility, we had better lay down clear provisions in the legislation. It is always better to have the assurance of provisions than having officials pledge verbally in the legislature that they will assume responsibility. We have indeed seen too many such examples. Take the Disneyland as an example, back then, a very rosy picture was painted of the development of the Disneyland but now, we have to keep dumping money to fill the pit, do we not?

For this reason, I call on Honourable colleagues, being Members of the Legislative Council, to consider this matter prudently, particularly when dealing with public finance. This matter involves the use of public funds rather than your own money. Just as the speculation by the CITIC Pacific in the Accumulator turned into "I kill you later" — it was our leader who said later that the Accumulator had turned into "I kill you later". Any loss of public funds is a loss suffered by all members of the public. As Members, if any piece of legislation or legal provision has any ambiguity or does not offer adequate protection, Members in this legislature should not accept or pass it. This is our sacred duty and we should not rely on ..... many Members said the Financial Secretary had already made a pledge here. Mate, we have already heard too many things of this sort. The Secretaries of Departments are the most skilled in making such blatant misrepresentations that reverse truth and falsehood and right and wrong.

I hope that later, the Financial Secretary can clarify two points publicly and this is very important. When I spoke against the arrangements for the bonds, I said that this might be another new hoax. Just as the Mandatory Provident Fund and the Disneyland, this is another pit that the Hong Kong public is asked to get into and fill. In fact, I have two simple questions. Of course, the Hong Kong Monetary Authority (HKMA) and the Exchange Fund will ultimately be responsible for the management. In the future, of course, it will be necessary to pay interest for the money borrowed via the issuance of bonds. I hope the Financial Secretary will reply as to whether or not the money so borrowed can be used to buy investment products similar to the Accumulator, which the CITIC Pacific bought. We have seen too many financial scams and there are far too many such ingenuous, sophisticated and technical scams. There are so many bankers in Hong Kong and the Lehman Brothers incident was a very typical

example. If we look at the present situation in the United States and Canada, many astute investors and consortia in control of vast amounts of capital were also cheated of billions of dollars by some elites in the financial sector. These people have already been arrested and put in jail, have they not? Even such a large listed company as the CITIC Pacific is in tatters.

Regarding the present legislation, apart from the ceiling of \$100 billion approved on this occasion, one can say that various other forms of regulation and control are absent. I wonder if the new appointee who will take office in the future, Norman CHAN ..... it is very likely that it will be him but I wonder if it is because the Central Government in Beijing has not yet given the green light that his appointment has not yet been announced. I do not know how the management of the HKMA will be like in the future. Maybe it will be even worse than when Joseph YAM was in office. Joseph YAM also made a victim of the Lehman Brothers-related minibonds incident jump to her death but still, he was awarded the Grand Bauhinia Medal. I said just now that one could get the Grand Bauhinia Medal only if one had caused the death of Hong Kong people, right?

After the painful experience relating to the CITIC Pacific, in the future, when the HKMA uses the funds in the Exchange Fund, what requirements are there to make the Hong Kong public ..... perhaps you can give Mr Ronny TONG another guarantee, telling him how the hard-earned money of the Hong Kong public will not, on account of some individuals ..... maybe he is very astute, just like many big banks in Hong Kong. Many people who have bought Lehman Brothers-related minibonds are also very astute, are they not? Does one mean that the staff of CITIC Pacific are not astute? To give another example, concerning the two mortgage companies in the United States, many people in them were also very astute but these companies also lost so much that they were in tatters and many companies and people also became bankrupt. In view of this, I hope that the Financial Secretary can give us an explanation and offer some protection later, in particular, that he can give Mr Ronny TONG a guarantee that there will not be any grey area, so as to avoid litigation in the future. In the future, no matter to where we take our litigation, in the end, it will still be the NPC that will make an interpretation of the Basic Law, will it not? For this reason, do not believe in the legal system. In the final analysis, we have to believe in ourselves and in the provisions that we pass. This will be better than resolving the issues in Court.

Second, I hope that the Financial Secretary can also clarify what control and safeguards there are after money has been borrowed. Just now, I have talked about the part relating to the purchase of bonds but is there any control on the administrative expenses? When debating the previous item, I said that the administrative fees of the MPF were rather high. I often say that financial scams are the numerous methods conceived by financial professionals to amass money for themselves. In doing so, they would even put a very grandiose spin on them, saying that the public can benefit a great deal and that they have done a lot for the Hong Kong Government. However, in the end, it is this group of financial fraudsters who earn the most money and gain the greatest benefits. Can the Financial Secretary explain to us how that group of robbers in the HKMA will be regulated? I will not bother about them any more. Some of them are paid an annual salary of tens of million dollars. It is a known fact that they still want to cheat and plunder. However, apart from those people working in the HKMA, regarding those so-called consultant firms, what mechanism is there to ensure that they will not fish in troubled waters and that the Hong Kong public will not be cheated by them? I hope that before voting, the Financial Secretary can clarify these two points for us. Thank you, President.

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

(Mr LEUNG Kwok-hung stood up)

**MR LEUNG KWOK-HUNG** (in Cantonese): I wish to seek clarification.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you have already spoken once.

**MR LEUNG KWOK-HUNG** (in Cantonese): I am only seeking a clarification from him.

**PRESIDENT** (in Cantonese): About what?

**MR LEUNG KWOK-HUNG** (in Cantonese): Can you listen to me first?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, the Rules of Procedure does not allow a Member to seek clarification in this way.

**MR LEUNG KWOK-HUNG** (in Cantonese): Do you mean that I can only ask him to clarify when he is speaking?

(The President nodded)

**MR LEUNG KWOK-HUNG** (in Cantonese): Well, never mind then.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If no Member wishes to speak, I will now call upon the Financial Secretary to reply. This debate will come to a close after the Financial Secretary has replied.

**FINANCIAL SECRETARY** (in Cantonese): I am grateful for the valuable comments provided by Members on the motion raised under the Public Finance Ordinance. Upon the passage of this resolution by the Council, we will proceed full-stream ahead with the preparatory work for launching the Government Bond Programme. We hope to grasp firmly the opportunities for development in the market for the early implementation of the Programme.

President, I earnestly hope that Members will support this resolution. Thank you, President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, he is making a speech now, may I ask him to clarify?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, what is your question?

**MR LEUNG KWOK-HUNG** (in Cantonese): As it is stated by the Government that bond issuance is conducted for the sake of the entire bond market, I would like him to clarify whether he would request this Council for fund allocation again in the event that response from the bond market is not good?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, this is not a question for clarification.

**MR LEUNG KWOK-HUNG** (in Cantonese): Then he needs not answer. Never mind.

**PRESIDENT** (in Cantonese): As I have just said, this debate will come to a close after the Secretary has replied. I now propose the question to you and that is: That the motion moved by the Financial Secretary be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will be rung 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.

Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Miss Tanya CHAN, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, and Dr PAN Pey-chyou voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr LEE Wing-tat, Mr LEUNG Kwok-hung, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr WONG Yuk-man voted against the motion.

Dr Priscilla LEUNG and Mr Paul TSE abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 51 Members present, 35 were in favour of the motion, 13 against it and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**PRESIDENT** (in Cantonese): It is now 11 minutes to nine, we shall deal with the next item on the Agenda. I will suspend the meeting at about 10 pm tonight. The meeting will resume at 9 am tomorrow morning.

**PRESIDENT** (in Cantonese): Proposed resolution under the Race Discrimination Ordinance to amend the Code of Practice on Employment under the Race Discrimination Ordinance.

I now call upon the Secretary for Constitutional and Mainland Affairs to speak and move his motion.

### **PROPOSED RESOLUTION UNDER THE RACE DISCRIMINATION ORDINANCE**

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I move that the Code of Practice on Employment under the Race Discrimination Ordinance, which was introduced into this Council on 6 May 2009, be amended as set out in the proposed resolution.

The Race Discrimination Ordinance (RDO) was enacted in July 2008. In October 2008, we brought into force sections relevant to empowering the Equal Opportunities Commission (EOC) to exercise its functions under the Ordinance, including preparation of the relevant code of practice and undertaking relevant publicity efforts. Due to the complexity of the issues relating to race discrimination, we have adopted the approach to bring into force the remaining sections of the Ordinance at the same time when the Code of Practice on Employment and related rules and regulations come into operation. This would allow the public, in particular employers and employees, to have a better understanding of the Ordinance when it is implemented.

The Code of Practice was issued by the EOC and gazetted on 8 May 2009, after undertaking wide public consultation from October 2008 to January 2009 and taking into account the views received.

The EOC has made further amendments to the Code in response to comments received during the scrutiny by the Subcommittee which was formed to scrutinize the Code as well as two Rules made by the EOC, namely the Race Discrimination (Formal Investigations) Rules and the Race Discrimination (Investigation and Conciliation) Rules.

These amendments to the Code, which I move today, include elaborations on a number of sections including those on treatments based on race related



factors such as religion or language, clarification of the responsibilities of employers, principals as well as employees, and prevention of harassment on the ground of race.

If the proposed resolution is approved, the Code will come into operation on the date the resolution is published in the Gazette, that is, 10 July 2009. We plan to bring into force, on the same day, the remaining sections of the RDO, as well as the two Rules made by the EOC, and the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation which has earlier been approved by this Council. This will be done by means of a commencement notice to be gazetted on 10 July 2009 to appoint the date of commencement of the relevant instruments.

I would like to take this opportunity to thank Mr Paul TSE and members of the Subcommittees for their efforts in scrutinizing the Code and the relevant instruments. They have provided many valuable comments and suggestions, including the suggestion to promote the RDO and the Code to foreign domestic helpers and their employers. We appreciate the concerns of Members in this regard. The EOC, the Labour Department and the Immigration Department will step up their publicity efforts on the RDO and the Code, including distributing pamphlets on the RDO at their counters, particularly those relevant to employment of foreign domestic helpers, and linkage to information on RDO at their web pages relevant to employment of foreign domestic helpers. EOC will also arrange for distribution of the information to foreign domestic workers via consulates in Hong Kong and via our Mobile Information Service operated by a non-governmental organization at the Airport. The EOC would of course continue to promote the RDO and the Code to all sectors of the community.

President, we have come a long way since the Race Discrimination Bill was introduced in December 2006. During the 34 meetings of the Bills Committee to scrutinize the bill and 10 meetings of the Subcommittees to scrutinize the subsidiary legislation and the Code, Members and all parties concerned have provided very valuable input. We will see the new legislation and related instruments coming into operation in a few days. This is an important milestone in our efforts to promote racial equality. I would like to thank all of you for your contribution and look forward to Members' continued support in this meaningful work.

President, I beg to move.

**The Secretary for Constitutional and Mainland Affairs moved the following motion:**

"RESOLVED that the Code of Practice on Employment under the Race Discrimination Ordinance, published in the Gazette as Government Notice No. 2733 of 2009 and laid on the table of the Legislative Council on 13 May 2009, be amended-

- (1) in paragraph 1.2.1, in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (2) in paragraph 1.2.2, in the Chinese text, by deleting "作";
- (3) in paragraph 1.4.3, by adding "and" after "international";
- (4) in paragraph 2.1.1, in the Chinese text, by deleting "乎" and substituting "符";
- (5) in paragraph 2.1.4 (3), in the Chinese text, by deleting "典籍、";
- (6) by deleting paragraph 2.1.4(4) and substituting-

"2.2 Religion

2.2.1 Religion in itself is not race. A group of people defined by reference to religion is not a racial group under the RDO<sup>17</sup>. The RDO does not apply to discrimination on the ground of religion<sup>18</sup>. But requirements or conditions having an impact on people's religious practices may indirectly discriminate against certain racial groups, and when this is so the RDO applies<sup>19</sup> (see for example the blanket ban on beards in Illustration 9 below may indirectly discriminate against ethnic groups whose religious practice or custom is to wear beards).

2.3 Language

2.3.1 As language used by people is often associated with their race, treatment based on language may

discriminate against certain racial groups or may amount to racial harassment. Since language issues may arise in different aspects of employment matters, they will be mentioned and dealt with in different parts of the Code below (see for examples paragraphs 3.8.1(2) to (4), 5.3.1(1)(d), 5.3.1(2), 5.3.4(3), 5.3.5(2), 5.3.12, 5.3.13(1), 5.3.14(8)(c), and 6.1.1(2)(v)).";

- (7) by renumbering paragraphs 2.2, 2.2.1 and 2.2.2 as 2.4, 2.4.1 and 2.4.2 respectively;
- (8) in Illustration 1, by deleting "only" where it secondly appears and adding "only" after "employ";
- (9) in paragraph 3.2.2, in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (10) in paragraph 3.3.1 (3), by adding "in fact" after "has";
- (11) in Illustrations 3 and 4, in the Chinese text, by deleting "國內" where it appears and substituting "內地";
- (12) in paragraph 3.4.1, by adding "This grace period ends on 10 July 2011." after "5 employees<sup>34</sup>."; and in the Chinese text, by deleting "這段" and substituting "寬限";
- (13) in paragraph 3.4.2, by deleting "Employers of domestic helpers may not at any time discriminate against them after recruitment<sup>38</sup>.";
- (14) in paragraph 3.4.3, by deleting "The grace period will expire on 10 July 2011, by which time the provisions making discrimination under the RDO in employment unlawful will apply to all employers.";
- (15) in paragraph 3.6, in the Chinese text, by adding "(《種族歧視條例》下有關僱傭範疇的條文)" after "第三部";
- (16) in paragraph 3.7.3, in the Chinese text, by deleting "不可種族歧視佣金是其全部或部分收入的保險經紀" and

substituting "不可對以佣金為其全部或部分收入的保險經紀作出種族歧視";

- (17) in paragraph 3.8.1(2), by deleting "and may refuse enrolment for people who do not meet the requirement regardless of their race. Such language requirement" and substituting "which";
- (18) in paragraph 3.8.1(3), by deleting "Course information and material may be provided only in the language required for the course.", and deleting "have equal opportunities to undergo vocational training, and providers are encouraged to do so.", and after "groups" adding "to have equal opportunities to undergo vocational training. Providers are encouraged to do so by, for example, providing lecture notes and other course materials in English so that people who can read English and speak Cantonese (but not read Chinese) may participate in a course taught in Cantonese.";
- (19) by adding after paragraph 3.8.1(3)-

"(4) Providers are also encouraged to ensure that language requirements for training course are commensurate with the contents of the courses, so that people from different racial groups are not deterred by unnecessary language requirement. For example, where the language requirement for a course is only the ability to speak Cantonese, it is unnecessary to require students to be able to read and write Chinese.";
- (20) in paragraph 3.8.2(1), by adding "Agencies also may not help or aid employers to discriminate on the ground of race<sup>45</sup>, for example, by arranging underpayment for workers from certain racial groups." after "their services.";
- (21) in paragraph 4.1.1, in the Chinese text, by deleting "僱員和工作人員" where it appears and substituting "員工";
- (22) in paragraph 4.1.2(1), by deleting "and implement the policy of the good employment practice and procedures described in

Chapter 5 of the Code." and substituting "a policy of racial equality and implement such a policy through good employment practice and procedures. Chapter 5 of the Code provides recommendations on the contents of a racial equality policy and on good employment practice and procedures for employers' and reference and adoption as appropriate according to the scale and structure of their organizations and available resources.";

- (23) in paragraph 4.1.2(2) after "hours"<sup>48</sup>.", by adding "Whether an event occurring outside normal working hours or workplace comes within the course of employment depends very much on the specific circumstances of each case. It is recommended that employers take reasonably practical steps to prevent discrimination and harassment by adopting good employment practice and procedures as described in Chapter 5 of the Code.";
- (24) in paragraph 4.1.3, by deleting "employment" and adding "in the workplace" after "procedures";
- (25) in paragraphs 4.2, 4.2.1 to 4.2.3, in the Chinese text, by deleting "僱員和工作人員" where it appears and substituting "員工";
- (26) in paragraph 4.2.3 after "race.", by adding "Employees and workers can be proactive in helping to eliminate racial discrimination by becoming familiar with the subject, so that they do not inadvertently discriminate against someone or inadvertently aid their employers to do so. Whenever appropriate, employees and workers could also encourage their employers to formulate anti-discrimination policies and to implement preventive measures. Employees and workers are encouraged to be supportive of friends or colleagues who intend, in good faith, to lodge a complaint about discrimination, or have lodged such complaint.", and deleting "They are recommended to:-

- (1) Observe the requirement of the RDO and follow the recommendations of the Code;
  - (2) Become familiar with and follow the employer's equality policy;
  - (3) Respect the racial identity of fellow workers and refrain from infringing their rights to work free of discrimination and harassment on the ground of race;
  - (4) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination and harassment on the ground of race;
  - (5) Take part in training related to equal opportunities.";
- (27) After paragraph 4.2.3, by adding-
- "4.2.4 Employees and workers have a clear role to play in helping to create a climate at work in which racial harassment is unacceptable. They can contribute to preventing racial harassment through awareness and sensitivity towards the issue and by ensuring that standards of conduct for themselves and for colleagues do not cause offence.
- 4.2.5 All employees and workers have responsibilities as well as rights in respect of the work environment that is created. Racial harassment, particularly in its less severe forms, can be part of the usual code of behaviour in a workplace. To change this may require each employee or worker to reconsider his or her own attitudes and conduct as well as those of his or her colleagues.

- 4.2.6 Employees and workers can do much to discourage racial harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffered such treatment and are considering making a complaint.
- 4.2.7 People often do not complain even when they have been racially harassed because they are afraid of co-workers' reaction. They do not want to run the risk of being accused by them of spoiling the work climate. Neither do they want to be told that they provoked the harassment themselves or that they cannot take a joke. When employees and workers show through their words and their actions that they find racial harassment unacceptable, this will provide substantial support to those who are harassed and make it easier for them to come forward to file a complaint.
- 4.2.8 Employees or workers who are themselves recipients of harassment should, where practicable, tell the harasser that the behaviour is clearly unwanted and unacceptable. Once the offender understands clearly that the behaviour is unwelcome, this may be enough to put an end to it. If the behaviour persists, employees or workers should inform management and/or their employee representative through the appropriate channels and request assistance in stopping the harassment, whether through informal or formal channels.
- 4.2.9 When telling the harasser that the behaviour is unwanted, if the employee or worker does not want to confront the harasser alone, he or she may want to ask a co-worker or a friend to be present. An alternative to confronting the harasser in person is to write to him or her and keep a copy of the correspondence.

- 4.2.10 Where an employee or worker feels uncomfortable or unsafe in confronting the harasser directly, the employee or worker may choose to inform management and/or an employee representative in the first instance and request for steps to be taken to deal with the matter.
- 4.2.11 If the harassment continues, however, the employee or worker should, if possible, seek advice on what to do next. The employee at all times has the option of seeking external assistance, such as lodging a complaint with the EOC or bringing legal proceedings in the District Court (see Chapter 7 of the Code).
- 4.2.12 It is important for an employee subjected to racial harassment to keep a record of the incident(s) so as to be able to recall exactly what has happened.
- 4.2.13 Employees and workers are also encouraged to come forward with complaints as soon as possible after the alleged incidents as a lapse in time may, in certain circumstances, weaken a complainant's case.
- 4.2.14 Overall, employees and workers are recommended to:-
- (1) Observe the requirement of the RDO and follow the recommendations of the Code;
  - (2) Become familiar with and follow the employer's equality policy;
  - (3) Respect the racial identity of fellow workers and refrain from infringing their rights to work free of discrimination and harassment on the ground of race;



- (4) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination, harassment and vilification on the ground of race;
- (5) Take part in training related to equal opportunities.";
- (28) in paragraph 5.2.2(1) after "race", by adding "(see paragraph 6.1.1(1) of the Code for the definition of direct discrimination under the RDO)";
- (29) in paragraph 5.2.2(2) after "objective" where it secondly appears, by adding "(see paragraph 6.1.1(2) of the Code for the definition of indirect discrimination under the RDO)"; and in the Chinese text, by deleting "不公平" and substituting "差異甚大的";
- (30) in paragraph 5.2.3, in the Chinese text, by adding "(守則第 5.3段)" after "推行<sup>53</sup>";
- (31) After paragraph 5.3.1(2), by adding -
- "(3) The application of consistent selection criteria is good management practice as it helps organizations to make faster decisions because the criteria for decisions are clear; and to make better decisions because the criteria directly relate to work performance; and they form the basis for effective job evaluation. Consistent selection criteria should also be applied in respect of other employment decisions such as promotion, transfer, or training. These criteria should be accessible by all job applicants, employees and workers.";
- (32) in paragraph 5.3.2 (1), in the Chinese text, by deleting "一個人", "他／她的" and "其是否有能力", and adding "的能力" after "工作" where it secondly appears;
- (33) in paragraph 5.3.4 (3), in the Chinese text, by deleting "理想" and substituting "良好"; by deleting "可" after "介紹所"

where it secondly appears and adding "可" after "實際" where it thirdly appears;

(34) After paragraph 5.3.5(2), by adding -

"(3) Keep record of the shortlisting process, including the shortlisting criteria and marking system, for not less than 24 months<sup>57</sup>;"

and renumbering paragraphs 5.3.5(3) and 5.3.5(4) as 5.3.5(4) and 5.3.5(5) respectively;

(35) in paragraph 5.3.6(2) by deleting "may" where it firstly appears and adding "should only" after "information" where it firstly appears;

(36) in paragraph 5.3.7, by deleting "It" where it firstly appears and substituting "An interviewer who seeks evidence of skills and abilities and who relies on facts rather than generalized hunches will be less likely to be biased. In line with good management practice, it";

(37) After paragraph 5.3.7(1), by adding -

"(2) Accommodate people from different racial groups who may find it difficult to attend interviews at certain times, for example, Jewish people who have to observe Sabbath on Saturdays;"

and renumbering paragraph 5.3.7(2) as 5.3.7(3);

(38) by adding after 5.3.7(3) as renumbered in (37) above-

"(4) It is a good practice to record, immediately after the interview, the assessment that each interviewer has formed on the applicant's ability to match the consistent selection criteria. This will not only ensure a logical assessment of the applicant's strengths and weaknesses but will also serve as a valuable explanation and defence against any unfounded suggestion of race bias;"

and renumbering paragraph 5.3.7(3) as 5.3.7(5) and adding "not less than" after "for" and deleting ", or if this is not practicable, at least not less than 12 months";

- (39) in paragraph 5.3.9 after "applicant.", by adding "Instructing employment agencies or services that there should be no discrimination in the recruitment process will help the employers to show that they have discharged their responsibilities under the law and that the agencies and services do not have authority from them to discriminate.";
- (40) in paragraph 5.3.10(1), by deleting "their practices, rules" and substituting "the terms and conditions of employment, the assignment of work and duties, the practices, rules, terms policies, conditions", and adding "This applies to commissions, bonuses, allowances, pensions, health insurance plans, annual leave, merit or performance pay, or any other fringe benefits available to employees and workers. If there is any differential treatment, ensure that it is not connected with the race of the employees." after "direct discrimination).";
- (41) in paragraph 5.3.10(2), by deleting "Employers should consult staff, trade unions and other workplace representatives on practical ways in which they can accommodate workers' needs." and adding "Employers and employees should respect each others' culture and customs, and employers should consult staff, trade unions and other workplace representatives on practical ways in which accommodation may be made in respect of employees' needs." after "working arrangements<sup>61</sup>."; and in the Chinese text, by deleting "不公平" and substituting "差異甚大的";
- (42) in paragraph 5.3.10(4) after "to do them.", by adding "Examples of "like work" are: Chinese and Indian tellers working in the same bank; a Pakistani person working in an employment agency supplying clients with temporary staff and a Chinese person supplying permanent staff in the same agency; and foremen and line supervisors working in different sections of a production line.";

(43) in paragraph 5.3.10 (5) after "warrant equal pay.", by adding "Race discrimination in pay may occur when different races are segregated into different jobs, for example, jobs having a higher status and are more highly rewarded are done mainly by Chinese people when compared to jobs done mainly by people from other racial groups. Such differences can be reinforced by discriminatory recruitment, selection and promotion procedures which restrict the range of work person of different races can perform.";

(44) After paragraph 5.3.10(5), by adding-

"(6) Where part-time workers do not enjoy pay or benefits in pro-rata with full-time workers, employers should review the arrangements to ensure that such arrangements are justifiable without regard to race.";

and renumbering paragraphs 5.3.10(6), 5.3.10(7) and 5.3.10(8) as 5.3.10(7), 5.3.10(8) and 5.3.10(9) respectively;

(45) by adding after 5.3.10(9) as renumbered in (44) above-

"(10) In addition, such considerations should:-

- (a) actually exist (e.g. the person belonging to one race has more experience than the person belonging to another race);
- (b) be genuinely the cause of the difference in pay (i.e. the employer should have a pay system which applies to all races alike and consistently rewards experience, where appropriate);
- (c) account for the whole of the pay gap (i.e. the extra payment is not an excessive reward for the additional experience); and
- (d) have the effect which the employer sets out to achieve, e.g. there is evidence that, as a result of the specific employee's experience, he/she does the work better than the other colleague, who

belongs to another race.";

- (46) in paragraph 5.3.12(1), in the Chinese text, by deleting "甄" and substituting "篩";
- (47) in paragraph 5.3.12(2), in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (48) in paragraph 5.3.13(5) by adding "not less than" after "for" and deleting ", or if this is not practicable, at least not less than 12 months";
- (49) in paragraph 5.3.13(6) after "discriminatory", by adding a full stop and "Employees of certain racial groups may be concentrated in sections from which transfer are traditionally restricted without real justification";
- (50) in paragraph 5.3.13(7)(b), in the Chinese text, by deleting "不同程度" and substituting "差異甚大";
- (51) in paragraph 5.3.14, by deleting "Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected. It is recommended that employers:-" and substituting-
  - "(1) Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected.
  - (2) An absence of complaints about racial harassment does not necessarily mean an absence of racial harassment. It may mean that the recipients of racial harassment think that there is no point in complaining because nothing will be done about it, or because it will be trivialized or the complainant will be subjected to

ridicule, or because they fear reprisals.

- (3) Implementing the preventive and procedural measures outlined here should facilitate a favourable climate at work.
- (4) Both the policy and complaints procedures should be introduced after consultation or negotiation with the employee representatives. Strategies to create and maintain a working environment in which the dignity of employees and workers is respected are most likely to be effective where they are jointly agreed.
- (5) Employers should also make clear that employees and workers have a duty and responsibility towards creating such an environment and in ensuring that racial harassment does not occur.";

and renumbering paragraph 5.3.14(1) as 5.3.14(6) and deleting "Make" and substituting "Employers should make"; and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(2) as 5.3.14(7) and deleting "Provide a work environment that is" and substituting "The statement should make it clear that the work environment is to be" and deleting the semicolon and substituting a full stop; and in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";

and renumbering paragraph 5.3.14(3) as 5.3.14(8) and deleting "Explain that harassment<sup>66</sup> on the ground of race is" and substituting "The statement should also explain that harassment on the ground of race is unlawful<sup>67</sup> and";

and in paragraph 5.3.14(8)(g) as renumbered above, deleting the semicolon and substituting a full stop;

and adding after 5.3.14(8) as renumbered above-

"(9) Information should be given about internal complaint

procedures, assuring employees and workers that confidentiality will be observed.

- (10) The contact details should be given of officers who are responsible for dealing with complaints, providing information and advice; and there should be a note about disciplinary action for harassers and that the complainant may lodge a complaint with the EOC or bring legal proceedings in the District Court."

and renumbering paragraph 5.3.14(4) as 5.3.14(11) and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(5) as 5.3.14(12) and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(6) as 5.3.14(13);

and adding after 5.3.14(13) as renumbered above-

"(14) A co-ordinator, preferably with special training, should be designated to establish and administer both informal and formal complaints procedures.

(15) Effective and regular promotion of the policy is important to a successful programme against racial harassment in that:-

- (a) it warns that certain offensive conduct is unlawful;
- (b) it sends out a clear message that management will act against such behaviour;
- (c) it ensures that all persons in the organization know what to do if they encounter racial harassment and know that any complaint will be handled effectively and properly; and
- (d) it assures staff that they are unlikely to be

disadvantaged by racial harassment or be victimized by making a complaint.

- (16) In order to promote the policy, information may be disseminated through:-
- (a) speaking at staff meetings;
  - (b) distribution and re-circulation of policy statements;
  - (c) posting notices; and
  - (d) conducting training and refresher courses.
- (17) The co-ordinator or any other staff member involved in the complaints handling procedures should receive adequate training to enable sensitive treatment of cases in relation to racial harassment, for example:-
- (a) what is racial harassment: definitions and examples; the role of power in harassment situations; the reasons why some individuals harass; recognize harassment situations, e.g. who are the workers at risk;
  - (b) prevention of racial harassment: recognize the role of publicity, how to use publicity and available resources effectively; informal monitoring of the workplace; recognize symptoms of harassment; and alert staff of possible acts of racial harassment; and
  - (c) dealing with harassment: skills on responding to enquiries and maintaining privacy and confidentiality; non-judgmental listening skills; informing enquiries of alternative ways of handling harassment other than by making a formal complaint; knowledge of outside bodies



that can be approached for assistance or to whom complaints can be made, e.g. the EOC.

- (18) Regardless of whether an informal or formal complaints procedures is in use, it is good practice for employers to monitor and review complaints of racial harassment and how they have been resolved, in order to ensure that the procedures are working effectively.";
- (52) in paragraph 5.3.15(1), in the Chinese text, by deleting "被" and substituting "獲"; adding a comma after "升職", deleting the bracket after "解僱";
- (53) in paragraph 5.3.15(6) by adding "not less than" after "for" and deleting ", or if this is not practicable, at least not less than 12 months";
- (54) in paragraph 5.3.16 by adding the following sub-paragraph after "It is recommended that employers:-"
- "(1) Ensure that employees and workers are not dismissed, made redundant, or given unfavourable treatment on the ground of race or irrelevant race-related factors such as language, appearance or attire;"
- and renumbering paragraphs 5.3.16(1) to 5.3.16(4) as 5.3.16(2) to 5.3.16(5) respectively;
- and in paragraph 5.3.16 (3) as renumbered above, in the Chinese text, by deleting "不公平" and substituting "差異甚大";
- and renumbering paragraph 5.3.16(5) as 5.3.16(6) and adding "not less than" after "for" and deleting ", or if this is not practicable, at least not less than 12 months";
- and renumbering paragraph 5.3.16(6) as 5.3.16(7);
- (55) in paragraph 5.3.17(4), in the Chinese text, by deleting "僱員

- 和工作人員" and substituting "員工" and by deleting "不公平" and substituting "差異甚大";
- (56) in paragraph 5.3.17(5), in the Chinese text, by deleting "不公平" and substituting "差異甚大";
- (57) in paragraph 6.1.1(1)(a), in the Chinese text, by deleting "作為" where it appears and substituting "行為";
- (58) in paragraph 6.1.1(1)(c), in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (59) in Illustration 9, by deleting ", for example, because" and substituting "as", and deleting "be" and substituting "have been";
- (60) in Illustration 10, by deleting "10" and substituting "9"; and in the Chinese text, by adding "例子9" after "上文";
- (61) in paragraph 6.1.1(2)(v), by adding "Each case depends on its own facts and Illustration 13 below is for reference only." after "the job.";
- (62) in paragraph 6.1.3(4), by adding "(except where the allegation is false and not made in good faith)" after "RDO";
- (63) in paragraph 6.2.2, in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (64) in paragraph 6.3.1 (11), in the Chinese text, by adding "。" after "人士<sup>104</sup>";
- (65) in paragraph 6.3.3, by adding "For good practice on prevention of racial harassment, please see paragraph 5.3.14 of the Code." before "For", and by deleting "paragraph 5.3.14(3)" and substituting "paragraph 5.3.14(8)";
- (66) in paragraph 6.4.3, by deleting "or" and substituting "and";
- (67) in paragraph 6.7.2, in the Chinese text, by deleting the fourth

comma;

- (68) in paragraph 6.7.4(3)(b), in the Chinese text, by adding "非" after "就", and adding "的僱員" after "人員";
- (69) in paragraph 6.7.4(3)(b)(i), in the Chinese text, by deleting "主要對有關僱主委任或" and substituting "本地僱用條款是指僱主", and by deleting "適用" and substituting "採用";
- (70) in paragraph 6.7.4(3)(b)(ii), in the Chinese text, by deleting "主要對有關僱主委任或" and substituting "海外僱用條款是指僱主", by deleting "並", and by deleting "的人", and by deleting "適用" and substituting "採用";
- (71) in paragraph 7.1.1, in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (72) in paragraph 7.1.3, in the Chinese text, by deleting "僱員和工作人員" and substituting "員工";
- (73) in paragraph 7.2.10, by adding "If the parties do not wish to resolve disputes through settlement and wish to obtain a binding decision from the District Court, they may resort to legal proceedings directly." after "publications by the EOC."; in the Chinese text, by deleting "遲" and substituting "呈";
- (74) in paragraph 7.3.2, by adding "the EOC's strategic concerns such as" after "reflects", and deleting "or the EOC's strategic concerns." and substituting "indicated through the EOC's complaint handling experience.";
- (75) in paragraph 7.4.1(4), by adding "or appropriate legal action" after "investigation";
- (76) in paragraph 7.4.1(5), by adding "through public education and publicity initiatives" after "racial harmony";
- (77) in paragraphs 3.4 and 3.5 of the sample policy on racial

equality, by adding "and management staff" after "Workers" where it appears;

- (78) in paragraph 3.9 of the sample policy on racial equality, by deleting "Requirements" and substituting "Terms and conditions of employment, rules and practices, requirements", and adding "with a view to take steps to promote equality and prevent discrimination in consultation with employees, workers and management staff" after "results";
- (79) in paragraph 3.10(2)(g) of the sample policy on racial equality, in the Chinese text, by deleting "地" before "挑剔";
- (80) in paragraph 3.11 of the sample policy on racial equality, in the Chinese text, by adding "「機構名稱」" before "將";
- (81) in footnote 1, in the Chinese text, by adding "(第602章)" after "《種族歧視條例》";
- (82) in footnote 26, in the Chinese text, by deleting the full stop where it firstly appears and substituting a semicolon; and deleting the full stop where it secondly appears;
- (83) by deleting footnote 38;
- (84) by renumbering footnotes 39 to 45 as 38 to 44;
- (85) by adding footnote 45 "RDO section 48";
- (86) by deleting footnote 53 in the Chinese text;
- (87) by renumbering footnote 54 to 53 in the Chinese text;
- (88) in paragraph 5.3.1 (2), in the Chinese text, by adding footnote 54 "參閱守則第5.3.12和6.1.1(2)(v)段" after "要求";
- (89) by adding footnote 57 "Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24

months (RDO section 80), keeping records properly will help to deal with disputes.";

(90) by renumbering footnotes 57 to 112 as 58 to 113;

(91) in footnote 61 as renumbered above, in the Chinese text, by deleting the full stop."

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

**MR PAUL TSE** (in Cantonese): President, I hereby report on the deliberations of the Subcommittee on the Code of Practice on Employment under the Race Discrimination Ordinance (Code of Practice on Employment) in my capacity of the Chairman of the Subcommittee on Race Discrimination (Formal Investigation) Rules, Race Discrimination (Investigation and Conciliation) Rules and Code of Practice on Employment under the Race Discrimination Ordinance (the Subcommittee).

President, the Subcommittee seeks to perfect the provisions of the Code of Practice on Employment as far as possible, so as to provide a set of practical guidelines for reference of employers and employees and a Code which emphasizes on the promotion of the spirit of racial equality in the workplace upon the implementation of the Race Discrimination Ordinance (the Ordinance). After listening to the views of the deputations on the Code of Practice on Employment, the Subcommittee held a series of meetings with the Administration and the Equal Opportunities Commission (EOC) to scrutinize the provisions of the Code of Practice on Employment. After taking into account the views of members and deputations, the EOC has agreed to make substantial revisions to the Code of Practice on Employment.

President, I would like to raise the concerns of the Subcommittee in regard to the employment of domestic helpers in particular. Though employers are free to choose domestic helpers from different races, under the provisions of the Ordinance, the domestic helper, once employed, is protected against racial discrimination in employment in the same way as other persons. The

Subcommittee was concerned that unlike ordinary employment, domestic helpers have close interaction with the employer and their family members in daily life who may not understand their legal responsibilities under the Ordinance. This applies particularly to the elderly. Members stressed that given the large number of households with foreign domestic helpers, it is important that the authorities and the EOC should provide those households with more practical guidelines with specific illustrations, and should also enhance their work on publicity and education, to make the employer and those in the household understand how to prevent infringing the rights of the domestic helper of a different race.

Members suggested that the Administration and the EOC should prepare publicity leaflets for distribution to potential employers of foreign domestic helpers through the Immigration Department and foreign domestic helper agencies. Members also suggested that a clause be added to the standard contract for foreign domestic helpers to alert employers of their responsibilities under the Ordinance.

In response to the concerns and requests of the Subcommittee, the Secretary for Constitutional and Mainland Affairs has reported on measures to be adopted by the Administration and the EOC in this regard when he spoke earlier.

President, the Subcommittee supports the resolution moved by the Secretary to amend the Code of Practice on Employment. Thank you, President.

**DR MARGARET NG** (in Cantonese): President, the least we should do as a civilized society is to fulfil our obligations under the International Convention and respect human rights. As such, the Hong Kong SAR should carry out and accomplish our mission under the International Convention on the Elimination of All Forms of Racial Discrimination as soon as possible. However, as regards the Race Discrimination Ordinance, irrespective of whether it was during the course of passing the Ordinance, its many pieces of subsidiary legislation or even the Code of Practice on Employment now under discussion, a lot of defects were found, and we had to make some compromises against our principles in many aspects. We have only done so for one reason, and that is, to put the Code into practice as soon as possible. Therefore, we are full of conflicting feelings when the Secretary said earlier that we could finally announce that the Ordinance would come into operation on 10 July, for in the course of this exercise, we came across

many ethnic minorities and their deputations who felt greatly wronged in the process. As such, President, I have to make this opening statement so that our Government will not feel too complacent, not only should it not be too complacent, but it must also take follow-up actions to make up for the deficiencies. President, the resolution we pass today is really not something that we should be proud of.

President, I would now move on to say that though I support the Code of Practice on Employment which is the main subject under discussion today — firstly, I support the passing of the resolution, and secondly, I also support all amendments to be moved by the Government later — I have to point out several facts. Firstly, on what was lacking in the consultation process. The Secretary said earlier that extensive public consultation had been conducted and the views of various groups had been taken into account. Though this is not untrue, he has covered up or neglected certain facts, and that is, we found out to our surprise that the consultation document issued with regard to the so-called extensive public consultation exercise first conducted by the Equal Opportunities Commission (EOC) on safeguarding the rights of ethnic minorities and racial equality, was only available in Chinese and English and not in languages which the ethnic minorities themselves can understand. It was even said that the views given by the ethnic minorities in the process were only very vague and general, and that is, only on the principles and were neither specific nor in accordance with the provisions. This is really understandable for how can the ethnic minorities have offered any specific opinions when they actually do not understand those provisions? It was virtually impossible for them to comment on whether the provisions were to their benefit or whether they were sound. This is my first point. How can the EOC set an example if it fails even to fully respect the special characteristics of the ethnic minorities?

President, as a matter of fact, we must fight to have the consultation document translated, at least, into the main languages of the ethnic minorities, despite the tight schedule, before the consultation exercise is conducted. We should strongly insist that the Subcommittee should do it and that is the only way we would be willing to scrutinize the Code. President, on one hand, we are certainly very happy to monitor and supervise the work of the Government, but on the other, we do not have much confidence on how the Ordinance will be implemented in future as a result of this.

Secondly, President, the language adopted in the source language of the

Code of Practice on Employment is so complex that it is comparable to that of the Racial Discrimination Ordinance and not a bit easy to understand. Therefore, even if we have the Code of Practice in hand, we will not find it very useful, and that is to say, it is not a so-called user-friendly version. Though nominally, it seems that a Code of Practice has been drafted, the spirit and target of the Code are actually far from being upheld and achieved. In this regard, the EOC is only forced to make the changes as a result of the hard work done by many organizations in the course of the consultation.

Thirdly, the stance originally adopted and the wordings of the Code of Practice on Employment are totally not in line with the provision on helping employees and employers understand their own rights and obligations under the Racial Discrimination Ordinance, and thus cannot achieve the purpose of promoting racial equality. In order to promote racial equality, the passing of legislation alone is not sufficient, for the community at large must be made to understand its rights and obligations and know that the provisions must be complied with before our target can be achieved. The responsibility of the EOC is to promote racial equality, and to do so with the help of the Code, thus the role of the Code is really of great significance. But, as this target cannot be achieved through the original version of the Code, we had to make great efforts on promoting changes in the course of the consultation and our scrutiny.

Fourthly, what I would like to talk about is, we must put on clear record that the official side did make some concessions at the insistence of our Subcommittee members and various groups, and members of the EOC have sincerely tried their best to make improvements, and the Code has now been much improved. President, we do not wish to do this each and every time for the situation can really be said to be very awkward, and it is really very awkward under the constraints of time. I have often said that if the situation is so awkward and things have to be done in such a great haste, then many mistakes would be made. I really hope that we can all learn from this lesson and such things will not happen again in future.

Fifthly, I would like to say that the depositions were of the view that the Code of Practice on Employment should not be the only code under the Ordinance and other aspects should be covered. In fact, there is a pressing need for other codes of practice to be drawn up in the areas of education, medical services and staff training. The Chairman of the Subcommittee has also



mentioned one point in particular in his earlier report, and that is, as regards to domestic helpers or domestic servants, it is necessary to compile a code for domestic helpers in general to clarify certain issues. This is one of the areas for which codes of practices should be compiled. As such, we always hope that the EOC will issue codes of practices when it senses such needs. Under the law, the EOC has the right and obligation to issue codes of practices when necessary and from time to time. Therefore, I have to stress once again, like what I have said earlier, that having learned a lesson in the process; we should do better in future.

Sixthly, in addition to the need of compiling other codes of practices, there is still another great deficiency in the Ordinance. As the Government is in possession of the largest amount of resources and has the greatest influence in society, our ethnic minorities will continue to be subjected to unequal treatment, if the Government fails to promote the equality scheme. We have not been successful in amending the relevant Ordinance, and the Government has now issued the so-called administrative guidelines which were discussed at the meeting of the Panel on Constitutional Affairs last week. Though the guidelines of the equality scheme are very important to the promotion of racial equality as a whole, from what we saw last week, President, it still falls short of our ideals and basic requirements. As such, President, I really have great reservations about whether racial equality can be promoted, if this move is not included.

Seventhly, what is the most effective way for promoting racial equality? It is for the Government (the EOC in particular) to set an example, especially in respect of employment. A Hong Kong citizen of Pakistani descent made a simple suggestion in the course of the public consultation exercise. He thought that many problems could be easily resolved if the EOC could employ some members of the ethnic minorities, for they would definitely know which areas were lacking when they had personally suffered from the dire consequences. President, this person is not only fluent in Cantonese, but the Cantonese he speaks is also very cultured and accurate. President, you may also be acquainted with this person for he lives in Tuen Mun. He even brought along his report cards to show us that he had got very high marks in Chinese Language in primary school. Such people will really be able reflect the views of the ethnic minorities and are very valuable assets of the community. I really hope that the authorities and the EOC can set an example by employing more ethnic minorities so that the scheme can be implemented more comprehensively and smoothly.

Eighthly, the co-operation of the deputations, in particular those of the

ethnic minorities, is most essential in the process. They have really worked very hard and are most keen on contributing their time and efforts. Without their participation, we may not even be able to achieve these not-so-perfect results that we have got. Therefore, we have repeatedly requested that the Government must continue to fight for the co-operation of, communication with and support of such groups, and provide them with the necessary resources. The Government often tells us that it has already done so and has already injected such and such amount of funds and established such and such number of centres, but we discover that the assistance offered has differed greatly between the "close and the distant". Some groups can easily obtain assistances, but others have never been able to do so. The group we would like to mention in particular is the Hong Kong Unison. Though the Hong Kong Unison has only barely survived on very limited resources, the Government has treated it with indifference or even with hostility. This makes us feel that the Government is really insincere in the so-called promotion of racial equality.

President, we have learned a great lesson from this incident, and really hope that the Government can act more faster in future, especially with regard to drafting other codes of practices after the Code of Practice on Employment is implemented. The drafting of government administrative guidelines is also quite an important step. President, the passing of the Code of Practice on Employment today does not signify that our work is complete. President, I hope that the Administration will listen to our views and do better. Thank you, President.

**MS MIRIAM LAU:** President, the Race Discrimination Ordinance (RDO) enacted last year makes racial discrimination unlawful in the areas of employment, education, provision of goods, facilities and services, and so on. The Liberal Party supports the elimination of racial discrimination in Hong Kong. While we support the RDO, we have also pointed out that for the law to be effective, proper education and promotion are of paramount importance to enable the community to understand the requirements of the law and abide by it.

Employment is a key area targeted by the RDO. The Code of Practice on Employment (the Code) before us today seeks to provide recommendations for good employment procedures and practices for employers to follow. It explains complicated concepts such as indirect discrimination and harassment provided by

the RDO, so that employers will better understand the law. Although the Code is not itself law, it is admissible as evidence in any proceedings under the RDO, and relevant provisions will be taken into account by the Court in determining questions arising in the proceedings. Accordingly, compliance with the Code will, at least theoretically, assure non-infringement of the RDO; conversely, non-compliance may expose the employer to risk of liability.

The RDO as well as the Code applies to all employers in Hong Kong, whether they be large corporations or small and medium enterprises. For all employers, small employers in particular, clear understanding of the Code and its ramification is not only a challenge, but a necessity. The Code must therefore be couched in terms that are simple, cogent and easily understood. The Code should also be easy to implement without the necessity of incurring huge administrative and operational costs.

The Code in its draft form, was first published in October last year for consultation. The Code in its present form purports to have incorporated the views received in that consultation exercise. However, judging from the many views of depositions received by the Subcommittee, the Code still falls short of expectations. There still remains complaint that the Code is economic on illustrations, that certain areas remain unclear and require clarification, and that concerns previously raised have not been addressed. Despite the final improvements made to the Code, the Liberal Party cannot be sure that it is the best of practical guidelines that may be provided to employers.

I wish to quote a few areas of concern that seem to remain unanswered. Both The Law Society of Hong Kong (the Law Society) and the General Chamber of Commerce have expressed reservations about the method for determining whether a person works wholly or mainly outside Hong Kong under paragraph 3.3.1 of the Code. The illustration given is of little assistance. Although the Equal Opportunities Commission (EOC) has clarified that a historical facts approach is adopted, and has further inserted the words "in fact" in paragraph 3.3.1(3), it can be envisaged that difficulty may arise in case the employee is engaged to work both in Hong Kong and some place outside Hong Kong for unspecified periods of time. Nowadays, many employees are required to commute on an irregular basis between Hong Kong and the Mainland to carry out their duties. The EOC has agreed to keep the case laws on these issues under review, however, I hope that the EOC will give serious consideration to the

reservations expressed and further clarify this provision when it carries out the review after 12 months.

Another area of concern relates to recruitment under paragraph 5.3 in relation to which the Law Society, the General Chamber of Commerce and the Employers' Federation have expressed concern. Of particular concern is the language requirement. The Employers' Federation is concerned about the need to justify pre-conditions and has asked that paragraph 5.3.12 be expanded to clarify what the relevant considerations are and also to provide examples. The General Chamber of Commerce requested that paragraph 5.3.12(2) (and on a similar note, paragraph 6.1.1(1)(c)) should be appropriately qualified to make it clear that the accent requirement is acceptable so long as it is commensurate with the satisfactory performance of a job. The EOC however refused to make any improvement to the provisions or provide illustrations to throw light on them. The EOC has only agreed to keep the issue under review as it accumulates operation experience and in the light of case law development. Employers are left groping in the dark as to what specifically the law allows, or disallows, them to do. Again this is an area that I think the EOC must address when it comes around to the review after 12 months.

Both the General Chamber of Commerce and the Employers' Federation have expressed concern that the practical guidelines enshrined in the Code are still unclear in the area of expatriate benefits and overseas contracts. Exceptions exist in the RDO concerning expatriate terms, however, how they are supposed to operate in practice remains highly unclear. The EOC says that paragraph 6.7.3 of the Code explains that the expatriate exception applies "so long as the benefit given to the employee is reasonable, and each case depends on its own facts". Honestly, I am pretty lost as to what this means, and I cannot understand why the EOC maintains that the provision is clear, when to me clearly it is not. In my view, this is another area that the EOC must set its mind to and come forth with further guidelines and illustrations.

Both the General Chamber of Commerce and the Employers' Federation have expressed concern that small employers will find the Code too onerous or difficult to observe. This is also my concern. As I mentioned earlier, the RDO introduced many complicated concepts and even the Code is not entirely easy to follow. The EOC explained that the Code merely makes recommendations and encourages certain practices. Employers are therefore not mandated to do

everything, and on certain recommendations, smaller employers need only adopt practices as may be appropriate to the scale and structure of their organizations and available resources. However, the fact is that the recommendations are contained in the Code. Therefore, if a recommendation is not followed, the small employer may in the event of court proceedings, be left with the onerous task of convincing the Court that he or she is entitled to be exonerated from the requirements of the recommendation. I suggest that in light of the vulnerability of small employers, special effort should be made by the EOC to educate and promote the Code to the smaller employers, so that they will know what they should or should not do under the law, and what they can or cannot do under the Code.

On a general note regarding the "Responsibilities of employers and principals" and "Drawing up and implementing a policy" under the Code, both the Law Society and the Employers' Federation have expressed the view that the EOC may be over-zealous in advising employers. The Law Society considers it inappropriate for the Code to recommend the adoption of a specific policy of good employment practice, which imposes obligations upon employers over and above those required by RDO. The Employers' Federation is of the view that while employers should make best efforts in providing a discrimination-free environment, they are not under any obligation to promote racial equality as such or monitor compliance with the RDO. Similar concern is raised by the General Chamber of Commerce in relation to the element of "equal pay for equal work" in the Code. The EOC's response is that since the Code is to give practical guidance to promote racial equality, it is appropriate to include recommendations that may be over the minimum requirement of the law. While this may be very honourable, and nobody should fault an aspiration to attain the ideal, I wish to remind the EOC that the guidance given by the Code must be "practical" and not merely "idealistic". I have one other concern. The RDO merely prohibits racial discrimination, but in the event of proceedings before the Court, acts or omissions of the employer are measured against the standards set out in the Code. If the standards in the Code are higher than that required by the law, would this produce difficulty in court proceedings? I hope not, but I do not have a definite answer. Perhaps the Administration or the EOC can enlighten me on this.

President, of the many Codes that have come before this Council on anti-discrimination issues, this Code is in my view the most complex one. Despite the criticisms and reservations that I have made just now, the Code,

together with the amendments made thereto by the Secretary today, remains one that is by and large acceptable. I must however emphasize that the EOC must continue to make improvements and refinements to the Code particularly in light of experience and development of the law in this area. As such, I welcome the EOC's initiative to review the Code around 12 months after implementation of the law. I also hope that the EOC will, during this interval, make concerted efforts to educate and promote the Code to the community to enable employers to understand and comply with the law.

With these remarks, President, I support the motion.

**MS EMILY LAU** (in Cantonese): President, today is July 8 and the Secretary is here taking the last train because the United Nations Committee on the Elimination of Racial Discrimination will conduct a hearing on 7 August to see how far have China and Hong Kong complied with the Convention. President, the Secretary worked very hard yesterday by coming to the Legislative Council to speak on the administrative guidelines on promoting racial equality. President, I believe that the authorities would have completely disregarded this issue if it does not have to go to the United Nations next month. But, despite the fact that the Secretary came here yesterday and is also here today, he cannot answer many questions. Of course, the Secretary himself is disdainful to go to the United Nations for why would he want to go to Geneva just to be reprimanded? However, I believe that what the SAR Government (the former colonial government was definitely despicably bad) has done in respect of eliminating racial discrimination is really deplorable. President, some ethnic minorities will also go to Geneva if they are able to earn enough money to pay for their passages for they are all very aggrieved and would like to lodge complaints at the United Nations.

President, today we are talking about the Code of Practice on Employment which consists of 50-odd pages and I do not know whether your honour has a chance to read it or not. Some Members have mentioned earlier that the consultation exercise was poorly conducted. In fact, it should have been completed a long time ago, but we found it unacceptable and demanded that it should be re-conducted. Thus, the Code of Practice on Employment was then printed in six ethnic minority languages for another round of consultation, but to what effect? President, please take a look and you will find amendments on

every page. You may say, is this not a good thing? It shows that the comments were well received. However, do you know that the various rounds of consultation were rushed through, with one following closely by another? It seems that the last amendment was only finalized yesterday or the day before. So, we said another round of consultation might be conducted but we were told that it was impossible for time was running short. Why is that so? It is because the United Nations is going to conduct a hearing on 7 August. President, in that case, there is certainly not enough time for another round of consultation. But do we really have confidence in the Code? In fact, the earlier remarks of Ms Miriam LAU were made on behalf of employers and as regards to the remarks made by other Members, I can appreciate the problems they mentioned in regard to other employees and the ethnic minorities. I have no idea whether the translations of the six versions were properly done and whether the ethnic minorities can understand or not.

Furthermore, President, we have discussed in the Subcommittee the issue of domestic helpers, that is, foreign domestic helpers for whom it was said that a minimum wage should be imposed. I heard that there would be some time before the matter could be settled but the foreign domestic helpers are already very agitated. What do you suppose? Is this a Disneyland? This is actually like a diving torpedo. However, there is no alternative but for Hong Kong to bear with it. But, this is such a complex document and will the people be able to understand after reading it? Only a very short time was spent on drafting the document and we only had a few days' discussions with the authorities before the 50-odd-page document was compiled. But amendments are needed throughout the paper. As such, President, can you tell us what exactly has the Secretary done? He has even been given a bauhinia medal. Can you tell us what he has done? Even his deputy has been promoted. President, please tell us what have they done?

We certainly hope that the authorities can do a good job with regard to a Code of such great complexity, and everyone will be able to understand. However, this is not the case and what do you suppose the Equal Opportunities Commission (EOC) has told us in its reply? It says if we look back at the other three anti-discrimination ordinances, namely, the Sex Discrimination Ordinance, Disability Discrimination Ordinance and the Family Status Discrimination Ordinance, we can see that the concepts have been clearly laid down. The EOC says this Code is relatively complex, partly because many languages are involved,

and partly because the small and medium enterprises, which the Liberal Party loves best to hear about, are very difficult to handle.

President, it is not easy to draft the Code in one language, not to mention six, so the EOC says it has to go easy on the draft, or else how could it have drafted the Code in six languages in response to our request? Right now, it is not even properly drafted in one language. However, the EOC still wants to save some face by saying that according to statistics provided by the Census and Statistics Department, 70% of the ethnic minorities can read English. President, this naturally does not include Caucasians, for we are now talking about the poor ethnic minorities.

President, both you and I are very concerned about education issues. Over the years — it really has been many years — both our colonial government and the SAR Government have done nothing. What does it actually mean if we say that 70% of the people can read English, President? That is to say that 30% of the people do not know any other language apart from their mother tongue, so how can they integrate into the Hong Kong society? This is not something which can be helped by the Code of Practice on Employment and can only be improved through our education system.

We have to do some work to give the children of ethnic minorities a chance to study and integrate into the Hong Kong society. Our Panel on Education discussed this issue during the last term of the Legislative Council. There are many ethnic minority primary students at present, but the number of their secondary students has dropped significantly — at least by 50%, and only two or three of those students can go to universities. President, whose fault is this? Why do ethnic minorities born in Hong Kong cannot have equal access to education? We are not even sure whether the existing legislation can be of any help to them or not in their grandchildren's generation.

Language is very important, but right now, I really do not know what should be done, for when we discussed the guideline yesterday, President, we have only received one relevant document, and that is, the one on education. However, the Secretary did not come. The same thing happened when the Secretary failed to come when the issue of Internet education was raised and discussed earlier during Oral Question session. It can be seen that the biggest problem of our education is Michael SUEN. However, since he did his job



properly yesterday, let us forget that for the moment. However, he has not done all his other jobs, so what will happen, President? About the lack of money — lack of funding, what was the Secretary's answer yesterday? He said each department had its own budget and would know how to apply for funding when it needed money in future, but the departments had to compete among themselves for getting funds.

President, when a new policy or ordinance has to be implemented, an ordinary and sensible person will assume that he can obtain resources for its implementation, right? However, this is not the case at present. We now say that the EOC will deal with the Code of Practice on Employment but it may not have the funds to do so. Of course, President, you may ask how the money allocated to the EOC each year is spent. On some occasions, it is used on tours, or dinners and other purposes on other occasions. These are all facts. Now, we have got two new EOC members in the Chamber and I do not know why Paul TSE and Frederick FUNG (maybe he can explain later what he has done at the EOC) have been appointed? But, the authorities must have their own criteria for making appointments.

As such, I certainly feel that the EOC should be monitored and I hope that it can have a very capable, independent and outspoken Chairman who is bold enough to challenge the Government. President, the current Chairman certainly does not possess such qualities, but is given the job for a term of five years with no good reasons, the one before him one year and the one before the previous Chairman three months. This is really infuriating. President, how can this be done? If you were the candidate whom I am in favour of for the Chairman post and have done a good job during your term of office, the authorities would dismiss you because people say a good Chairman should be bold enough to challenge the Government. A judge was then appointed to replace that Chairman with no good reasons and was dismissed again after he got everything in a mess in three months. Then, a retired Deputy Director of Social Welfare was appointed as Chairman for one year, but only in an acting and not in substantive capacity. Then, the Privacy Commissioner for Personal Data was coaxed to act as the Chairman and was given a term of five years when he asked for a five-year term, and the EOC is now in a utterly miserable position under his leadership. Such an organization which has no resources and credibility and is always subjected to investigations and criticisms by the Audit Commission must have made the authorities very happy, and it would even say "good, the EOC

should be scolded as much as possible". The EOC can do nothing. But, what does it matter? As such, how are equal opportunities promoted? It might as well go to sleep!

We now say that the ethnic minorities should be offered assistance, but how many of them are aware of what is going on? President, as regards this Bill, the Secretary said yesterday that he got 40-odd votes, which means that it will be passed unanimously. We can see that this is really marvelous. But, everyone is so worried. If we were to invite all the ethnic minorities, employers and everyone whose interests are at stake to come and sit here, will they really tell the Secretary with one accord that they are confident that the Ordinance will help eliminate racial discrimination in Hong Kong? President, they will certainly not do so. Do you think that I were born only yesterday? President, you were also not born yesterday.

I think that since none of us here is going to move amendments to the Bill, it will certainly be passed, but we cannot lie to ourselves and I will not lie to myself when I go to the United Nations next month. Though the work is in progress, we are still a long way from eliminating racial discrimination, especially when the authorities refuse to provide government departments and the EOC with resources and let them carry out their work.

I understand the worries of Honourable colleagues when they talked about foreign domestic helpers earlier for there are several hundreds of thousands of such domestic helpers in Hong Kong and many of their employers may be elderly people who are not aware of such legislation. So, how can we make them understand their obligations as employers and let their domestic helpers understand the legislation? Moreover, how can other domestic helpers learn about their rights? We have requested the authorities to do more, but what did the Secretary say earlier? He only said that pamphlets will again be distributed and information will be given on the web. President, are these sufficient? I think at least some advertisements would be put on the television and more on the radio. In fact, I very much agree with what Honourable colleagues have said about the job being a very difficult one. The authorities think that they have already done their job by putting forward several bits and pieces, and Hong Kong can now start to eliminate racial discrimination. I think this idea is really a dream.

The Secretary should at least tell us how much resources will be injected

and which department will undertake this job. However, President, up to today, he still does not have any clues. Not only is there no money, the Code of Practice on Employment is so complex, but guidelines are also missing. In fact, it is not going too far to say that the Secretary has completely failed to accomplish his work, and I do not know how he would have the decency to go to the United Nations. In fact, he was reprimanded by the United Nations last year; otherwise, he would not have hurried to draft the Bill. As a Hong Kong Chinese, I really think that I should be very ashamed for Hong Kong has actually got adequate resources and should have enough incentive to really promote a system on eliminating racial discrimination.

President, if we were to conduct a general survey, we would find that the majority of people interviewed would say that they do not think that we have any racial discrimination problems and our society is very harmonious. This includes the findings, which I have read, of a recent survey conducted by our Democratic Party in February. However, if you look at the findings of researches conducted by some scholars on ethnic minorities, you can see that they think there are problems for they find out that the ethnic minorities feel that they are being discriminated against. I once received some calls from members of the ethnic minorities on a television programme and they said that they were discriminated against a lot. We will not feel the pain unless we are pierced by a needle. Now, instead of finding ethnic minorities dancing and celebrating on the streets, I see more and more demonstrations, for we have enhanced their awareness and raised their expectations. President, this is a good thing. However, can the Ordinance, the so-called guidelines and the so-called Code of Practice on Employment really help our society achieve our target? Or, will they only give rise to more problems or even clashes? That I do not know.

However, I feel that as a Member of the Legislative Council, I have the responsibility to warn the authorities and ask them to do a proper job. Though the Code of Practice on Employment will soon be passed, it must be reviewed as soon as possible. I hope that the EOC will have the resources to offer explanations, and that is, to give explanations to employers and employees when they raise questions, for many people will not be able to understand such complex issues. I hope that the EOC will not say something like what the Privacy Commissioner for Personal Data, Mr Roderick WOO said. He said it was a very bad thing that he had to "pat shoulders on the streets" to seek favours from his friends and he had asked so many favours from his friends that he could ask no

more. He had coaxed people so often to help that eventually, he could no longer find anyone to help. The authorities should really refrain from doing so again. Do you all agree that the authorities have disgraced everyone by acting in such a manner?

The EOC Chairman has now left his post, and it was said that a global recruitment exercise would be conducted. President, can you tell how ridiculous this is when you heard that the Chairman would be openly recruited, but the authorities cannot even say whether the post is permanent or not. It was said that the post should be split into two for the past Chairmen had done very badly, and the post should thus be split into two and there is no need for a full-time executive Chairman. Some human rights watchdog organizations have immediately written to lodge strong complaints in this regard and say they cannot accept an Executive Chairman of the EOC who is not full time. I heard that the EOC seemed to agree to have the post converted to a non full-time one and believe that this will lead to fights. From this, we can see that the authorities have only acted on their own whims with no regard at all to the views of human rights groups, exactly like what Donald TSANG said yesterday on working behind closed doors. It is really working behind closed doors and the whole government is working behind closed doors. What are its justifications for failing so far to give an explanation to the Legislative Council on how the post will be split up and whether it is full-time or not when an open recruitment exercise will be conducted this month?

President, from the points mentioned above alone, you can see how ridiculous the ways of the Government are. President, do you really think that we can rely on such a Policy Bureau and such an incompetent EOC to eliminate racial discrimination in Hong Kong and fight for equal opportunities? We can only say and will now say that, and I am not claiming to be wise, but President, we can soon tell who is right and who is wrong.

**MR TAM YIU-CHUNG** (in Cantonese): President, what I have to say will be more positive. The Code of Practice on Employment was enacted after extensive public consultation and scrutinized by a Subcommittee established by the Legislative Council, and the views of various organizations and the public were taken into account in the process of the enactment of the Code. It is believed that the implementation of the Code and the relevant provisions of the Race Discrimination Ordinance (RDO) is an important step towards promoting

racial equality in Hong Kong.

I would like to raise the following four concerns in relation to the implementation of relevant provisions of the Code of Practice on Employment and the RDO:

- (a) active publicity and promotion: though the Code of Practice on Employment is not law itself, it will have an important role to play when the Court is dealing with legal proceedings under the RDO. As a wide range of racial discrimination concepts are covered in the Code, it is believed that it is necessary to conduct widespread and continuous publicity so that the public will understand the Code. As such, the authorities should actively publicize and promote the Code, so that members of the public will understand their rights and obligations under the Code and Ordinance.
- (b) assistance and encouragement given to enterprises to establish good employment practices and procedures under the Code of Practice on Employment: after this resolution is passed, the Code and relevant provisions of the RDO will come into operation on the date the resolution is published in the Gazette (that is, July 10). Though Hong Kong enacted various Ordinances and Codes of Practice on Employment with respect to equal opportunities in the past, the Code enacted in respect of racial discrimination and relevant provisions are unique in certain aspects, such as in relation to languages and indirect discrimination issues, as compared to those enacted in respect of other legislation. As many employers and organizations are still worried about such issues, the authorities should actively assist and encourage enterprises to establish good employment practices and procedures in accordance with the Code.
- (c) issues on domestic helpers: as the Code of Practice on Employment will be applicable to domestic helpers, this is one of the issues which many members of the public are concerned about. The relationship between domestic helpers and employers and their family members is very delicate since there are close contacts between both parties in work and daily lives. Many people are worried that the way they get along and communicate with their domestic helpers may touch

upon grey areas as regards to racial discrimination. As such, in order to ease the worries of the public, the authorities should actively publicize the relevant information, and should also monitor the implementation of the Code and relevant complaint cases closely.

- (d) review of the implementation situation: the authorities should maintain proper communications with the public at the early stage of the implementation of the Code and relevant provisions, continue to listen to various views and report the progress of its work to the Panel at an appropriate time.

With these remarks, I support the relevant amendments.

**MS CYD HO** (in Cantonese): President, I presume that the current Code of Practice on Employment under the Race Discrimination Ordinance (RDO) has once again become a masterpiece of hasty homework to be handed in to the United Nations because someone has to attend a hearing of the United Nations from August 7 to August 10. Why am I saying so? It is because in the course of the consultation and our scrutiny, we knew that the relevant Policy Bureau and the Equal Opportunities Commission (EOC) had carried out their jobs very carelessly and sought only to compile a Code of Practice on Employment in time and on time. I found our job a bit difficult in the course of our scrutiny, but not because of different policy directions, for the policy direction was laid down in the main legislation and we had to work in accordance with the principal legislation, regardless of whether we liked it or not and there was no room for arguments. Thus, there is absolutely no need and no room for arguments in relation to the policy direction. However, the EOC has not got any help from the Policy Bureau in the process of working with the Legislative Council. A very obvious example is that a consultation report should have been compiled after the completion of the consultation exercise, to inform us of the views it has received in the whole process? Which of the views are accepted and which are not accepted? What are the reasons for doing so? And, how are the views accepted reflected in the text of the Code of Practice on Employment?

We did not receive the report when our work commenced and the EOC only said that it was compiling the report and was immediately speeding up the process when Members chased after the report. In the end, we even had to

cancel one or two of our meetings to give the EOC time to submit its report, and only then were we able to go over each of the provisions of the Code of Practice on Employment slowly. How would we be able to work when it has even failed to make such preparations? From this, we can see that no careful consideration has been made. As some Honourable colleagues have mentioned earlier, since domestic helpers have close interaction with the employers in their daily life, we have to take care of their religious needs; otherwise, an act of discrimination will be constituted. For example, if we have a domestic helper who does not eat pork, but we always request for pork soup, then what should be done? However, no provision has been made in the Code of Practice on Employment to grant immunity to employers and give them time to replace their helper because the Code will come into force immediately. As such, when employers request domestic helpers, whose contracts of employment were signed before the Code comes into operation, to do something which they do not want to do on religious grounds, employers will now contravene the provisions of the Code of Practice on Employment, even if such acts did not violate any codes in the past. We have made such discoveries in the course of our study, but it was already too late.

In fact, many people say that they will not discriminate against the ethnic minorities and also support the idea of equal opportunities. However, this is easier said than done and though it is easy to say so, some people may not know that they have discriminated against others in actual practice. It is most unfortunate that even the EOC falls into this category. We did not know what we should do during the consultation exercise of the Code of Practice on Employment. It can be clearly seen that the EOC was completely insensitive to the inequality faced by the ethnic minorities, their constraints and their helplessness with regard to languages. When the EOC and the Constitutional and Mainland Affairs Bureau first submitted the Code of Practice on Employment to the Panel for "soundings", we asked the EOC how many copies of the Code in different languages were printed. We thought that the Code must have been printed in different languages, so we just asked for the number of copies, but who would have guessed that it was only printed in Chinese and English, and as regards other languages of the ethnic minorities, only leaflets were available. How could we relay adequate information or all information of the Code of Practice on Employment with 50-odd pages in its Chinese version to all targets to be protected by the Ordinance, if its content is summarized to the length of a one-page leaflet? And, how would they be able to offer their opinions? Perhaps the officials of our SAR Government are under the mistaken impression that any person who does not speak Chinese must speak English. This includes

our current Chief Executive who said the ethnic minority housewives could read the English version of newsletters to parents when I once told him that they could not read the newsletters. He was totally unaware of the fact that some ethnic minority housewives can only understand their mother tongue. We really do not have any confidence in our officials and the EOC that they can actually carry out their responsibilities of ensuring the availability of equal opportunities for the ethnic minorities when these officials are so insensitive.

In fact, the education level of many grass-roots ethnic minorities is not high and they do not know other languages apart from their mother tongue. They are the most underprivileged among the underprivileged. They are most likely to be bullied for they have no channel for receiving public information and thus do not know their rights. As such, the EOC and the authorities need to consider employing more ethnic minorities who are fluent in three languages, and that is, those who understand their own languages in addition to Chinese and English, if they really want to put into practice the protection of equal development opportunities for the ethnic minorities, so that staff who understand the mother tongues of the ethnic minorities can immediately act as interpreters when the ethnic minorities make enquires at the support counters of the Labour Department, and provide job seekers with sufficient information.

President, we cannot agree if it is said that the Government does not know what to do, but we know that as always, there are many things which the Government should do but will not do for a number of reasons. For example, it is afraid that it will be sued, that there are no resources, or that it has to allocate more funds. If the EOC is a statutory organization which maintains the position of safeguarding human rights or promoting equal opportunities, then its duties will be to monitor and to push the Government; and we will be very disappointed if the EOC falls to the level of the Government, which has no sensitivity and only says that it has no resources or does not know what to do, and hence derelicts all its duties.

President, some Honourable colleagues mentioned earlier that the EOC was a statutory organization which had good credibility and was trusted by the public in the past. But, the EOC has fallen out of the Government's favour after it sued the Government for violating the Sex Discrimination Ordinance, so Ms Anna WU, the former Chairman, could only serve for three years, and three other persons were successively appointed as Chairmen afterwards. We understand that the choice of candidate for the post of chairman of a statutory body does have



a significant role to play in discharging its powers and responsibilities. Today, while the EOC is repeatedly criticized by the Audit Commission, the executive authorities should also be blamed as well for who has selected the person in question to be the Chairman in the first place? It is the executive authorities. What makes me feel more worried is that apart from failing to see that the EOC lacks the ability to monitor its internal finances and management, the executive authorities have made a more serious mistake of failing to see that the current Chairman of the EOC has not much sincerity and persistency in enforcing equal opportunities when that person was appointed the Chairman. As such, I hope that in the subsequent recruitment exercise of the EOC Chairman, in addition to conducting an open recruitment exercise, the authorities would also let the final candidates to come to the Legislative Council for questioning by Members, so that members of the public and the media can get to know the candidates through the platform of this Council. Such candidates should be accepted by the public and the Council before they can be appointed as Chairman.

Finally, President, in addition to the Code of Practice on Employment, I hope that the EOC can also compile relevant codes of practice in relation to the provision of education, housing and medical services as soon as possible, so that the ethnic minorities can be aware of their rights in each of the public policy areas, and that their rights are protected. Thank you, President.

**MR FREDERICK FUNG** (in Cantonese): President, the elimination of racial discrimination is definitely an issue which calls for immediate attention. However, what is most disappointing and discouraging is that I have always assumed that the greatest obstacle to the elimination of racial discrimination lies in the business or the industrial and commercial sectors. However, during the short span of a month or so since I joined the Equal Opportunities Commission (EOC), I realize that the greatest problem lies in the SAR Government. Originally, I intended to speak more on the Code of Practice on Employment, but as Members have mentioned the EOC earlier, I have some observations to make which I hope will help the promotion of the Code of Practice on Employment, although I only have a short experience of working with the EOC for a month or so.

First of all, I would like to thank Mr Paul TSE for leading the Subcommittee which managed to meet with the Government and various groups within a very short period of time and compiled the Code of Practice on

Employment. Though I am still not very satisfied with the Code, it is something we cannot do without and it is better than none. It is just that I still think that it is inadequate and unsatisfactory. I hope that after the Code of Practice on Employment is compiled, we can soon use it as a basis for making further amendments and perfect the Code through actual practice.

At the time when the Code of Practice on Employment was compiled, I have not yet become a member of the EOC. As I have said earlier, I have only joined the EOC for a month or so. I was also a bit surprised when the Government appointed me as a member of the EOC and wondered why I was selected? According to the official, this was due to the fact that I have always served in the local community, and the Government hopes that in light of my understanding of the local community, some messages could be brought to the people. Moreover, if I find any problems of inequalities in the local community, I may also bring them to the attention of the EOC. Furthermore, as a Member of the Legislative Council, I may also serve as a channel for communication between the EOC and the Legislative Council, or convey the views of Legislative Council Members to the EOC.

No matter what the Government thinks, after going through the Code of Practice on Employment, I hope that the Government would pay attention to several points. Firstly, on the issue of foreign domestic helpers which some Honourable colleagues have mentioned earlier. I think that this is very important and quite a big problem for employers. When the 250 000 foreign domestic helpers are employed to work in Hong Kong, they will be placed under the protection of the Code of Practice on Employment and the Race Discrimination Ordinance. However, not every employer may be able to understand the Code, particularly those elderly employers or young people who employ foreign domestic helpers to take care of their elderly parents. Therefore, I think that the Government must deal with this issue as soon as possible, not only should it complete the compilation of the Code of Practice on Practice soon, but it should also launch a simple, direct and clear publicity exercise, to let employers who employ foreign domestic helpers know what the Code is all about. Otherwise, there will be a lot of complaints in future.

Secondly, Hong Kong always claims itself to be Asia's world city and also wishes to become an international financial centre, but in order to reach the level of an equal opportunities society, I think our standard should not be lower than that of other cities or countries at the same economic level. As such, what is the

international standard for equal opportunities in relation to racial issues? Does the Government have a yardstick for measuring against itself, the EOC or society to see whether we are up to standard? If not, should we have such a standard? Otherwise, Hong Kong will be subjected to the criticisms of the United Nations every year. And, has the United Nations laid down such a standard? If not, we can ask it to do so, and then bring it back to Hong Kong, so that everyone would know about the basic requirements of the United Nations, and things can then be handled more easily. We can see how much we are lacking with regard to this standard and if we are found to be lacking, then, I think the Government should first do something and then our society should also do something. I think we need to find out this standard, so that things can be handled more easily.

Though I am not a member of the Panel on Constitutional Affairs, I attended its meeting yesterday for the issue of administrative guidelines was brought up at the meeting. Though I did not laugh my head off after reading the guidelines, I did laugh, for it was mentioned in many of the guidelines' provisions that certain things should be considered or encouraged, and that is, only considerations and encouragement should be made on this and that. As for what needs to be done, the guidelines do not specify and have not laid down any penalty. A set of administrative guidelines which is non-binding and apparently with no enforcement powers may cause great problems in its enforcement. Many Honourable colleagues said that the matter could be dealt with by the EOC. This makes me feel very scared, for I am a member of the EOC and Paul is also a member. However, we actually do not have any powers, so what could we possibly do when the matter is referred to us? With regard to obligations and powers, I think that the Government should be more relaxed. Since it needs to enact legislation and agrees that Hong Kong should have human rights and that the EOC should deal with or enforce such legislation, how can the EOC perform its duties if it is not given any powers? There is a great loophole in this area and the Government should find ways to plug it.

Let me quote another example. Before the meeting of today, I read some information and hope that the Government can use it as reference. The Labour Department has some English website but its information is in a mixture of English and Chinese, thus the ethnic minorities will not be able to find jobs on the Labour Department websites even if they understand English; and the Cantonese terms for security guard jobs are not taught in the security guard courses of the Employees Retraining Board. President, we know that the employment website of the British Government has eight special telephone lines, which are manned

from Monday to Friday between 9 am to 5 pm, offering services in four Indian languages, Persian, Somalian, French and Polish. I have searched the websites of the Labour Department, Social Welfare Department, or even that of the Constitutional and Mainland Affairs Bureau under the Secretary through the GovHK website, but failed to find any similar support services for the ethnic minorities. From the example of Britain alone, we can see that our standard is far below that of other countries, and this is only one example, so where has the line of our standard been drawn? Has the Government got such a standard so that we can see in what ways we are up to standard and lacking?

President, I have joined the EOC for a month or so, and though I cannot represent the EOC and have not yet been able to understand all its affairs, I have joined the work of two of its committees and would like to talk about some issues, so that Members may understand some of its problems. I have joined the Public Education and Research Committee and the Complaints Committee. Let me first talk about the Complaints Committee which receives more than 1 000 complaints each year, but 24% of those cases are left outstanding each year. We can treat this as an exceptional situation if this only happens in one year, but if more than 20% of the complaint cases could not be completed in the past two to three years, then this is not exceptional but a normal state of affairs. If this is a normal state of affairs, then are our procedures for handling complaints too complex? Or is it due to the fact that we do not have enough professionals, so the cases have to be contracted out; and the time we take in handling the cases is prolonged because tenders have to be invited and we have to go through a lot of complicated procedures when the cases are contracted out? Or is it due to the fact that we do not have adequate manpower and so the cases just drag on? My position is that it is unacceptable to have 24% of the cases outstanding and I think that it should be under 10%. However, how can the number of outstanding cases be reduced from 24% to the acceptable level of less than 10%? I hope that Members could give me some time and I will help to find solutions.

The other committee I have joined is the Public Education and Research Committee. At present, the EOC has basically relied on the electronic media, including television and radio, and the school publicity team for conducting public education. I find this inadequate and I have also considered various other forms of publicity, such as some new-fangled forms like websites, msn and so on. I am actually not familiar with such things and those who know me will know that I am a computer idiot — I know nothing about computers. Though I am not familiar with such forms, I know that they are available, so why do we not adopt

such means? We can even talk over the telephone and this is also a feasible means, but why have we not done so? The answer is we do not have the manpower. The other means is through direct contacts, for direct contact is actually an essential part of publicity, during which members of the public can ask direct questions if they have any doubts. If the EOC does not have the manpower to answer questions face to face or over the telephone, it can make its own calls or request to buy the air time of television or radio programmes for carrying out direct conversations on television or over the phone, or can even set up an Internet phone line. I understand that the Civic Party has done so ..... no, the League of Social Democrats has done so but I do not know if the Democratic Alliance for the Betterment and Progress of Hong Kong has done so as well — it has got its own television station and radio station for producing programmes to talk with the public, or as I have mentioned earlier, services in eight languages can be provided. But again this will involve the issue of manpower. Exchanges must be made out through various channels and forms and the work of public education would be found lacking if only the two most traditional ways of publicity which I have mentioned earlier are available.

As regards research, I have asked what kind of researches has been conducted and found out that it was mainly public polls conducted in recent years. When I first joined the Committee, I thought that we would be carrying out researches and not conducting public opinion polls. Of course, it is also necessary to conduct public opinion polls, for we can find out the opinion of the public on certain issues and from this do our work with reference to these opinions. However, I have always thought that by research, it means we would check the work of Hong Kong against a standard set by the United Nations, to see whether is adequate and then conduct researches to see how to achieve that standard and look into ways for solving the problems. I have asked why only so little work has been done. And, I find out to my horror that the EOC has only got one researcher, but how is that possible? How is it possible for any research to be conducted if there is only one researcher? As the surveys have been contracted out, he is responsible for monitoring the surveys and this job alone would be sufficient to get him worn out, so how would he be able to cope if he is asked to do all sorts of other work? How could the EOC be able to do all the work which Members have requested over the years, as mentioned earlier? It would not even be able to perform its most basic duties, and that is, in respect of the three areas I have mentioned earlier, not to mention fulfilling the ideals. Though I have only joined the EOC for a month or so, I am already at a loss, and I am really distressed. I hope that Members can understand the situation I talk

about today.

The EOC has currently got a funding of some \$80 million each year, but as the issue of language is very important, and we will have difficulties in communicating with the ethnic minorities and thus fail to solve their other problems, if the language problem cannot be resolved. Since there are different languages, can we employ ethnic minorities who understand Cantonese, English and various languages of the ethnic minorities to join the staff of the EOC — Emily has said earlier that we can employ them — so that we can do a better job in public education. This is some of the ways.

As regards research, though we do not have sufficient resources to employ many researchers, can the job be contracted out to The Chinese University of Hong Kong, University of Hong Kong, Baptist University or other universities? Since we have got eight universities, researches can be conducted with regard to the four Ordinances on inequalities, to find out the reason why we have fallen short of the international standard, look into ways for solving the problems and approaches which should be adopted. I think that in this way, the EOC would have acquired a brain, a think-tank and got people to find solutions, and it would acquire arms and legs by employing staff who speak different languages.

Finally, I would like to add one point. As regards complaints, though we handle more than 1 000 complaints each year, what I would most like to see is for conciliations to be reached and everyone can sit down, sort things out and solve the problem. In the event that conciliations cannot be reached, legal assistance should be offered. By legal assistance, I mean assistance provided in the form of legal advisers. However, we will have a serious problem if it comes to legal proceedings for the EOC has only got a million-odd dollars for conducting legal proceedings. So, how many legal proceedings can be conducted with merely a million-odd dollars? I do not know whether it is enough to hire Ms EU, Senior Counsel to conduct a lawsuit or not. For example, if it is a major lawsuit, and we have only got a million-odd dollars, can I raise my hand to ask for 10 million-odd dollars for instituting legal proceedings, even though I am a member of the EOC? This is virtually impossible.

I have given a general description of what I have seen during the one month or so since I joined the EOC and this falls far short of our expectation or ideal. If we really want to do a good job in equal opportunities and human rights in Hong Kong, I urge the Government to seriously reflect and review

whether it is sincere in allowing the EOC to do a proper job in respect of the four Ordinances on equal opportunities. Even if the Government does wish to do so, I am afraid that the EOC may not have the ability to achieve this with its existing talents, even with Paul TSE included, and funds. I think that the most fundamental issue which the Government has to face is whether it is determined to do a good job in promoting equal opportunities and human rights in Hong Kong.

Thank you, President.

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): It is now past 10 pm. I now suspend the meeting until 9 am tomorrow.

*Suspended accordingly at three minutes past Ten o'clock.*

## MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2009

## COMMITTEE STAGE

Amendments to be moved by the Secretary for  
Financial Services and the TreasuryClauseAmendment Proposed

- 10 In the proposed section 46(1A)(*da*), by deleting “on request”.
- 19
- (a) By adding –  
“(1A) Section 153(3) is amended by adding “, 148A(5)(*a*), 148B(4)(*a*) or (*c*) or 149(2)(*a*) or (*c*)” after “(10)(*b*)”.”.
- (b) By adding –  
“(3) Section 153 is amended by adding –  
“(3A) A transferor trustee who is taken to have been notified of an election under section 145(8)(*b*) must, within 30 days after the end of the period referred to in that section, arrange for the accrued benefits concerned to be transferred to the personal account referred to in section 145(8)(*a*)”.”.
- (4) Section 153(5) is amended by repealing “and (3)” and substituting “, (3) and (3A)”.
- (5) Section 153(5)(*b*) is amended by adding “made or taken to have been made” after “the election”.”.



- 20 By adding before subclause (1) –
- “(1A) Section 154(1) is amended by adding “or (3A)” after “153(2)”.”.
- 22 (a) By deleting the proposed section 157B(1) and substituting –
- “(1) The Authority must establish and maintain a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes for the purposes of enabling –
- (a) a person who made a request under subsection (4) to ascertain in accordance with that subsection any information contained in the register; and
- (b) the Authority to notify under subsection (5) a member of a registered scheme of any information contained in the register.”.
- (b) In the proposed section 157B(3), by adding –
- “(ba) the number of personal accounts established and maintained by the member;”.
- (c) In the proposed section 157B(3)(c), by adding “, or each of the personal accounts,” after “personal account”.
- (d) In the proposed section 157B(3)(d), by deleting “for the purpose of providing information relating to the personal account” and substituting “, or each of the approved trustees, for the purpose of providing information relating to the personal account concerned”.
- (e) In the proposed section 157B(4), by deleting everything after “information contained in the register” and substituting –

“about the personal accounts (if any) established and maintained within any master trust scheme or industry scheme by the relevant person, the person who authorized the representative to make the request or the deceased person.”.

(f) In the proposed section 157B, by adding –

“(5) If the Authority considers appropriate, it may, on its own initiative, notify a member of a registered scheme in writing of any information contained in the register about the personal accounts (if any) established and maintained within any master trust scheme or industry scheme by the member.”.

**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Education to Ms Audrey EU's supplementary question to Question 5**

As regards assistance for school children in using computers and accessing Internet, as the Secretary for Labour and Welfare has explained at the meeting, the use of information technology (including the use of computers and Internet access) is conducive to students' learning. Government has introduced various measures to help students from low-income families to gain access to computers and the Internet for learning. For instance, the Education Bureau has collaborated with the Environmental Protection Department in launching a computer recycling programme earlier this year to provide recycled computers and one-year free Internet access to students of families in receipt of Comprehensive Social Security Assistance or financial assistance under the School Textbook Assistance Scheme. We are aware of demands for the Government to provide subsidy on a long-term basis. The Government is considering the matter.

As regards attendance at the Legislative Council meeting held on 8 July 2009, the reply by the Secretary of Labour and Welfare was a consolidated reply from the Government.