

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 12 November 2008

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE 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 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, J.P.

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING

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

THE HONOURABLE 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.

**MEMBER ABSENT:**

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

**PUBLIC OFFICERS ATTENDING:**

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

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

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.  
THE SECRETARY FOR JUSTICE

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

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

DR KITTY POON KIT, J.P.  
SECRETARY FOR THE ENVIRONMENT

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

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

**CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY  
GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

## TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>No.</i>	
Allowances to Jurors (Amendment) Order 2008 .....	L.N.	240/2008
Antiquities and Monuments (Declaration of Historical Buildings) (No. 3) Notice 2008.....	L.N.	241/2008
Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 .....	L.N.	244/2008
Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences .....	S.S. No. 5 to Gazette No. 45/2008	

### Other Papers

- No. 26 — Construction Workers Registration Authority Annual Report 2007-2008
- No. 27 — Report of changes to the approved Estimates of Expenditure approved during the second quarter of 2008-2009 Public Finance Ordinance : Section 8

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. Question time normally does not exceed one and a half hours. After a Member has asked a main question and the relevant official has given reply, the Member who asks a question has priority to ask the first supplementary question. Other Members who wish to ask

supplementary questions will please indicate their wish by pressing the "Request to speak" button and wait for their turn.

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

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

### **Building a Section of the South Island Line (East) on Viaduct**

1. **MRS REGINA IP** (in Cantonese): *President, according to the latest "South Island Line (East) Preliminary Design Stage — Revised Proposal" made by the MTR Corporation Limited (MTRCL), the section of the railway from the toll plaza of the Aberdeen Tunnel to Lei Tung via Wong Chuk Hang will be built on viaduct. Many members of the public are dissatisfied with the proposal, as the viaduct railway will generate noise, do damage to the environment and natural landscape, affect the long-term planning of the district in terms of conservation, tourism, commerce and trade, and so on, and thus violate the principle of sustainable development. In this connection, will the Government inform this Council:*

- (a) *as the MTRCL had indicated that the tunnel option for that section would delay the whole project by three years, whether the Government has looked into the reasons for that and the ways to prevent such delay; whether it is technically feasible to adopt the tunnel option for that section; if so, whether it knows why the MTRCL still proposes the viaduct option for that section;*
- (b) *whether it has assessed the adverse impact of the viaduct option on the environment of that district and its long-term planning; and*
- (c) *in what aspects the viaduct option will better complement the overall planning of the development of Southern District than the tunnel option; how the Government ensures that the above railway project will not hinder the sustainable development of the Southern District?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the MTRCL is undertaking the preliminary design of the 7 km South Island Line (SIL) (East), which will be a medium capacity railway line running between Admiralty and South Horizons with three intermediate stations at Ocean Park, Wong Chuk Hang and Lei Tung Estate. The MTRCL has proposed that the section between the toll plaza of the Aberdeen Tunnel and Ap Lei Chau should run on a viaduct.

The Government and the MTRCL have been consulting the local communities extensively on the SIL (East) project, including its alignment and form of construction. We hope to gazette the railway scheme for further consultation in mid-2009. Our target is to commence the construction works for the SIL (East) in 2011 for its commissioning in 2015.

My reply to the questions is as follows:

- (a) The SIL (East) will serve a number of areas in the Southern District, the topography and geographical features of which would need to be taken into account in the design of the railway. In the light of the public's concerns about the proposed viaduct section, we have asked the MTRCL to investigate whether such a section could be constructed in a tunnel. After reviewing the study report submitted by the MTRCL, we agree with the MTRCL that such an option will have the following difficulties and drawbacks:
  - (i) If a tunnel is to be built in place of the viaduct, the level of the proposed Wong Chuk Hang depot will have to be lowered by about 14 m accordingly to accommodate an acceptable gradient of the railway track at the depot approach area. This will require the construction of the retaining structures along the boundaries of the depot site at Police School Road and Nam Long Shan Road; and the excavation of 1 million cu m of hard rocks inside the whole of the depot site. These works are time-consuming and will lead to about three to four years' delay to the commissioning of the SIL (East).
  - (ii) In order to construct the tunnel section across the Aberdeen Channel, part of the Channel will be required to be closed to facilitate the construction of cofferdams (that is, deposition of



earthy materials in the sea to form a waterproof dam), followed by dewatering of the works site, and subsequent construction of the tunnel units. During the construction period, about two thirds of the Aberdeen Channel along the tunnel alignment will have to be closed for three years, leaving only a 35-m fairway for marine traffic. This will adversely affect the operation of the nearby Aberdeen Typhoon Shelter where the mooring space will correspondingly be reduced. The dispersal of the contaminated materials due to dredging of the marine deposit within the Typhoon Shelter during the construction will have impact on the water quality there. The disposal of the marine mud will add to the burden of the mud pit capacity problem.

- (iii) The construction of the ventilation building and the floodgate for the tunnel section crossing the Aberdeen Channel will require the clearance of some shipyards on the north shore of the Channel.
  - (iv) Approximately 16 000 sq m of land inside the Hong Kong Police College will be required temporarily for cut-and-cover tunnel construction for at least three years; and a major part of the Tactical Training Complex Building there will have to be demolished, which will affect the operation of the Police College.
  - (v) The proposed aboveground Ocean Park Station and the Wong Chuk Hang Station are designed with convenient pedestrian links with the nearby areas. To locate these two stations underground, the level distance between the station platform and road surface is comparatively larger, and the travelling time taken will be longer. This would reduce the attractiveness of rail.
- (b) We are well aware of the concerns about the visual and noise impacts of the proposed viaduct section. The SIL (East) is a designated project under the Environmental Impact Assessment Ordinance. The MTRCL has engaged an independent consultant to conduct the Environmental Impact Assessment and identify appropriate mitigation measures, which will have to comply with the

Ordinance. Besides, the MTRCL will spare no effort in finding an aesthetically acceptable viaduct structural form in harmony with the Wong Chuk Hang surroundings. Reference will be made to overseas examples where appropriate. In the assessment of the revised proposal, the Government will consult the Advisory Committee on Appearance of Bridges and Associated Structures and the District Council so as to arrive at a design that could accommodate the views of the different parties concerned.

- (c) We attach great importance to ensuring that the SIL (East) will facilitate the overall long-term planning for the Southern District. The provision of fast, efficient and environmentally-friendly railway service will be key to the sustainable development of the district, which we hope will help improve the quality of life for the local community in the years to come. The Ocean Park and the Aberdeen Typhoon Shelter are well-known tourist attractions. Wong Chuk Hang is being planned for commercial and residential development. We have considered different designs and methods of construction of the railway line. We have looked at the programme implications of the various options, the benefits and impacts to the district, as well as relevant planning and environmental considerations. On balance, we are of the view that the viaduct design is a practicable option. In the further design stage, we will study various mitigation measures, improve the viaduct design and continue with consulting the District Council (DC) so that the railway line will complement the further development of the district.

President, we will continue to stay in close touch with the relevant DC, local concern groups and the public in developing the railway scheme. We expect that another round of public consultation will be conducted after the railway scheme is gazetted under the Railways Ordinance in mid-2009.

**MRS REGINA IP** (in Cantonese): *President, I wish to follow up two points. According to the Secretary, in order to construct a tunnel section, part of the Aberdeen Channel will have to be closed. About two thirds of the Aberdeen Channel will be closed for three years, leaving only a 35-m fairway for marine traffic. But was the Aberdeen Channel not also closed during the construction of the Ap Lei Chau Bridge? Closure was possible at that time, so why is it*

*impossible now? Many members of the public would like to know how the construction of the tunnel section concerned is different from the building of the Ap Lei Chau Bridge. Second .....*

**PRESIDENT** (in Cantonese): Mrs Regina IP .....

**MRS REGINA IP** (in Cantonese): *One follow-up question only?*

**PRESIDENT** (in Cantonese): Yes. Only one question is allowed in one supplementary. But you may wait for another turn.

**MRS REGINA IP** (in Cantonese): *Fine.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the construction of a bridge and the building of a tunnel are of course two very different engineering propositions. As mentioned in part (a) (ii) of the main reply, since caissons must be laid on the seabed, it will be necessary to construct cofferdams, or waterproof dams, for dewatering of the works site first. Besides, it will also be necessary to conduct dredging works. Therefore, the construction of a tunnel is very different from the building of a bridge, which requires the laying of bridge piers only.

**MRS REGINA IP** (in Cantonese): *May I ask for a written reply on the actual difference?*

**PRESIDENT** (in Cantonese): Secretary, can you provide a reply in writing?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I can. Actually, there is already an explanation in part (a) (ii). But if Mrs IP wants a more detailed and technical reply, I will naturally comply. (Appendix I)

**MR KAM NAI-WAI** (in Cantonese): *President, many residents look forward to the early completion of the SIL. Very often, when people put forward any alternative options, such as the tunnel option mentioned in the main reply, the Administration and the MTRCL will refuse to consider them on the ground that delay will result. President, may I ask whether the Government has given any thoughts to constructing the proposed tunnel in separate sections. The section between the Aberdeen Tunnel entrance and the Ocean Park has met with strong opposition from the residents in Shouson Hill Road. It is argued that the scenery of this area is very beautiful, but a tunnel cutting through it will seriously damage the beauty of the area. Has the Administration ever considered the construction of separate tunnel sections, so that there will not be any delay and the beautiful environment in the Southern District will not be damaged?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, first of all, we will certainly collate public opinions during the design stage and consider their feasibility as much as possible. Regarding Mr KAM's proposal on constructing separate tunnel sections, I can tell Members that after the first stage of consultation, we have decided to build a tunnel instead of a viaduct for the section between Shum Wan Towers and Yue On Court, as we consider that the gradient is suitable. If the construction of a tunnel is feasible without affecting the progress of construction, we will certainly make adjustments. This is a fine example.

But a tunnel thus constructed will have to be "elevated" after the section concerned. The reason is that rail tracks are different from roads, in the sense that the former often face the constraints imposed by gradient and soil behaviour. Bored tunnels are not suitable in many cases. Therefore, we must strike a balance, and time is an important factor. And, we must also consider the feasibility of the works. For the construction of separate tunnel sections which I have mentioned, we will adopt such an approach if the gradient allows and the environment is suitable. The section between Shum Wan Towers and Yue On Court is one such example.

**MR KAM NAI-WAI** (in Cantonese): *President, President.*

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

**MR KAM NAI-WAI** (in Cantonese): *She has not answered my supplementary question. I asked whether a tunnel could be built for the section between the Aberdeen Tunnel entrance and the Ocean Park.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, according to our present design, a viaduct will be constructed for the section concerned for reasons of gradient and soil behaviour. But this does not mean that we cannot do anything with the design, for example, first to reduce visual impacts; and second, to introduce appropriate noise abatement measures, like considering the use of low-vibration tracks and rubber noise absorption installations.

**MR PAUL TSE** (in Cantonese): *President, when choosing between the tunnel and viaduct design as construction options, the Bureau, as stated clearly in the Secretary's main reply, has taken into account the fact that the Southern District is both a residential district and an important tourist area. May I ask whether the Bureau will further consider making reference to the Disneyland Resort Line in the design of the SIL, focusing more on tourist attractions, or where possible, establishing new tourism support facilities and attractions along the line, so as to make sure that while providing the public with transportation convenience, the SIL can also promote the development of local tourism?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): We do welcome all the design details suggested by Mr TSE. We also welcome the tourism sector to make more suggestions, so that there can be more tourist attractions along the SIL. The catchment area of the SIL will cover the Ocean Park after redevelopment. I understand that by 2015, the daily patronage may reach 7 million a year. The SIL station in the Southern District may be designed with the theme of the Ocean Park in mind. Members are welcome to offer their advice to us.

Another important project is related to the Typhoon Shelter. I know that the Tourism Commission wishes to adopt the setting of a fishing port as the theme. We therefore welcome Members' suggestions on whether the similar themes can be adopted for other stations.

**MR WONG TING-KWONG** (in Cantonese): *President, I know that the choice between a viaduct and a tunnel will have cost implications. May I know the cost difference between a viaduct and a tunnel?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, actually, we have not yet made any detailed cost comparison at this very initial stage. But the tunnel option will certainly be much more complicated. A rough estimation at this stage is that the cost difference may amount to several billion dollars. But at this stage, our prime concerns are feasibility and the time. Residents' opinions are very clear. We should launch the project as early as possible, for such infrastructure projects are very important to Hong Kong. Therefore, our concern at this stage is not money. Our main concerns are the time, effectiveness and feasibility.

**MR IP KWOK-HIM** (in Cantonese): *President, the description given by the Secretary in part (a) (ii) of the main reply is hardly acceptable, for the reason that two thirds of the Aberdeen Channel must be closed for three years. Does the Government have any alternative tunnel construction option which will not necessitate any such closure? Members of the public are worried that the viaduct option may cause noise nuisance and visual pollution. Are there any ways to tackle these problems in case a viaduct must really be constructed?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, we have actually considered many different options. At the very beginning, some asked whether it was possible to construct a deep tunnel (what we are talking about now is a shallow tunnel). But we found that no deep bored tunnel could be built unless the hard rock layer was as thick as 40 m — Dr HO is present now. This makes the whole proposal impracticable. How can a tunnel "climb" 40 m to the station? Therefore, right at the very beginning, we already knew that it was not feasible to construct a deep bored tunnel. On the other hand, the construction of a shallow tunnel will necessitate the laying of caissons, as I have described. Waterproof dams must be constructed before caissons can be laid in the middle of the Aberdeen Channel. This is the only way through which a shallow tunnel can be built.

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

**MR IP KWOK-HIM** (in Cantonese): *The part on whether a viaduct will cause noise nuisance and visual pollution.*

**PRESIDENT** (in Cantonese): I think the Secretary has mentioned this already in the main reply. Secretary, do you have anything to add?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, a viaduct design-wise may not necessarily cause any serious visual impacts. We can see that in other places of the world, there are also many elevated railways and viaducts. We can employ an appropriate design and introduce various mitigation measures. As I said just now, we may, for example, put in place various noise mitigation measures and devise a more aesthetic design. We may certainly do all this as much as possible. But this seems to be the more desirable option at this stage.

**MS MIRIAM LAU** (in Cantonese): *President, it is stated in the main reply that the Government and the MTRCL have widely consulted residents in the Southern District on the SIL. But the fact is that Southern District residents still have very great reservations about the construction of a viaduct. And, I have handled many complaints and made many suggestions. But all such proposals have not been accepted. The Administration has even advanced various reasons and dismissed the proposals as impracticable. I am not saying that the justifications advanced are totally unsound. But in that case, how can the Government or the Secretary convince residents that after wide consultation, their advice may be accepted? In part (b) of the main reply, it is stated that there will be a design that can accommodate the views of the different parties concerned. But how is any such design going to meet the needs of residents and accommodate the views of the different parties concerned?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the section between Shum Wan Towers and Yue On Court is an example. Following the first-phase consultation and circumstances permitting,

we are willing to make adjustments. According to the original plan, it should be a viaduct section. But now, a tunnel is to be built. As I have mentioned, we will face some practical problems if the viaduct design is not adopted. And, there are also various physical constraints in the course of construction. For example, the level of Wong Chuk Hang depot will have to be lowered by 14 m and 1 million cu m of hard rock must be removed. This will be a very massive works project. But most importantly, the construction project will have to be delayed for three to four years. Therefore, having considered all relevant factors such as effectiveness, the physical setting, planning and support services, we are of the view that this is a desirable option.

**PRESIDENT** (in Cantonese): Last supplementary question.

**MISS TANYA CHAN** (in Cantonese): *President, Mr IP Kwok-him already asked a question on the harbour with reference to the main reply just now. It is indeed true that the Channel will be narrowed. But speaking of vessels, vessels in another Typhoon Shelter are required to leave temporarily to make way for the construction of the Central to Wan Chai Bypass. Are there any ways to widen the fairway, so that the tunnel option can become feasible? The Secretary has mentioned that the cost difference between a tunnel and a viaduct may be several billion dollars. This is a very large range. What actually is the tentative estimation of the cost difference?*

**PRESIDENT** (in Cantonese): Members may ask only one question in a supplementary.

**MISS TANYA CHAN** (in Cantonese): *I am sorry, President.*

**PRESIDENT** (in Cantonese): Secretary, you may choose how to reply.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, any widening of the fairway will involve many problems such as dredging and land resumption. We do not think that this feasible. At present, many vessels are still using the Ap Lei Chau Typhoon Shelter, so we must



carefully handle the use of the Typhoon Shelter and refrain from interfering with its operation. As for the cost difference, we will need a preliminary design in order to make an accurate cost comparison. But having assessed the two proposals, we can already identify many constraints and shortcomings. Therefore, we only have a rough estimation at this stage.

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

### **Medical Incidents in Public Hospitals**

2. **MR WONG SING-CHI** (in Cantonese): *President, this September, a medical incident occurred in North District Hospital under the Hospital Authority (HA), in which a left mastectomy operation was inappropriately performed on a patient. The incident was caused by a confirmed malignant specimen of another patient being mistaken as taken from that patient. In this connection, will the Government inform this Council whether:*

- (a) *it knows if the HA has assessed whether the above medical incident involved deficiency in the system or human error, what procedures are presently in place to ensure that patients' laboratory and examination reports will not be mixed up, and what improvement measures the HA will take to avoid the recurrence of similar incidents in the future;*
- (b) *it knows if the HA will make compensation to the patient concerned and her family regarding the medical incident, and what criteria or mechanism are in place to ensure that the amount of compensation is fair and reasonable; and*
- (c) *the authorities will consider setting up an independent mechanism to handle matters relating to complaints, litigations and compensation arising from medical incidents?*

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

- (a) The HA has all along attached great importance to the procedures for verifying patients' identity and put in place established guidelines

and codes of practice to ensure that patients' identity, records and information, procedures of the operation as well as the correct location of the operations are verified before any operation or procedure is carried out.

Meanwhile, most of the laboratories at the acute hospitals under the HA, including the one in North District Hospital, have been accredited under the Hong Kong Laboratory Accreditation Scheme or by overseas accreditation organizations. A set of quality management measures has also been put in place for managing the procedures and flow of pathological tests, including patients' sample tests and reports. Information relating to the tests has also been computerized for greater accuracy and access efficiency.

The Advanced Incident Reporting System (AIRS) established by the HA seeks to ensure immediate and appropriate handling of sentinel events, with a view to minimizing harm to patients and the impact of such events. After the occurrence of this medical incident, the hospital in question has reported to the HA Head Office and set up an investigation panel to conduct investigation on the incident in accordance with the AIRS guidelines. It has also immediately explained the incident to the patient and her family, checked and understood their need and demand, and provided them with suitable assistance. The HA will seek to prevent the recurrence of similar incidents in future through experience sharing among hospitals and their staff.

- (b) The HA always adheres to its patient-oriented service culture and encourages and assists its health care professionals to report and appropriately handle the medical incidents. The HA also makes public the causes and details of medical incidents in a transparent and open manner and ensures that the cases of affected patients are handled fairly and impartially. There are established procedures in the HA to handle claims for compensation and insurance companies will be notified of such claims. The case will be followed up through loss adjuster or the HA's legal adviser, or be subject to the decision by the Court. The amount of compensation payable will be determined based on precedents.

For this incident, the HA has maintained communication with the patient's family on how to settle the matter, with a view to making the most suitable arrangements.

The HA will continue to monitor the medical incidents and promote the report of medical incidents to the public, in order to strengthen the public's confidence in the HA's services, safeguard the integrity of our public health care system, and prevent the recurrence of similar incidents.

- (c) Since its establishment, the HA has set up an effective two-tier complaint system for the proper handling of medical complaints. All views or initial complaints about hospital services will be handled and responded by the hospital directly. If the complainant wishes to put forward further views or is not satisfied with the handling/outcome of his/her complaint, he/she can file an appeal with the Public Complaints Committee (PCC) of the HA. The PCC is comprised of members from different sectors of the community and responsible for considering and deciding on all appeal cases independently. Members of the PCC are not HA employees, and the PCC is not affiliated to any hospital or operational departments/service units. As such, the PCC can handle all complaints fairly and impartially as an independent body. To enhance its transparency, the PCC regularly reports its work to the public and release statistical data on the complaints received, including the types and findings of the complaint cases. Apart from the HA's complaint system as mentioned above, members of the public may also lodge their complaints with other organizations such as the Medical Council of Hong Kong. The HA has been co-operating fully with these organizations to resolve complaints effectively.

The current complaint redress system is effective and can properly handle complaints on medical services. There is no need to set up other independent mechanism to handle these complaints.

**MR WONG SING-CHI** (in Cantonese): *President, after the occurrence of the incident, I have personally talked to the then Acting Director of North District Hospital and learnt that the Director had already left at that time. As the office*

*of Director has remained vacant for around two months, all matters are handled by the Acting Director.*

*Besides, in my conversation with their colleagues, I was told that chances were the cause of the mistake could not be identified. The Secretary said earlier that a very good system and procedures have been put in place to address such problems. But according to what I have heard, I suspect that the causes of the mistake can never be found because no one knows why the specimen contained in one of six test tubes which are sealed does not belong to the patient. No one can tell us why such a mistake has occurred.*

*Secretary, may I ask you whether the report received by you indicates that no results have come out of the investigation? If so, what has gone wrong? Is it due to problems in the procedures, thus leading to human or procedural errors which are beyond your monitoring?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, first of all, I would like to point out that the HA operates as a team. If a Director is not in office, other suitable persons will certainly stand in.

According to my understanding, the investigation on the incident has now been completed and a report has been submitted to the hospital before submission to the HA Head Office. I believe it will be made public in a couple of weeks. We have grasped a full picture of where the problem lies instead of failing to identify the causes. And I can also give Members a clear account of the incident. As far as I know, human factors have played a greater part. The report will, of course, make recommendations on how to improve the procedures.

**MR ALBERT HO** (in Cantonese): *As we all know, incidents of incompatible blood transfusion, wrong administration of medication or inappropriate operation performed on patients have occurred in our public health care system from time to time. We are extremely disturbed and shocked by such incidents. So, after the occurrence of an incident, it is most important that comprehensive and impartial investigations can be conducted.*

*In the main reply, the Secretary said that the existing mechanism is sound. But the general public has got an impression that many investigations are carried*

*out by the HA on its own. Even though the investigations are conducted by the so-called independent PCC, we all know that in such a small place as Hong Kong, many of the PCC members are former HA experts and familiar with each other.*

*President, my supplementary question is as follows. Can a mechanism be set up so that overseas and independent experts can be invited to conduct a study in order to submit a report and offer recommendations when some highly contentious medical incidents have occurred? In other words, can the Government consider the establishment of a truly independent medical complaint system in the future?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, first of all, I have to point out that the PCC is comprised of 22 members and chaired by a senior lawyer. Among other members, only three of them are doctors and they are not HA doctors. Some of them have never worked in the HA at all. Regarding the rest, they are all members of the public with a few of them being representatives of patients' groups. It can be described as an independent mechanism representing various sectors of the community.

I can also say a few words on professional advice mentioned by the Honourable Member. There are many different specialists in the medical sector in Hong Kong. Generally speaking, if expert advice is required in a case, both sides can also hire their specialists. In some very special situations, reports by foreign experts are required. Such a situation will happen from time to time. According to my experience, Hong Kong is such an open place that specialists from all over the world can be invited to help with a study as long as it is necessary.

However, I should also emphasize that the HA, in particular the HA, has all along handled these complaints and incidents according to the patient-oriented principle. They will be dealt with in a fair and impartial manner without bias towards any of its staff. Should any mistakes be committed by its staff, the matter will certainly be dealt with internally. But regarding facts, it will certainly deal with the issue by adhering to the correct and fact-oriented approach.

**MR CHAN HAK-KAN** (in Cantonese): *President, we have from time to time heard that patients' specimens are mixed mistakenly in hospitals under the HA*

*which often conducts investigations because of such events. But it seems that the same mistakes are always committed by hospitals. I query whether something has gone wrong with the existing mechanism, especially the computerized test system. May I ask the Secretary whether the computer bar code system will also be one of the items to be looked closely at in its investigations? Besides, will regular accuracy tests be conducted on the computer bar code system?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the existing computer system of the HA has been used for more than a decade and will be updated from time to time. The HA has also made sufficient efforts in the protection and verification of patients' information.

As far as I know, the incident this time around is not related to the system. However, whenever an incident has occurred, we will review the procedure as a whole in order to find out where the problem is. Regarding the incident concerning North District Hospital, I believe after the publication of the report, Members will understand every detail of the whole incident and a full account can be provided.

**DR JOSEPH LEE** (in Cantonese): *President, apart from exposing the inadequacy of the mechanism, the tragedy has also greatly affected the patient and her family in various aspects including psychological, physical and social health. In the main question, the Secretary is asked what compensation has been made to them. In reply, however, the Secretary only mentioned some mechanisms.*

*May I ask the Secretary what substantial measures have been taken at this stage to the satisfaction of both the patient and her family members? In his reply, the Secretary only said that the most suitable arrangements would be made. But what does he mean by the most suitable arrangements? At this stage when no substantial compensation has been made, what have the authorities done for the patient and her family members?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, according to the information provided by the HA to me, after the incident, both

the medical staff and management staff have contacted the patient's family so as to explain the incident to them and offer psychological counselling to them. Physically, the patient will certainly continue to receive treatment and follow-up service in the hospital. Regarding compensation, they have discussed the issue with the family in order to understand their need or actions to be taken. The HA will fully co-operate with them.

**DR JOSEPH LEE** (in Cantonese): *The Secretary has not answered my supplementary question. I wish to know whether any relatively concrete action has been taken. For instance, has the patient be advised to undergo breast orthopaedic operation?*

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

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, doctors have discussed with the patient and her family about different treatments and different orthopaedic methods. The views of the patient's family have been taken heed of and followed up.

**MS CYD HO** (in Cantonese): *President, the Secretary's reply is very shocking because he has not answered how this medical blunder occurred. As to how to prevent a repeat of such incident, he put it very lightly: "the HA will seek to prevent the recurrence of similar incidents in future through experience sharing among hospitals and their staff." If a system which is as elaborate as a computer program can also make mistakes, how can a simple experience sharing be adequate to prevent the recurrence of similar incidents? May I ask the Secretary whether there are more effective methods than experience sharing to truly prevent the recurrence of similar incidents in the future?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, whenever a medical incident has occurred, the HA will also conduct a detailed analysis of the causes. Moreover, it will not only share its experience with the people concerned but also with other departments throughout the HA. We will certainly make adjustments or improvements depending on the causes of each

incident. Sometimes, we need to make changes to the guidelines as regards procedures, sometimes we have to improve the materials or other relevant instruments, and sometimes we even have to strengthen the supervision of the entire process. It is, therefore, not simply a simple experience sharing in each case. Rather, we have to follow up a lot of recommendations for changes. So, the Bureau has in fact made painstaking efforts in this regard. I believe the current system of Hong Kong is comparable to any health care institutions or countries of international level in the world.

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

**MS CYD HO** (in Cantonese): *Experience sharing is only a process of an investigation rather than a solution .....*

**PRESIDENT** (in Cantonese): Ms HO, you should not express your views. Which part of your supplementary question has not been answered? You need repeat that part only.

**MS CYD HO** (in Cantonese): *The Secretary has not answered whether there is any more effective solution than experience sharing. He only mentioned the process of investigation in his reply.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I need not repeat what I have said. As I said earlier, we would share the recommendations and improvements in addition to experience sharing in each case.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, there are in fact too many of such cases. I have received two such complaint cases and the surnames of the victims are TSUI and YING respectively. These cases are basically incredible, and our efforts of fighting for the victims' interests are generally in vain.*



*In part (b) of the main reply, the Secretary said that "The HA always adheres to its patient-oriented service culture and encourages and assists its health care professionals to report and appropriately handle the medical incidents." Suffering from farsightedness, it looks to me that the Chinese rendition of "patient-oriented" (以病人為本) reads like "以病人為笨" as if the radical "竹" has been added to the character "本". As the saying goes, "One is thin if there is no bamboo in his or her place", thus the radical "竹" is added to the character "本" which has become "笨", meaning "stupid".*

*I would like to ask a very simple supplementary question. The Secretary said earlier that they will not only share the experience with the patients and those who are involved in the incidents, but also share the experience with other departments. Buddy, as computers are so popular nowadays, have the authorities set up a database so that all people in the world, including the 6.9 million Hong Kong people or their counterparts in overseas countries, can access it? Now information is circulated in a restricted manner and will only be passed to other departments after the authorities concerned have read it. But what are the other departments? I really have no idea. May I ask the Secretary whether your meetings and archives will be made accessible to the patients as you adhere to the patient-oriented principle, or whether they will be restricted to the professionals? Please tell me the meaning of "以病人為本" and "以病人為笨". Has such a mechanism be put in place? If not, why not? Will there be such a mechanism in the future?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, regarding all serious medical events, the HA will also publish the reports for the information of all Hong Kong people. Even for incidents which are not serious, reports will also be published on a quarterly basis under a co-ordination and recording mechanism. As Members are know, the HA will hold a press conference every three months or so in order to inform the public of the number of medical incidents and the details of each case so that the public will know where the problems lie and where caution should be exercised. Hence, the public will also be educated on how to communicate with the medical staff. I consider this a good practice which is also a transparent and responsible approach.

**MR LEUNG KWOK-HUNG** (in Cantonese): *The Secretary has not answered my question.*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *The part concerning their minutes of meetings, similar to the verbatim records of our meetings. He said that reports would be published. But what significance does it really have?*

**PRESIDENT** (in Cantonese): You asked the Secretary whether minutes of meetings will be made available for public inspection. Your question is very clear.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Right, all should be made available for public inspection rather than giving the public an account of an incident after it has occurred. Buddy, I am sorry to tell you that verbatim records of our meetings are also compiled.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, since the privacy of patients is involved in medical incidents, the minutes of meetings, particularly those involving the patients' identity, their family situation or health condition, will not be publicized. However, we will certainly disclose the details concerning how a serious incident has occurred.

**MR LEUNG KWOK-HUNG** (in Cantonese): *This is sophistry because information concerning the privacy of patients can be deleted or covered by red code. Buddy, you are not a good official if you act in such a manner.*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down. As we said at the last meeting, Members should not debate with the Secretary if the Secretary has responded to Members' supplementary questions even though Members are not satisfied with the Secretary's replies. The issue should be followed up on other occasions such as the relevant panels.

We have spent more than 20 minutes on this question. The third question.

**Regulation of Listed Companies**

3. **MR ALBERT HO** (in Cantonese): *On the 20th of last month, CITIC Pacific Limited issued a profit warning revealing that the company had incurred huge losses due to the holding of leveraged foreign exchange contracts, even though the company had become aware of the exposure arising from such contracts as early as 7 September. This incident has aroused the concern of the public and investors, and the Securities and Futures Commission (SFC) has also commenced investigation. In this connection, will the Government inform this Council:*

- (a) *whether it has found out if there are other listed companies in Hong Kong which have incurred losses due to the holding of similar contracts; if so, whether these listed companies have made timely announcements; if not, the reasons for that;*
- (b) *whether it knows, over the past three years, the number of profit warnings issued by companies listed in Hong Kong, the number of cases of whether listed companies have made timely announcements of price sensitive information investigated by the SFC, and if the SFC has imposed penalties on the listed companies of the substantiated cases; if penalties have been imposed, of the details; if not, the reasons for that; and*
- (c) *whether it will step up regulation on listed companies to ensure that they strictly comply with the relevant legislation and the Listing Rules and disclose information properly to eradicate insider trading, and hence safeguard investors' interests?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, in response to Mr Albert HO's question, we have consulted the SFC and the Hong Kong Exchanges and Clearing Limited for comments and our reply is as follows:

- (a) Consistent with the approach taken in other international securities markets with respect to similar obligations, the Listing Division of the Stock Exchange of Hong Kong (SEHK) monitors listed issuers'

compliance with their general disclosure obligations through a number of means, including:

- (i) monitoring of press, market rumours and stock analysis reports.
- (ii) following up with listed issuers on possible untimely or omission of disclosure of price sensitive information when information is available (such as upon receipt of complaints).
- (iii) reviewing of issuers' periodic financial results to look into whether issuers are in breach of the Listing Rules.
- (iv) reviewing and commenting on issuers' ad hoc regulatory announcements to monitor whether issuers are in compliance with the Listing Rules.

Where the Listing Division is made aware that a general disclosure obligation is triggered, for example, where a listed issuer has incurred or is exposed to the risk of a significant financial loss from an investment in a derivative currency instrument, the Listing Division will request the issuer to make an immediate disclosure, or else trading suspension may be necessary.

All in all, the regulatory authorities have kept watch on the disclosure made by Hong Kong listed companies through their monitoring activities and have considered, in reviewing disclosures by listed companies, whether these listed companies have made timely announcements. Relevant figures will be provided in part (b) of the main reply.

- (b) The SEHK is responsible for enforcing the Listing Rules and promoting compliance, while the SFC will take appropriate enforcement actions when listed companies are suspected of having breached the Securities and Futures Ordinance (such as providing false or misleading information).

The SEHK makes several hundred enquiries and investigations every year to verify if listed issuers are in breach of the Listing Rules.

Some of these enquiries and investigations involve possible failure of listed companies in making timely and accurate continuing disclosure of material price sensitive information as required.

According to information provided by the SEHK, listed companies have issued 173 "profit warning" notices in the first 10 months of this year. The Listing Division has made follow-up enquiries in 39 cases, and so far has commenced disciplinary investigations in six cases. Figures relating to the number of "profit warning" notices issued by listed issuers and the number of follow-up enquiries or disciplinary investigations conducted in the past three years are tabulated at the Annex.

During 2006 and 2007, the SEHK had publicly censured or criticized three listed issuers and their relevant directors for breaches of the Listing Rules in their failure to comply with their general disclosure obligations to make timely disclosure of price sensitive information.

- (c) The SEHK, in conjunction with the SFC, seeks to review the rules and requirements applicable to listed issuers from time to time to ensure that they address the developments in the market and keep up with the international best practice, and would closely monitor market developments and where appropriate provide further interpretation and guidance to listed companies regarding matters that might impact upon their listing and disclosure obligations.

The SEHK issued the "Guide on Disclosure of Price Sensitive Information" in 2002, which included clear guidelines on what is price sensitive information, when and how price sensitive information should be disclosed, the formulation of communications policy and procedures, and so on. Separately, the SEHK issues consultation documents on further improving the corporate governance of Hong Kong listed companies from time to time, such as enhancing the transparency of disclosure.

The global financial tsunami has caused market concern that the recent economic developments will have an adverse impact on the operations, financial performance and financial conditions of listed issuers. Against this background, the SEHK has on 31 October

2008 sent a letter to all listed companies reminding them of the continuous disclosure obligation under the Listing Rules which provides for timely disclosure by listed issuers of any price sensitive information.

The Government and our financial regulators attach great importance to the quality of corporate governance of the listed companies in Hong Kong. We will continue to enhance the quality of corporate governance of Hong Kong listed companies and adopt appropriate measures to safeguard investors' interests.

Annex

Figures Relating to the Issuance of "Profit Warning" Notices and on Cases Under Investigation Provided by the SEHK

	2006	2007	2008 (January- October)
Number of "profit warning" notices issued	33	54	173
Number of cases where follow-up enquiries were made by the Listing Division	2	15	39
Number of disciplinary investigations conducted by the Listing Division	1	1	6

**MR ALBERT HO** (in Cantonese): *President, I believe the Secretary is also aware that many market rumours have been doing the rounds in the wake of the CITIC Pacific incident, claiming that many listed companies, having also speculated in large quantities of financial derivative products or instruments, have incurred very huge losses. I know that the regulatory authorities have appealed to listed companies to make early disclosures should they have similar losses.*

*The appeal seems to have evoked a lukewarm response. Has it ever occurred to the Secretary mind that the companies, having ignored the regulatory authorities' appeal, regard the authorities as "toothless tigers"? According to part (b) of the Secretary's main reply, their failure to make disclosures will only*

*lead to public censures or criticisms. If it only comes to that, how would they be mindful of the authorities? They will just let the authorities censure or criticize them.*

*My supplementary question is: Will the Secretary take immediate measures to enhance the power of imposing punishment under the Listing Rules and confer greater power on other bodies (such as the SFC) to enforce these rules?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Mr HO has noticed that in the wake of the CITIC Pacific incident and in view of the present economic situation, there is public concern over financial disclosures by listed companies. Hence, be it the SEHK or the SFC, they have called on listed companies, reminding them of their obligation to make timely disclosures. We believe that the general disclosure obligations in Hong Kong are largely in line with international practices.

As Mr HO has said, as far as the law is concerned, apart from making public censures and criticisms, the SEHK can possibly suspend the stock trading of or delist the companies. These are very effective regulatory measures to listed companies. I believe listed companies will also fulfil their obligations to shareholders, in particular if it involves matters of public concern.

In response to Mr HO's question to us on whether there are other ways to follow up the matter, I also wish to point out that we are currently examining how best the statutory status of the requirement regarding disclosures under the Listing Rules can be enhanced. I hope to come back to the Legislative Council in due course to report the situation to Members.

**MR ALBERT HO** (in Cantonese): *The Secretary has not answered my supplementary question. I asked the Secretary if he had any immediate plan to enhance the penalties or the power of the SFC? Is there or is there not?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I believe the current penalties, that is, public criticisms and censures,

can make listed companies realize their duty of fulfilling obligations. At present, the SFC and SEHK have issued many guidelines pertaining to what is market sensitive information, how to make disclosures and how to make early disclosures for listed companies' reference.

**MS STARRY LEE** (in Cantonese): *President, in fact, the crux of the problem is whether protection for small investors is adequate. The directors, by simply claiming ignorance of the matter, could justify their loss of \$15.5 billion, making the stock market plummet and the small investors lose half of their investment in one day. Members may well know that, according to its "profit warning" notice, not only has it engaged in one leveraged Australian dollar contract, but also accumulator contracts on Euros and Renminbi. The Secretary pointed out just now that the SEHK had only publicly censured three cases in the past. May I know what the SFC has done in this regard; and what the result of the investigations is?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Regarding the CITIC Pacific incident, the SFC confirmed on 22 October 2008 that an investigation of CITIC Pacific Limited was in progress. If Member wishes to know the status of past investigations, I do not have the information with me now, but I can obtain it from the SFC.

**MS STARRY LEE** (in Cantonese): *In fact, I asked about the result of the investigations conducted by the SFC into other companies. As the Secretary mentioned that the SEHK could only make public censures and criticisms, are there any past cases handled by the SFC which the Secretary can tell us?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I have said just now that I do not have the information with me, but I will be happy to obtain it from the SFC and report back to Members.

**MR JAMES TO** (in Cantonese): *President, recently, after the CITIC Pacific Limited was exposed, it is discovered that a lot of information can only be*



*investigated by the SFC. The Secretary stated in part (c) of the main reply that the SEHK had sent on 31 October 2008 (that is, this year) a letter to remind all listed issuers. May I ask the Secretary, after the issuance of this reminder, whether any company has made disclosures? According to part (a) of the main reply, if companies do not make disclosures, the authorities can only make reference to, among others, press coverage, market rumours and stock analysis reports. However, as we all know, recently, it has been extensively reported that many people and companies, including many listed companies and their associated persons and companies, have incurred huge losses. Given that the disclosures are so scanty, what other ways does the Government have to properly protect investors' interests with a view to ensuring that disclosures are timely and comprehensive? Because the authorities appear to be at their wits' end.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I thank the Honourable Member for raising this supplementary question. According to the related figures, from 31 October when the SEHK issued the letter to listed companies to the morning of 10 November 2008, 27 listed companies have issued "profit warning" notices.

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

**MR JAMES TO** (in Cantonese): *President, my supplementary question is: Apart from press coverage, market rumours and stock analysis reports mentioned in part (a) of the main reply, do the authorities have a comprehensive approach to grasp the whole picture?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): As I have explained, the Listing Rules provide for the continuous obligation of listed companies to disclose in a timely manner all price sensitive information. For some time in the past, the SEHK has issued guidelines and notices on, among others, the definition of sensitive information and disclosure procedures on a continuous basis. We have to remind listed companies of their obligations in this regard, or else they shall be subject to investigation and may possibly be subject to investigations ending in rulings of breaches.

**MR ALBERT CHAN** (in Cantonese): *President, as evident in the figures tabulated in the Annex, the rate of increase is alarming. "Profit warning" notices have increased from 33 in 2006 to 173 in the first 10 months of 2008. Cases concerning follow-up enquiries have increased from two in 2006 to 39 in the first 10 months of 2008. Disciplinary investigations have increased from one case in 2006 to six cases, and the percentage increase is very alarming.*

*The way in which the Government handled this issue gives me an impression that its attitude is too soft with these listed companies and large consortiums, especially those corporations of a special status. However, for instance, in the Bank of East Asia incident, the Government was prompt in conducting investigation and taking follow-up actions. This gives us a strong impression that it is soft with large consortiums and the rich who are suspected of withholding information or engaging in improper practices, but harsh on the public and even apathetic towards investor protection.*

*The CITIC Pacific incident has given such a strong impression to the public. Moreover, these figures indicate that the problem is worsening. In view of the surging figures, does the Government have any measure or is it determined to comprehensively change its present feeble attitude of favouring the large consortiums while according no protection to consumers and investors?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I beg to differ from the Member's remark that we are favouring the consortiums. The reason for the increase in "profit warning" notices, as indicated by the figures, is mainly, as Members may understand, the economic downturn. Many companies, in view of the worsening economy, have issued warning notices timely to disclose their profit problem. This is in compliance with our requirement. These figures show that the Listing Division has increased the number of investigations, and the SFC has also conducted investigations. The two regulatory authorities, both the SFC and the SEHK at the front line, attach great importance to ensuring compliance of companies with their obligations prescribed by the Listing Rules.

**MR ALBERT CHAN** (in Cantonese): *President, he has not answered my supplementary question at all. I said that the rising figures, in particular the percentage increase of disciplinary investigations, are alarming. I obviously see that .....*

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

**MR ALBERT CHAN** (in Cantonese): *My supplementary question is: Will he introduce a comprehensive reform to the present system to protect investors' rights and interests?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): My interpretation of these figures is that the increase in the number of investigations proves that the vigour of our investigation has increased. In view of the numerous "profit warning" notices and in response to the concern of the public and investors, investigations conducted by the regulatory authorities have increased. As I have said, we seek to review from time to time whether there is room for improvement in the Listing Rules. Moreover, in my reply to Mr HO's main question, concerning the part on conferring statutory status on part of the Listing Rules, we are following up the issue to explore feasible options and we will brief Members in due course.

**PRESIDENT** (in Cantonese): This Council has spent almost 20 minutes on this question. We will now proceed to the fourth oral question. I wish to remind Members again that Members should be as concise as possible and should not present arguments when asking supplementaries, so that more Members may have the opportunity to ask supplementaries.

### **Designation of Low Emission Zones**

4. **MR KAM NAI-WAI** (in Cantonese): *In its reply to a question raised by a Member of this Council in April this year, the Government said that it would study the designation of "low emission zones" which would deny access to pre-Euro and Euro I buses so as to improve roadside air quality within the zones. In this connection, will the Government inform this Council:*

- (a) *of the commencement date of the aforesaid study, its latest progress and projected completion date, and whether it will make reference to the arrangements and experience of other places in the designation of "low emission zones";*

- (b) *given that the Government has said that the designation of "low emission zones" may shift the roadside air pollution problem to other areas, whether franchised buses will be included in the current incentive scheme for encouraging owners to replace their old-model diesel commercial vehicles; if so, of the details; if not, the reasons for that; and*
- (c) *of the respective numbers of new buses to be purchased and old buses to be scrapped by franchised bus companies in the next three years; whether it will request franchised bus companies to expedite the pace of replacing old buses, so as to complement the implementation of the "low emission zones" scheme?*

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

- (a) The Government has commenced a study to look into the feasibility of setting up "low emission zones". The study aims to explore whether a pilot "low emission zone" can be set up at one or more busy corridors to restrict franchised buses with higher exhaust emissions from entering the zone(s), so as to evaluate the effectiveness of the zone(s) in improving roadside air quality. In considering the setting up of pilot "low emission zones", we will also study possible ways to ensure that the franchised bus companies will provide effective services to passengers in various districts, and that the road traffic in different districts will not be affected. In addition, we will examine how to minimize or avoid any negative impact it may have on roadside air quality in other areas. We expect to complete the relevant study in 2009.

We will take account of overseas experiences and local situations in taking forward the study.

- (b) The Government has no plan to extend the subsidy scheme for replacing old diesel commercial vehicles to the franchised buses. However, we will continue to require the franchised bus companies to replace their older buses according to operational needs and, after balancing different requirements, deploy more environment-friendly buses to busy corridors as far as possible.

- (c) The Transport Department is now discussing the Five Year Forward Planning Programmes (which include plans and proposals regarding the retirement of older buses and purchase of new ones) with the franchised bus companies, and adjustments may be made to the Programmes. We therefore cannot provide the number of buses that will be replaced at this stage. The study on setting up "low emission zones" will consider in detail the relevant factors, including the number of buses in the existing fleet, the distribution of vehicle models, the bus replacement schedule and other operational needs of each franchised bus company, in order to explore the feasibility of different options.

**MR KAM NAI-WAI** (in Cantonese): *President, it is evident in the main reply that the Government is not sharing the people's sense of urgency. We all know that the problem of air pollution is extremely serious and many people are concerned about it. However, the Government indicated that it still needed to further study the matter, after conducting one study after another, the feasibility study on the "low emission zone" would be completed only in 2009.*

*Since the authorities already know that old buses are a very significant source of pollution, why does the Government not extend the incentive scheme for replacement of old diesel commercial vehicles to franchised buses? As far as I know, more than \$3 billion under this scheme has yet to be used, why is the Government so reluctant to do so? Does the Government have any alternative plans, or is there a time limit for bus companies to replace their old buses? Otherwise, even if the Government study the matter over and over again, it can still not solve the problem in 10 or 20 years from now.*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, regarding the study on "low emission zones", we have to consider various factors: Firstly, with regard to efficiency, whether there will be a considerable degree of improvement to roadside air quality; secondly, the standard for the establishment of "low emission zones", that is, which Euro emission standard would be more appropriate. In addition, we have to consider the impact of setting up "low emission zones" on other roads, and whether the setting up of "low emission zones" will cause a relative increase in the traffic flow on other roads. Therefore, all of these considerations have to be resolved in this study.

Just now Mr KAM mentioned the issue of air quality in Hong Kong, we are concerned about the aspirations of the public in this regard, and we are also aware of the public demand for fresh air. Just as the Chief Executive proposed in the policy address, Hong Kong will adopt an interim target in accordance with the Air Quality Guidelines released by the World Health Organization as Hong Kong's new Air Quality Objectives, which shows that the Government is determined in and committed to improving the air quality in Hong Kong.

We have commissioned a consultancy to conduct a comprehensive review to update Hong Kong's future air quality objectives. We hope the consultancy report could be completed by the end of this year, and a public consultation could be conducted next. The establishment of "low emission zones" is actually one of the measures of a package, so we hope to take everything into account then.

**PRESIDENT** (in Cantonese): Mr KAM, which part of your supplementary question has not been answered? I would like to remind Members once again that if you are not satisfied with the Secretary's reply, you may only repeat the part of your supplementary question that you think not answered by the Secretary, but we will not open a debate here.

**MR KAM NAI-WAI** (in Cantonese): *I know the rule very well. President, with regard to my supplementary question, the Secretary has not answered the part on why the authorities will not extend the scheme for replacement of old diesel commercial vehicles to franchised buses. My question was very clear, but the Secretary was just beating around the bush.*

**PRESIDENT** (in Cantonese): Mr KAM, please sit down. Secretary, please reply.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): With regard to the replacement of buses, a mechanism is already in place, that is, bus companies have to replace their buses according to the programme drawn up by the

Transport Department (TD). As I have mentioned in the main reply earlier, the TD is now discussing the Five Year Forward Planning Programmes, which include plans and proposals regarding the retirement of older buses, with the franchised bus companies.

As to extending the scheme for replacement of old diesel commercial vehicles to franchised buses, in fact, it will cause a substantial impact. We have to take into account the fact that if bus companies were to replace their older buses, it would incur additional costs to them, would it be appropriate for taxpayers to pay for that? Will this bring fare pressure on passengers? For that reason, we can consider this issue comprehensively only after we have looked into all the factors.

**MR WONG KWOK-KIN** (in Cantonese): *President, may I ask the authorities besides pre-Euro and Euro I franchised buses, whether they will prohibit other vehicles, that is, non-franchised buses such as minibuses and vans and other vehicles from entering the "low emission zones"? If yes, what other types of vehicles would be included? If not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): At present, our study will focus mainly on buses, as buses account for 30% to 40% of the traffic volume in busy districts such as Mong Kok, Causeway Bay and Central. Our study is focused on the setting up of a pilot "low emission zone", and the reasons for targeting buses are, firstly, buses account for a large traffic volume and, secondly, exhaust emissions from buses are comparatively higher. Therefore, we will consider the case of buses in the first place.

Of course, with regard to the approach of setting up "low emission zones", each country has had different experiences. Some places will only target buses, while some others will aim at certain types of vehicles or trucks. For that reason, we have to wait until the completion of the study report before we can ascertain the scope suitable for Hong Kong.

However, in view of the current situation, we consider that buses are a key concern, so the study being conducted will aim at buses, and it is hoped that the relevant scheme can be implemented as soon as possible.

**MS EMILY LAU** (in Cantonese): *President, the authorities really know nothing about the expectations of the public for fresh air. It cannot be achieved solely by allocating a certain sum of money to help them to replace their vehicles. Will the Hospital Authority's expenditure on the health problems of members of the public be included?*

*President, if the authorities are reluctant to exert greater efforts to require bus companies to convert to the more environmentally-friendly low-emission buses, how can the authorities' scheme work? Just now the Secretary has asked whether or not the setting up of "low emission zones" would shift the problem of traffic congestion to other roads. It will be inevitable. If the authorities do not exert greater efforts to convert to low-emission vehicles, and if it allows owners of high-emission vehicles to replace their vehicles in their own ways, which country on earth can achieve the effect of a "low-emission zone" for fresh air? President, may I ask what place on earth can achieve that?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): The Government is aware of public aspirations for fresh air. With regard to the replacement of old commercial diesel vehicles, we have put some incentive measures in place, that is, we will provide subsidies to pre-Euro diesel commercial vehicle owners, so as to facilitate the early replacement of their vehicles. This subsidy scheme has been again extended for 18 months.

Of course, we will also consider other measures, such as increasing the licence fee of old diesel vehicles, but we must conduct in-depth studies and consultations before making a decision.

As to reducing vehicle emissions to improve the air quality in Hong Kong, the Government has taken many measures actually. In 2006, we implemented the Euro IV emission standard, and we also started to introduce duty concession for Euro V diesel in 2007. The aim of these measures is to encourage owners of these vehicles to use cleaner oil products, thereby improving our air quality.

**MS AUDREY EU** (in Cantonese): *President, in part (a) of the Secretary's main reply, she said the study was expected to be completed only in 2009. May I ask the Secretary what the date or timetable for implementing a "low-emission zone" is? If your study only aims at the franchised buses, then is it true that no*



*amendment to the relevant legislation would be necessary, as it can be done by reaching a consensus with the franchised bus companies alone; or is it still necessary to amend the legislation? Can the Secretary tell us when this "low-emission zone" will be eventually set up?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, the Government hopes to see the early implementation of the pilot "low-emission zone". However, insofar as a timetable is concerned, it depends on the findings of the study before a timetable can be established.

With regard to the "low-emission zone" experience I have just mentioned, in fact, there are many different types, and we are currently making reference to overseas experiences, such as those of London, Berlin, Tokyo and Shanghai. All of these places have set up "low emission zones", but their scopes are rather different. Some are established downtown, while some are set up in areas with heavy traffic flow. As to time restrictions, some are all-year-round, some being 24-hour, while others are subject to specified periods of time.

As to restrictions on vehicles, some aim at diesel buses, trucks, but some places will also include automobiles. With regard to the implementation standards, some have adopted the Euro I emission standard, while others have adopted the Euro II, III to IV emission standards, and so on. In terms of enforcement, there are quite a number of measures to be considered, for example, the imposition of a fine or fee, and so on, for non-compliance.

For that reason, the purpose of this study is to resolve a host of problems. The position of the Government is, of course, the implementation of the pilot "low emission zone" as early as possible.

**MS AUDREY EU** (in Cantonese): *Sorry, President, the Secretary has not answered my supplementary question at all, because I have not asked her about overseas experience; I just asked her about the study now being conducted. My question is: Upon the completion of the study, when will this scheme be implemented? In addition, since the study only aims at franchised buses, then whether or not it can be achieved without making amendments to the relevant legislation. If legislative amendment is required, then how long will it take? She has not answered all of these questions.*

**PRESIDENT** (in Cantonese): Secretary, please answer the last part, that is, whether there is a need to amend the law.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): We have to look at the findings of the report before making a decision. We target the buses because we wish to implement the pilot "low emission zone" as soon as possible.

**MR LEE WING-TAT** (in Cantonese): *President, in fact, the authorities are aware that roadside air pollution is the main culprit leading to health problems. The Government is aware of the fact that most of the time, such areas as Wan Chai, Causeway Bay, Central and Mong Kok are unsuitable for pedestrians because the suspended particulates from roadside pollution will induce a number of respiratory illnesses to passers-by. The Faculty of Medicine, University of Hong Kong, has also pointed out that each year, more than a thousand deaths are caused by this.*

*Secretary, although colleagues have raised so many questions, and you could recite so much information in a loud and clear way, not a decision has been mentioned at all. President, I am wondering if the Government uses the study as a pretext for discussing something without reaching a decision. The Secretary has read out all the information, even when Ms Audrey EU asked her whether there would be a need to amend the law, she said that she had to look into that. In fact, I wanted to laugh out loud just now, but the President would not permit that. If the Secretary has to study whether or not to amend the law, then what can she do to speed up the pace?*

*May I ask the Secretary, since this problem that we are now talking about, that is, the roadside air pollution problem, is so serious, as you also know that it is the factor contributing to the deterioration of people's health, can you give an answer to the Legislative Council on whether or not you can put the scheme into effect in one year's time? President, as we all know, the last time we spent five years discussing the issue of banning idling vehicles with running engines, and we have not implemented it even now.*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, insofar as the early implementation of the pilot "low emission zone" is concerned, the

Government feels the same as Honourable Members, we hope that the pilot scheme can be implemented as soon as possible.

However, I must point out that since 1999, the Government has implemented a series of measures to encourage bus companies to deploy more environmentally-friendly buses on busy road sections. For example, over 80% of the Euro II buses are serving in such districts as Causeway Bay, Admiralty and Central. We can learn from the fact that in 2007, a number of major pollutants, such as the volume of respiratory suspended particulates, have dropped by 15% from that of 1999; and the content of nitrogen oxides has also seen some improvement as it has been reduced by 24%.

Of course, in addition to these achievements, with regard to the reduction of roadside air pollution, we still have room for improvement. However, we also hope to complete the study on setting up a "low-emission zone" and to implement the scheme as soon as possible.

**MR LEE WING-TAT** (in Cantonese): *My question is very simple, it only contains 10 words. Can the relevant Bureau implement the scheme within this year?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, it really depends on the findings of the study.

**PRESIDENT** (in Cantonese): We have already spent more than 19 minutes on this question. Fifth question.

### **Measures to Tackle Problems Brought by Financial Tsunami**

5. **MR WONG YUK-MAN** (in Cantonese): *President, in a United States Congress hearing on the 23rd of last month, the former Chairman of the United States Federal Reserve Board, Alan GREENSPAN, conceded that the market-driven ideology did not work anymore. Thereafter, in response to the financial tsunami, the Government has set up the Task Force on Economic*

*Challenges (Task Force), and its members are almost exclusively elites of the business sector with no representative from the grassroots and the small and medium enterprises (SMEs). In this connection, will the Government inform this Council:*

- (a) whether it will review the use, since many years ago, of "big market, small government" as its principle of governance, so as to avoid the situation of its policy being tilted in favour of tycoons;*
- (b) what "opportunities" it has identified in this financial tsunami, whether they include massive transformation of industries, integration of the Pearl River Delta Region and return of industrial operations, and of the details of these "opportunities"; and*
- (c) why representatives with popular support from the grassroots and SMEs are excluded from the Task Force; and in the face of extensive business closures and surges in bankruptcies and unemployment to be brought about by the financial tsunami, whether the Government will provide specific estimates on the numbers of businesses closing down and bankruptcy cases in this year for reference of the Task Force, thereby assisting it in formulating concrete proposals to help SMEs and the grassroots tide over the difficult times, such as converting the existing Support for Self-reliance Scheme to an unemployment assistance scheme without any conditions; if it will, of the specific figures and details of the proposals?*

**FINANCIAL SECRETARY** (in Cantonese): President, first of all, I would like to thank Mr WONG Yuk-man for his question.

Free market is the bedrock of Hong Kong's success. Our entrepreneurs, small business operators and highly productive labour have been the major driving force in improving the living standards and increasing the Gross Domestic Product (GDP) of Hong Kong. Our per capita GDP has increased from \$28,000 in the early 1980s to more than \$233,000 today. This is the result of the continuous efforts of Hong Kong people.

The SAR Government has been adhering to the principle of "big market, small government" because in a "big market", the private sector can increase its

share in the economy, and the limited social resources can be allocated and utilized in the most efficient manner through market forces, enabling the community to enjoy the greatest benefit.

The Government's role is to create a stable, predictable and business-friendly environment to meet the needs of the market, and to provide assistance where necessary, especially when the market operation is out of balance. The Government will provide a safety net for the underprivileged and those in need to assist them in tiding over the present difficulties.

"Big market, small government" is a flexible concept. We will take a pragmatic approach in introducing measures tailored to specific circumstances and adopting different policies to meet the needs of the community and promote economic development.

The second and third parts of the main question raised by Mr WONG Yuk-man are related to the Task Force. The Task Force set up by the Chief Executive aims to continuously monitor and assess the global major markets and the local market at this critical time, to gauge the impact of the financial tsunami on the Hong Kong economy and major industries in a timely manner and, more importantly, to identify ways to turn the crisis into business opportunities for consideration by the Government and the industries concerned.

At its first meeting last Monday, the Task Force had an in-depth discussion on both the global and local economic situations. As the effects of the global financial tsunami on our various economic sectors are gradually emerging, the Task Force has agreed to focus its work on four sectors relating to financial services, trade and logistics, tourism and consumption-related services, and real estate and construction.

At present, we are stepping up our efforts to explore ways to enhance the competitiveness of and identify new opportunities in these four sectors. Our aim is to make a timely assessment of the impact of the financial tsunami on Hong Kong's economy and major industries, and put forward specific proposals to address the challenges for consideration by the Government and the industries. In this connection, we are open to suggestions from the industries and the public. Our work, of course, includes studying any feasible proposals, such as transformation and upgrade of industries, integration of the Pearl River Delta

Region and return of industrial operations mentioned by Mr WONG Yuk-man, with a view to tapping new business opportunities and increasing Hong Kong's competitiveness. The Government will provide in due course relevant information for assessing the specific proposals made by the Task Force. We will also make use of the existing consultation channels to seek the views of the public and the industries, including SMEs.

I believe that with the personal experience of the Task Force members and collective wisdom of the community, we can soon formulate suitable overall strategies for Hong Kong to tap new opportunities in different sectors.

**MR WONG YUK-MAN** (in Cantonese): *When United States President candidate OBAMA had a debate with McCain during the election, McCain said that he would set up a special committee if he was elected to solve the economic crisis the United States was facing in the midst of the financial tsunami, but OBAMA said that Washington had a fondness for setting up committees. The SAR Government has learnt from the former United States Government and set up a committee and it has also followed the example of the former Chief Executive. OBAMA shirked all responsibilities in saying that Washington had a fondness for setting up committees, but the problem cannot be solved. The SAR Government has done the same. Concerning the Task Force, firstly, it does not comprise the democrats or those from political parties; secondly, there is no representative from the grassroots and it only comprises "cronies sharing common interests". Also, members of the Task Force have a fondness for layoffs, for the companies of several members have been laying off employees. Buddy, the Task Force is set up for layoffs and making life difficult for wage earners in the face of closures. Am I correct that another sushi shop has just closed down?*

**PRESIDENT** (in Cantonese): Mr WONG, please come to your supplementary question direct.

**MR WONG YUK-MAN** (in Cantonese): *This is a prelude to my supplementary question. President, how would the Financial Secretary understand it if I do not make things clear?*

**PRESIDENT** (in Cantonese): Please be concise.

**MR WONG YUK-MAN** (in Cantonese): *President, I will certainly convey my message in a concise way, has it not been conveyed sufficiently concisely? My remarks are so pleasant to listen to, right?(Laughter)*

*Regarding the "Three Direct Links" across the Strait, what economic challenges have the Task Force identified? Its comment about short-term effects and long-term benefits is the most outrageous. Buddy, no kidding here and please make the point clear. The Government has offered a rope when various trades and industries are going to hang themselves. We were infuriated by the remarks made by some of its members, especially Mr SHIH Wing-ching after the first meeting of the Task Force. Is his company not laying off staff? Why am I not a member of the Task Force? Am I or are my party allies not capable?*

**PRESIDENT** (in Cantonese): Mr WONG, according to the Rules of Procedure, a question shall not refer to the names of persons. Please ask your supplementary question concisely.

**MR WONG YUK-MAN** (in Cantonese): *Is it all right for me to refer to McCain a while ago?*

**PRESIDENT** (in Cantonese): Please come to your supplementary question direct.

**MR WONG YUK-MAN** (in Cantonese): *President, my supplementary question is very explicit; it is about the Financial Secretary's not answering my main question. First, I question the representativeness of the Task Force. Second, I question that it is not really addressing the problem. The Financial Secretary's reply to the main question is just an official reply and it makes no difference even if he has not given the reply. Third, I question why there are no representatives from the grassroots and the SMEs in the Task Force. I would like the Financial Secretary to answer my questions.*

**FINANCIAL SECRETARY** (in Cantonese): President, during this critical period, the Task Force should definitely comprise experts and academics of different background who can determine the impacts of the financial tsunami on our economy and major industries in a timely manner. We should also explore the specific measures to be proposed and new business opportunities. Surely, we attach great importance to people's views. Apart from the usual government channels for the collection of public opinions, members of the public can use emails to communicate with the Task Force, and its email address is <tfec@fso.gov.hk>. So far, we have already received a lot of emails conveying different views. The Government will continuously listen to the views of different bodies including the District Councils, the Commission on Strategy Development and other advisory bodies. Of course, the Legislative Council is an indispensable and important link. We are looking forward to specific suggestions from Honourable Members present, so that people would be helped in tiding over this financial tsunami peacefully.

**MRS SOPHIE LEUNG** (in Cantonese): *President, the Task Force is mentioned in the main reply and it is stated that it aims "to continuously monitor and assess the global major markets and the local market at this critical time". May I ask if we may have to think out of the box in considering certain subjects such as the "per capita GDP" in part (b) of the main reply? Should we consider the increase to more than \$233,000 from a brand new perspective? Some have asked if people with particularly high income should be set aside so that we can really consider how to solve the problem of disparity between the rich and the poor, hence they will not push up the Gini Coefficient. I would like the Secretary to give a reply.*

**FINANCIAL SECRETARY** (in Cantonese): President, we will do so by various means and we are going to apply the collective wisdom of the members of different committees when we consider more creative and effective proposals. I also welcome the expression of views by the general public by email or other methods.

**PRESIDENT** (in Cantonese): Fourteen Members are waiting for their turns to ask supplementary questions. I hope that Members would be as concise as possible in asking supplementary questions.



**MR FREDERICK FUNG** (in Cantonese): *President, I am very disappointed at the Financial Secretary's reply. The former Chairman of the United States Federal Reserve Board, Alan GREENSPAN, who was renowned as the greatest central bank head, conceded that the market-driven ideology did not work anymore. Now that the United States as the "big leader" has found it necessary to correct and review the market-driven ideology, I wonder why the SAR Government cannot consider doing the same. Why do we insist that a review is not necessary? I wonder if the SAR Government knows that the unchecked development of market economy will give rise to two problems: First, as Alan GREENSPAN has admitted, self-regulation would be impossible; second, there will be a disparity between the rich and the poor when the economy is good, and competent workers will be eliminated and become unemployed under unfavourable economic circumstances. Alan GREENSPAN has admitted these problems. Why has the SAR Government not responded to and examined these important problems?*

**FINANCIAL SECRETARY** (in Cantonese): *President, the Government has all along adhered to the "big market, small government" principle. The Chief Executive has told us that the Government does not think the market is all-powerful and intervention is not extremely evil. A major market principle is to allow private enterprises to run business freely, fairly and reasonably, and the Government's role is to provide assistance when necessary. For example, it should provide a safety net to people caught in misfortune or in need to help them overcome difficulties. But as I have mentioned in my main reply, "big market, small government" is a flexible concept and the Government will take a pragmatic approach in introducing measures tailored to specific circumstances.*

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

**MR FREDERICK FUNG** (in Cantonese): *Yes. I asked if the SAR Government has conducted a review because even the former Chairman of the United States Federal Reserve Board, Alan GREENSPAN, admitted there were problems. Is the Financial Secretary saying in his reply that the Government has conducted a*

*review but insists on not making any changes, or is it saying that it has conducted a review and made changes? If changes have been made, what are these changes?*

**PRESIDENT** (in Cantonese): I think the Financial Secretary has given a reply. Financial Secretary, do you have anything to add?

**FINANCIAL SECRETARY** (in Cantonese): President, we would review different concepts from time to time. I believe the current "big market, small government" principle is very flexible. As I have just said, the Government will take a pragmatic approach in introducing measures tailored to specific circumstances.

**MR RONNY TONG** (in Cantonese): *I think people have an impression that a lot of the Task Force members have vested interests and there are no independent experts. In particular, the Government has not attempted to adopt the experience and wisdom of peripheral economies. May I ask if the Government has considered inviting independent experts, especially experts from peripheral economies, to tender advice and tell us how all places in a common economic environment can tackle the financial tsunami?*

**FINANCIAL SECRETARY** (in Cantonese): President, members of the Task Force are appointed in their personal capacity, and this is the consistent practice of the Government. These members are experts from various sectors; some of them are well-versed in the local situation, and some others have rich international experience. We hope to make use of the collective wisdom and experience of its members, and we hope the Task Force will produce new ideas and make creative and substantive proposals. We have invited the representatives of the International Monetary Fund to elaborate on the current world situation at the first meeting. We will continue to listen to and consider the views and solutions of peripheral countries and other places.

**MR RONNY TONG** (in Cantonese): *The Secretary has not listened clearly to my supplementary question; my focus is on independent .....*

**PRESIDENT** (in Cantonese): Mr TONG, please put your supplementary question clearly.

**MR RONNY TONG** (in Cantonese): ..... *inviting independent experts to join the Task Force. I also asked the Government to explain why independent experts in the economies of other peripheral countries are not invited to participate in the discussions on this issue.*

**FINANCIAL SECRETARY** (in Cantonese): As I said just now, all members of the Task Force are appointed in their personal capacity; I wonder how a person can be regarded as independent.

**MR RONNY TONG** (in Cantonese): *President, the Financial Secretary still does not get my point. I am not asking if they are appointed in their personal capacity. I have said very clearly that people think that many members of the Task Force have vested interests and they are stakeholders in the market. So, even though they are appointed in their personal capacity, they cannot be regarded as independent. President, "independent" is the gist of my supplementary question, and it is my hope that the Financial Secretary would reply to this.*

**FINANCIAL SECRETARY** (in Cantonese): President, I think every one of us in the world is a stakeholder, if Mr TONG is invited .....

**MR RONNY TONG** (in Cantonese): *President .....*

**FINANCIAL SECRETARY** (in Cantonese): Can I finish with my reply first? If I invite Mr TONG to take part, I believe I cannot say he is in an independent capacity. We have invited many people from various sectors so that we can listen to their views and I believe we will gain a lot from their collective wisdom.

**MR WONG KWOK-HING** (in Cantonese): *President, concerning the representativeness of the Task Force, I find it regrettable that there is no*

*representative of wage earners. The Financial Secretary keeps saying that there are representatives from various sectors and I would like to ask him to explain why there is no representative of wage earners. The expression "with the personal experience of the Task Force members" is used in the last part of the Financial Secretary's main reply, but the press has exposed that "the personal experience" refers to the experience in layoffs and firing employees. Why has the Government not appointed any representative of wage earners? I hope the Financial Secretary will explain this.*

**FINANCIAL SECRETARY** (in Cantonese): President, as I have said a short while ago, we will make use of the existing channels to listen to the views of various parties. If the representatives mentioned by Mr WONG Kwok-hing have any opinions, they are welcomed to submit their views by emails or other methods.

**MR WONG KWOK-HING** (in Cantonese): *President, the Financial Secretary has not answered why the Government has not appointed any representative from the grassroots.*

**PRESIDENT** (in Cantonese): I believe the Financial Secretary has answered the question. Secretary, do you have anything more to add?

**FINANCIAL SECRETARY** (in Cantonese): President, if I have to add anything, I will only be repeating the answer already given. *(Laughter)*

**MR LEE CHEUK-YAN** (in Cantonese): *I said right from the outset that the Task Force would only be "bragging", who would have expected that it is even worse than just "bragging"? President, it is a "Task Force on Layoffs" as all of its members have broken others' rice bowls. They have personal experience in breaking rice bowls. I have this question for the Financial Secretary. Most of the members appointed have laid off employees, which gives people an impression that the Task Force is set up because of the lack of confidence in the future, thus necessitating the immediate shift of the crisis onto wage earners.*

*That being the case, why has the Government told the public to have confidence in the Task Force and to believe that it can lead Hong Kong in finding economic opportunities and raising competitiveness? The Government has also shown us that the appointees do not have confidence in our economy because they have laid off employees. May I ask the Financial Secretary if he has asked these members to review their own behaviour so that the public would have confidence in them and the "bragging" Task Force? Will the Government do so, and has it done so?*

**FINANCIAL SECRETARY** (in Cantonese): President, there have been ups and downs in our economy over the past 10 years and these members' companies have made manpower adjustments in the light of economic circumstances before. If they need to downsize in the wake of a global financial crisis this time, I trust that they must have no other alternatives. Should our economic situation turn better, I believe these companies would need to and would readily employ more people.

**MR LEE CHEUK-YAN** (in Cantonese): *President, the Financial Secretary has not answered my supplementary question on how best to restore public confidence in the Task Force besides the concern about layoffs.*

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

**FINANCIAL SECRETARY** (in Cantonese): President, to restore public confidence in the Task Force, I believe it is also necessary to restore our confidence. The Legislative Council and the Executive Authorities should co-operate in boosting Hong Kong people's own confidence.

**PRESIDENT** (in Cantonese): This Council has spent more than 21 minutes on this question. As a few Members have indicated interest in this question, I will allow one more supplementary question. I am afraid Members who do not have a chance to ask a supplementary question would have to follow up the matter on other occasions.

**DR RAYMOND HO** (in Cantonese): *The Government has been saying for many years that employment opportunities should be created and the Chief Executive also stated in his policy address last year that more employment opportunities should be created and more infrastructure projects would be launched to boost economic activities. We precisely need to create employment opportunities now. Will the Financial Secretary tell us — although I have said many times that the construction industry comprises more than 300 000 people and there are many SMEs such as subcontractors, material suppliers, consultancies and contractors, there is not even one representative from the industry — now that there is no representative from the industry comprising so many people, how can the Government tell us that employment opportunities would be created? The Government does not understand the importance of creating employment opportunities at all. Will the Financial Secretary review the composition of the Task Force?*

**FINANCIAL SECRETARY** (in Cantonese): *President, I have answered this question a short while ago. I am mainly saying that the Task Force members come from various sectors and I hope the topics they discuss would be broad enough to cover all sectors of our economy and that they would put forward mitigation measures.*

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

### **Electricity Charges Subsidy**

6. **MR WONG KWOK-KIN** (in Cantonese): *President, since 1 September this year and for 12 consecutive months, the Government has been crediting a subsidy of \$300 each month into each residential electricity account for offsetting billed charges for electricity consumed under the same account. Any unused credited subsidy in a month can be carried forward for use in the following months until 31 August 2014 or closure of the account, whichever is the earlier. Therefore, if a customer moves home and closes his electricity account, the unused portion of the credited subsidy cannot be used further. In this connection, will the Government inform this Council:*

- (a) *as residents in the Lower Ngau Tau Kok Estate will need to be transferred soon due to the redevelopment of the Estate, and the*

*majority of them are elderly persons with a low level of electricity consumption, they will not be able to carry forward the unused portion of their credited subsidy to the account of their new units, of the number of households to be affected, the number of phases by which the transfer exercise will be carried out, the duration of the transfer exercise, and the number of households involved in each phase;*

- (b) as residents of the Estate need to be transferred due to redevelopment and are not moving out of their own accord, whether the Government will make special arrangements to allow them to carry forward all unused portions of the subsidy credited to their accounts prior to the removal for further use in the accounts of the units they will move into; and*
- (c) whether it will make the same arrangement for all other households moving home within the period during which the subsidy on electricity charges can be used; if not, of the reasons for that?*

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

- (a) According to the information provided by the Housing Authority, the rehousing for Lower Ngau Tau Kok Estate is divided into two phases. Phase 1 was completed in June 2003. Phase 2 which is now in progress involves seven public rental housing blocks consisting of some 3 800 households. Among them, around 600 households have moved out before September 2008. The remaining households are expected to move to the newly completed Upper Ngau Tau Kok Estate starting from March 2009. The whole rehousing exercise is expected to be completed in the first half of 2009. Among the households to be relocated, the number that may have accumulated an unused subsidy for electricity charges by the time of removal will depend on their electricity consumption.
- (b) and (c)

When developing the Electricity Charges Subsidy Scheme, we note that, in reality, the registered account holder and the person paying

electricity charges to the electricity companies may not be the same person. For example, in respect of a leased premise, the registered account holder may be the landlord but the payer may be the tenant. Under such circumstances, allowing the transfer of unused subsidy to another account on removal may lead to disputes between the landlords and tenants on who should own the unused subsidies. Besides, for some aged meters, information on the registered account holders may not be complete. For instance, the full name or identity card number may not be available. This creates practical difficulty for the electricity companies in the transfer of accounts. In addition to the above, there are other implementation considerations such as how one should deal with cases where users become clients of another electricity company on removal, the administrative complexity, and so on. After examining the above factors, we consider that it is more appropriate to adopt a simpler mechanism that will allow us to implement the Scheme as soon as possible. Hence, while recognizing that some payers may not be able to fully utilize the subsidy, we have nonetheless specified in the Scheme that any unused subsidy can only be used to offset electricity charges under the same account to which the subsidy is credited. The Scheme was approved by the Finance Committee of the Legislation Council after thorough discussion. After all, the aim of the Scheme is to enable those who pay electricity charges for over 2 million registered domestic electricity accounts to enjoy electricity charges subsidy for one year from September 2008 so as to relieve the pressure of inflation. The design of the Scheme has served this objective.

We understand Members' concerns on the situation of tenants of the Lower Ngau Tau Kok Estate. Besides the Electricity Charges Subsidy Scheme, the Financial Secretary and the Chief Executive have also announced in the Budget speech and in July respectively a series of relief measures. Although some tenants of Lower Ngau Tau Kok Estate may not be able to fully utilize the subsidy, we believe that they can benefit from other measures announced by the Chief Executive and by the Financial Secretary, such as the payment of three months' rent for public rental housing tenants, the provision of an additional grant of \$3,000 plus two months' allowances to recipients of Old Age Allowance, and so on.



In addition, we understand from the Housing Authority (HA) that affected tenants can occupy both the new and old units for a maximum of two months. In other words, affected tenants can enjoy two subsidies for electricity charges during the overlapping period for the new and old units. The additional subsidy so received can help to offset part or all of any unused subsidy that cannot be carried forward from the old unit to the new unit. Furthermore, half month's rental for the new unit and one month's rental for the old unit are waived.

Noting that redevelopment of public rental housing estates and the related rehousing normally involve only the HA as a single landlord and its tenants, we will discuss with the Transport and Housing Bureau and the electricity companies to explore whether there are other feasible arrangements to deal with any unused subsidies for electricity charges that may have been accumulated by the tenants of Lower Ngau Tau Kok Estate on removal, and whether such arrangements can be applied to other HA tenants who have to be relocated on the redevelopment or demolition of public rental housing estates.

**MR WONG KWOK-KIN** (in Cantonese): *President, the residents in Ngau Tau Kok are not moving out of their own accord; they are forced to be relocated because of the redevelopment of the Estate. They are precisely the people who are most in need of government subsidy because it is quite difficult for them to make a living. Under such circumstances, as pointed by the Secretary just now, there should be no other disputes because as only a single landlord and a single tenant are involved. Therefore, will the Government consider refunding the balance of their electricity charges to them in cash? This is the simplest solution. Can the technical problems raised by the Secretary just now be resolved by returning the money to them in this way?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): As I said in the main reply, we are considering and exploring whether there are other arrangements to help the tenants. I have some reservations about the proposal of cash refund. I believe the measure taken

under the Electricity Charges Subsidy Scheme seeks to credit the subsidy into accounts under the Scheme to cover the electricity expenses of the public. In considering this measure, we have examined why electricity accounts should be used in lieu of a cash refund. I believe we must act in line with the original intent of the policy.

**MR IP WAI-MING** (in Cantonese): *President, we all understand that, as the economy worsens, many people have to move from large flats to small ones, or even rent a flat to live because they have defaulted on their home mortgage payments. We also know that, under the new tenancy legislation, tenants have to move upon the receipt of a one-month notice from owners. Many tenants have to move here and there because they have been persistently evicted by owners. May I ask the Secretary this question, if the Government does not allow members of the public to transfer the balance of their subsidy to their new accounts or, as pointed out by Mr WONG Kwok-kin just now, refund the balance, how the Electricity Charges Subsidy Scheme can achieve the purpose of alleviating hardship, given that the objective of the Scheme is to alleviate the hardship of the people?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I would like to thank the Honourable Member for this supplementary question. We have taken the overall situation into account. As I said earlier, the Electricity Charges Subsidy Scheme is designed to benefit all the people of Hong Kong with a scheme which involves relatively low administrative fees, a simpler design, and can be implemented expeditiously. Insofar as its progress is concerned, since the implementation of the Scheme in September after the Financial Secretary's announcement of the Budget, many people have already been benefited. We have considered many details, such as whether tenants can continue to receive the subsidy after removal, and found that it is difficult to handle. For instance, after the announcement of the Scheme, we received a lot of enquiries, most of which involving matters between owners and tenants, with some tenants indicating that they are requested to surrender the subsidy to owners. We have also received separate calls from a brother and sister requesting that the subsidy granted to the property jointly owned by them be shared. There are also disputes between owners and tenants over who should be entitled to the subsidy. Having considered these issues, we understand that it is very difficult for a scheme to handle all these issues. Therefore, we have come up with this simple scheme.

As regards the number of people who have moved homes, according to the figures for the past two months, 40 000 have cancelled their accounts. This reflects that the mobile population in Hong Kong is quite large. If we have to handle this matter, it would be difficult to simultaneously give consideration to the mechanism originally designed, that is, the original intention of granting subsidy to the people expeditiously.

**MR ALAN LEONG** (in Cantonese): *After listening to the Government's reply, I believe the Government is still regretting about using this approach to "give away money". President, the difficulties mentioned by the Secretary in the main reply are absolutely not applicable to Lower Ngau Tau Kok Estate, because there would be no problem as long as the Government allows the subsidy to follow the person. President, may I ask in particular how long the study would take as the Secretary mentioned in the last paragraph of the main reply that a study would be conducted? Is there a timetable? What are the details of the study? What actions will be taken? I hope the Secretary can explain to this Council clearly what the study is all about.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, actually we have been keeping an eye on this matter. Several Members also relayed the situation in Lower Ngau Tau Kok Estate to us in the past. Therefore, our departments have been following up the matter, including following up the matter with the HA in discussing measures to be taken to facilitate the residents in Lower Ngau Tau Kok Estate. We have also considered installing electric meters expeditiously so that the subsidy for electricity charges can be collected. Some of the measures mentioned by me just now would be helpful, for instance, when there is overlapping between new meters and old ones. Actually, we have been exploring whether there are other ways to help the residents. I can only tell Honourable Members that we have kept this matter in view and we are exploring whether administrative arrangements can be made to render assistance. I cannot give Honourable Members a timetable today. If there is any feasible proposal, I will definitely inform Members immediately.

**MR TOMMY CHEUNG** (in Cantonese): *Secretary, I do not agree entirely with the supplementary question put to you by Alan LEONG because I think this*

*measure is most beneficial to the people. However, I believe you will be disappointed because your popularity rating has kept falling. Therefore, I hope you know how to make the best of this opportunity. According to you, only thousands of people will be benefited under the scheme. Secretary, my supplementary question is very simple. If you are determined and believe this is what you should do, you do not need to ask others what study is available. If you are concerned whether the funds approved by the Finance Committee of the Legislative Council at that time can be used under such circumstances, I believe Ms Emily LAU will be more than willing to convene a special meeting for you to discuss this matter and give you an opportunity to tell us the amount of money involved as a result of the relocation of the tenants. The Liberal Party will support and continue to allow you to use the money. We also hope you can consider enabling these public housing residents to enjoy the subsidy because they are actually trying their best to save electricity charges. You should also wish to encourage them to continue saving electricity charges. This is not merely a matter of money; it also concerns environmental protection. Therefore, I hope the Secretary can give us a reply today. If you believe your policy can take care of these people — only involving removal — I believe the HA and power companies will definitely consider your proposal so long as the policy is there.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I would like to thank Mr Tommy CHEUNG for his question and reminder. Yes, we are in the process of studying this matter. If there is anything we can help the people, we will certainly do it. At the same time, we have also taken into account the relatively unique situation of Lower Ngau Tau Kok Estate because the units are under the HA. We have begun discussing with the HA and power companies as the administrative arrangements for removal are relatively straightforward. Since residents will start moving in March next year, I certainly hope a view can be formed before March. I will discuss with Honourable Members by then.

**MR TOMMY CHEUNG** (in Cantonese): *President, I wish to follow up. Actually, the supplementary question put to the Secretary by me is very simple, though it was presented by me just now in a long-winded way. Does the Secretary believe he should act in this manner policy-wise? If he does, the HA*

*and power companies can make complementary efforts, instead of asking them whether they can offer solutions. The key lies in whether the Secretary believes he should help the residents involved policy-wise.*

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Actually, my reply is: We are taking the initiative to discuss with them to explore if there are feasible solutions.

**MS LI FUNG-YING** (in Cantonese): *I would also like to follow up Mr Tommy CHEUNG's supplementary question. My question is actually very simple. If the Secretary believes he should act in this manner policy-wise, then he needs consult others. Instead, he can make a more proactive proposal direct. It was clearly stated in the Secretary's reply that the situation of the tenants and owner involved in this public housing redevelopment exercise is unitary and easily distinguished. Hence, may I ask whether the Secretary will reconsider adjusting this policy of yours?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I would like to thank Ms LI for her question. I have made it very clear that, given the circumstances, actions have been taken by us. We are exploring with the HA and power companies some feasible options. Over the past couple of months after I was informed of this matter, my colleagues have been discussing with the HA and power companies what can be done. I hope we will soon bring good news to Honourable Members.

**MR FRED LI** (in Cantonese): *President, I told the Secretary about this matter months ago. I would like to tell the Secretary in this Chamber that I have with me two electricity bills, charging \$61 and \$66 respectively for a two-month period, issued to elderly tenants of Lower Ngau Tau Kok Estate. You can see that they can save a lot if they are granted a monthly subsidy of \$300.*

*Furthermore, the \$3,600 subsidy can be exhausted over a period of six years. However, once they move into their new homes, they would not be entitled to the hundreds of dollars a month saved previously. This is where the problem lies. President, the Government must help those most in need. These elderly singletons rely on the light emitted by the television for lighting in order to save the electricity charges incurred by using electric lamps. I believe every Honourable Member here greatly supports the idea that the Government should continue its subsidy to these people. I believe even other political parties will not raise objection. Hence, may I ask the Secretary whether he can appear before the Finance Committee expeditiously? This is because the Secretary has often insisted that the Finance Committee would not allow this to happen when granting approval to fundings, and that we should apparently be held responsible for the problem. Now let me ask the Secretary this question: Can you expeditiously seek approval from the Finance Committee to enable you to give permission to tenants in need to transfer the remaining, unused electricity charge subsidy to their new meters? The problem can thus be resolved.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Thank you, Mr LI. Right. We have discussed this issue before. This is why we are exploring this matter in such a proactive manner. We are now in the course of studying feasible options. We will present it once we have decided on a feasible solution.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Setting Level of Minimum Wage Vis-a-vis CSSA Payments**

7. **DR DAVID LI:** *President, the Chief Executive reiterated in his 2008-2009 policy address that legislation would be introduced to implement a statutory minimum wage system. In its study report published in 2005, a political party proposed that the statutory minimum wage system should have the effect of encouraging Comprehensive Social Security Assistance (CSSA) recipients to*

*return to the labour force and, therefore, the minimum wage should be set at a level such that the total work income of a household would be higher than the amount of CSSA payments the household would receive if all its members did not work. In this connection, will the Government inform this Council of the following, broken down by household size:*

- (a) the number of households which currently rely solely on CSSA for subsistence, and the median monthly CSSA payments these households receive; and*
- (b) the number of households, other than those in part (a), which have a monthly household income less than the median monthly CSSA payments currently received by CSSA households of the same size, and the median monthly income of the former?*

**SECRETARY FOR LABOUR AND WELFARE:** President, the CSSA Scheme is designed to provide assistance to individuals who suffer financial hardship because of old age, disability, illness, unemployment, low earnings or other reasons to meet their basic needs by bringing their income up to a prescribed level. Most CSSA cases are classified under categories such as old age, permanent disability, ill health and single parent. As at September 2008, these cases took up 83% of the total CSSA caseload. The CSSA Scheme also takes care of the special needs of recipients of these categories through the provision of higher standard rates, various supplements and special grants. For example, the average monthly CSSA payment for a singleton elderly recipient is \$3,875.

The Social Welfare Department (SWD) has been assisting able-bodied unemployed CSSA recipients to secure full-time paid employment. Under the CSSA Scheme, SWD has been implementing the Support for Self-reliance (SFS) Scheme to provide able-bodied CSSA recipients with employment assistance services, so as to motivate them to move from "welfare to self-reliance" as early as possible. These services include job matching, post-placement support, and arranging community work which helps develop work habit and enhance self-esteem. Since its implementation in 1999 and up to August 2008, a total of 29 394 CSSA recipients participating in the SFS Scheme have successfully left the CSSA net after securing full-time paid employment.

My replies to the specific questions raised are set out below:

- (a) Under the CSSA Scheme, the SWD usually works out the figures concerned based on the average CSSA payments, which include "standard rates", "supplements" and "special grants". Regarding "standard rates", the current monthly standard rates for a single able-bodied adult, a two-member CSSA household comprising two able-bodied adults and a four-member CSSA household comprising two able-bodied adults and two able-bodied children are \$1,750, \$3,110 and \$5,290 respectively. Besides, the level of "supplements" and "special grants" are determined by the actual circumstances and needs of respective individuals or families.

As at the end of September 2008, there are a total of 213 316 CSSA households that do not have income other than CSSA payments. The number of CSSA households that do not have income other than CSSA payments and their average monthly CSSA payments (including standard rates, various supplements and special grants), broken down by household size, are tabulated below:

<i>Number of eligible member(s)</i>	<i>Number of households</i>	<i>Estimate on average monthly CSSA payments* (with an increase of 4.4% in standard payment rate with effect from 1 August 2008)</i>
1	139 023 <sup>^</sup>	\$3,706
2	44 449 <sup>^</sup>	\$6,065
3	17 379	\$8,048
4	8 515	\$9,480
5	2 910	\$11,165
6 or above	1 040	\$13,900
Total	213 316	

Note : \* Refer to the situation when CSSA cases do not have income other than CSSA payments. The estimate is compiled based on CSSA cases during May 2007 to April 2008 and adjusted in accordance with CSSA rates implemented as from 1 August 2008.

<sup>^</sup> Refer to CSSA households with one or two eligible members in which 102 983 and 25 572 old age cases are involved respectively.

- (b) Based on the income levels reported by the respondents to the General Household Survey (GHS) conducted by the Census and Statistic Department for the second quarter of 2008, the estimated number of non-CSSA households with an average monthly household income less than the average monthly CSSA payments received by CSSA households of the same size is 265 600.



However, GHS is based on information provided by the respondents and some of them may be reluctant to disclose their CSSA status. Hence, the actual number of non-CSSA households may be lower than the above figure.

We consider it inappropriate to make a direct comparison between the figures of CSSA households provided by the SWD and the figures of non-CSSA households collected in the GHS, as all CSSA recipients are required to pass the asset tests while the respondents of the GHS are not required to report any information on their assets and hence their financial situation cannot be fully reflected.

### **Development of Agricultural and Fisheries Industries**

8. **MR CHEUNG HOK-MING** (in Chinese): *President, in connection with fostering the development of the agricultural and fisheries industries, will the Government inform this Council:*

- (a) *apart from zoning lands for agricultural uses under the Town Planning Ordinance (Cap. 131) and strictly regulating changes of agricultural land use, of other proactive measures currently in place to encourage the industry to rehabilitate abandoned agricultural lands and to increase the income of farmers;*
- (b) *whether it will, by making reference to the successful experience of Japan and Taiwan, proactively examine the establishment of an agricultural development fund to assist the agricultural industry in transforming into one which adopts advanced and new technologies and yields high value-added agricultural produce;*
- (c) *how it assists local farmers in opening up sales channels for organic produce;*
- (d) *whether it will consider implementing a pilot scheme to set up quality mariculture farms in vacant industrial buildings; and*
- (e) *given that it advised, in a paper submitted to this Council in May this year, that the Agriculture, Fisheries and Conservation Department (AFCD) planned to set up an experimental hatchery to develop fry hatching and breeding techniques, when such hatchery will be set up?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, our reply to the question raised by the Honourable CHEUNG Hok-ming is as follows:

- (a) The AFCD has been promoting agricultural land rehabilitation and providing further services in this regard. When a farmer or any member of the community indicates interest in the rehabilitation of abandoned agricultural land, the AFCD will gather and provide information about the agricultural land concerned for his reference. A meeting with the land owner will then be arranged for both sides to discuss face-to-face the tenure arrangement. When the farmer starts land preparation, he can hire a tractor from the AFCD to plough the land. The farmer may also borrow other agricultural machines, such as cultivator, brush cutter and branch breaker free of charge from the AFCD. Furthermore, he may apply for a low-interest loan and seek technical farming support from the AFCD.
- (b) The Government has set up the Agricultural Development Fund (ADF) under the Vegetable Marketing Organization (VMO) to support local agriculture. As at 1 April 2008, the ADF has a total fund of \$130 million. In 2007-2008, the ADF allocated \$21 million for various projects promoting agricultural research and development, such as promoting organic farming, providing financial grants to the Hong Kong Organic Resources Centre for its operation, improving the market facilities of the VMO and organizing the Farmfest for the promotion of local agricultural products.
- (c) Since 2000, the AFCD has been actively providing assistance to local agricultural sector in developing organic farming through the provision of technical support to local organic farms on pest and disease control, horticultural practices, soil management and seed saving. The AFCD has also been assisting the trade through the FMO to develop the market for organic food. There are now more than 30 organic vegetable retail outlets under the VMO marketing network, including large supermarkets, MTR shops, health food stores and the Lions Nature Education Centre outlet at Tsiu Hang, Sai Kung. In addition, the AFCD has been actively working with various organizations towards diversifying marketing channels, an example of which is to help the Federation of Vegetable Marketing Co-operative Societies Limited set up weekend farmers' markets.

Besides, the AFCD has been assisting the trade in organizing large-scale promotional activities, such as the annual Farmfest, with a view to enabling the public to have a better understanding of the local organic products and to establish contacts with the local farmers so that they may continue to buy organic products from these farmers in future.

- (d) We understand that there is already an indoor aquaculture farm located in an industrial building in Hong Kong. The farm aims to culture mainly high value marine fish like high-finned grouper through the application of indoor aquaculture technologies and systems, including recirculatory filtration and disinfection systems, as well as good practices in aquaculture management. The farm's mode of operation can serve as a reference for the trade. The Government will provide assistance in the form of technical support, training and loans to any fish farmers interested in developing indoor aquaculture farms.
- (e) The AFCD is committed to assisting local fish farmers in upgrading and developing fish fry hatching and breeding techniques through the provision of technical support, training and trial schemes in collaboration with fish farmers. To step up efforts in this area, the AFCD has set up experimental hatchery facilities at Ta Kwu Ling in mid-2008 to facilitate research in fish fry hatching and breeding techniques. In September 2008, it organized a training course on grouper hatching jointly with the Network of Aquaculture Centres in Asia-Pacific at Ta Kwu Ling to provide the necessary knowledge and techniques to local fish farmers, fishermen and people interested in the research and development of fish fry hatching and breeding, so as to further promote the development of fish fry hatching and breeding in Hong Kong.

### **Facilities of Cycle Tracks and Promotion of Cycling Tourism**

9. **MR LAU KONG-WAH** (in Chinese): *President, regarding the facilities of cycle tracks and the promotion of cycling tourism, will the Government inform this Council:*

- (a) *of the number of complaints about the existing ancillary facilities of cycle tracks it received over the past three years, with a breakdown*

*by the subject matter of such complaints; whether it has regularly inspected the existing facilities of cycle tracks and carried out improvement works with reference to public views;*

- (b) *whether it will, by making reference to the efforts of other places (for example Taiwan and Europe) in encouraging cycling tourism activities, study ways to promote cycling tourism, including providing cyclists with information such as suggested routes and notes for guidance; and*
- (c) *as there were several fatal traffic accidents involving bicycles in recent years, whether it has examined the ways to ensure the safety of cyclists when developing cycle track networks; if it has, of the details; if not, the reasons for that?*

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

- (a) The number of complaints received on the ancillary facilities of cycle tracks in the past three years is as follows:

<i>Facilities</i>	<i>Number of Complaints</i>
Bicycle parking spaces	81
Traffic signs	60
Railings	83
Bicycle rental/repair kiosk *	2

\* operated by Leisure and Cultural Services Department

The Government regularly inspects the cycle tracks and ancillary facilities under its maintenance purview to ensure that they are maintained in good condition for public use. For instance, the Highways Department inspects the cycle tracks under its ambit at least once every half a year. In addition, the Government reviews from time to time the adequacy of these facilities taking into consideration the usage of the cycle tracks and the adjacent road traffic as well as public opinions, and will make improvements wherever appropriate and practicable.

- (b) According to overseas experience in developing cycling tourism, cycling routes usually link up various sightseeing spots, or integrate with nearby sightseeing spots to form a cluster of attractions. Safety is fundamental to well-developed cycling routes, along which ancillary facilities and services, such as safety and sanitary facilities, signage and convenient bicycle rental services, should be provided to travellers. The Government is liaising closely with the tourism industry and the Hong Kong Tourism Board (HKTB) on promotion of cycling tourism. The HKTB is actively developing new tourism products including cycling tourism by making reference to the experience of other regions in the world.

Having regard to the planning of the relevant cycle track networks and the development of the local ancillary facilities, the Government will, in collaboration with the tourism industry and the HKTB, study the demand for cycling tourism in the key source markets and the feasibility of developing cycling tourism. Starting from November 2008, the HKTB together with the tourism industry will launch guided cycling tours under the Nature Kaleidoscope Programme to promote cycling travel activities around the Deep Bay and Mai Po areas in Northwest New Territories to overseas visitors so as to test out the market.

- (c) In developing the cycle track networks, the Government will give due consideration to the design of the cycle tracks, including alignment, curvature, gradient, width, sight distance as well as connectivity with existing cycle tracks. Adequate lighting, traffic signs, road markings and railings will also be provided along cycle tracks to safeguard the safety of cyclists and other road users.

### **"EatSmart@restaurant.hk" Campaign**

10. **MR FREDERICK FUNG** (in Chinese): *President, earlier this year, the Department of Health (DH) launched in full scale the "EatSmart@restaurant.hk" campaign, under which participating restaurants have promised to provide EatSmart Dishes every day, including "Dish with more Fruit and Vegetables"*

*(which means that either fruit and vegetables are the sole ingredients, or their quantity is at least twice as much the amount of meat in the dish) and "3 Less Dish" (which means that the dish has less fat or oil, salt and sugar). In this connection, will the Government inform this Council whether:*

- (a) it has conducted a survey to gauge public response to the campaign, including the percentage of diners in these restaurants choosing EatSmart Dishes; if it has, of the survey results; if not, the reasons for that;*
- (b) it has uncovered cases of participating restaurants not keeping the above promise, and what measures are in place to monitor whether these restaurants provide EatSmart Dishes; and*
- (c) it will make reference to the recent efforts of New York City in the United States to promote healthier eating habits and encourage participating restaurants to list the caloric content of the dishes on the menu for reference of diners when choosing their dishes?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the DH launched a pilot run of the "EatSmart@restaurant.hk" Campaign in July 2007 to encourage and assist restaurants in providing dishes with more fruit and vegetables and less oil, salt and sugar on their menus, so as to allow more healthy food choices for the general public when eating out. My replies to the three parts of the question are as follows:

- (a) The DH conducted a random survey on participating restaurants of the pilot project and interviewed their customers and staff. Findings of the survey indicated that 48% of the interviewed customers were aware of the "EatSmart restaurants" and "EatSmart dishes"; 24% had ordered "EatSmart dishes"; 99% supported the provision of healthier dishes by restaurants and 75% indicated that they would patronize the restaurants again because of the healthy dishes provided.
- (b) In the light of the experience gained from the pilot project, the DH officially rolled out the "EatSmart@restaurant.hk" Campaign in

April 2008. Participating restaurants are required to nominate staff to attend training to learn the requirements of the Campaign and master the techniques and tips of healthy cooking. Upon completion of the training, trainees have to pass an assessment on nutritional knowledge and menu design before their restaurants are eligible to take part in the Campaign. Participating restaurants are also required to follow the DH's instructions by making available at least five "EatSmart dishes" every day, including those with "More Fruit and Vegetables"<sup>1</sup> and "3 Less"<sup>2</sup>; indicating clearly "EatSmart Dish" icons on menus; and displaying the "EatSmart" Campaign decal at prominent locations of the restaurants and placing customer opinion forms.

The DH conducts visits to participating restaurants to ascertain their compliance with the requirements of the Campaign. Annual renewal of enrolment is required to ensure that participating restaurants have fulfilled the above basic requirements. They will be disqualified as an "EatSmart Restaurant" if they fail to meet the specified requirements of the Campaign without reasonable explanations.

Since the official launch of the "EatSmart@restaurant.hk" Campaign, the DH has paid over 90 visits and found that some restaurants failed to fully comply with the requirements of the Campaign. The DH has urged the restaurants concerned to take follow-up action, and the restaurants have subsequently taken the necessary measures.

- (c) As recommended by the World Health Organization, a balanced diet includes increased consumption of fruit and vegetables; limited intake of fats, sugar and salt (sodium); and attaining energy balance and a healthy body weight. Since the amount of energy contained in a dish is only one kind of nutritional information among others, the mere provision of food energy figures cannot give comprehensive nutritional information to the general public. The

<sup>1</sup> Dishes of "More Fruit and Vegetables" are dishes that have only vegetables and fruit as ingredients or where portions of vegetables and fruit are more than twice of that of meat.

<sup>2</sup> Dishes of "3 Less" are dishes that are cooked or prepared with less fat or oil, salt and sugar.

DH will continue to disseminate the message of healthy eating to the public through various channels and encourage the industry to create a favourable environment for promoting balanced diet in the community.

### **Employment of Students with Disabilities and with Special Educational Needs upon Graduation**

11. **MR LAU KONG-WAH** (in Chinese): *President, regarding the employment of students with disabilities and those with special educational needs upon their graduation, will the Government inform this Council whether:*

- (a) it knows the number and percentage of such persons employed within the first year after graduation over the past three years, the main types of occupations in which they are engaged and their present unemployment rate;*
- (b) it has new measures to facilitate or encourage the employment of such persons by various government departments as well as public and private organizations; if so, of the details of the measures; if not, the reasons for that; and*
- (c) it has reviewed if sufficient training courses and employment support are currently provided to such persons; if it has, of the review results; if not, the reasons for that?*

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

- (a) The Education Bureau conducts an annual survey on the situation of special school students after leaving their schools. According to the survey findings, a vast majority of these school leavers would receive vocational training, vocational rehabilitation and day training or care services, and so on, in the first year after leaving their schools. Some would continue their studies, and only a small number of them would join the open market for employment in the first year of leaving their schools. The relevant information on the



school leavers in the past three years as provided by the special schools is summarized below:

<i>Post-School Arrangement</i>	<i>School Year</i>		
	<i>Number of persons (percentage)</i>	<i>2004-2005</i>	<i>2005-2006</i>
Employment	12 (2.4%)	21 (3.7%)	16 (3.1%)
Others #	489 (97.6%)	540 (96.3%)	501 (96.9%)

# Including vocational training, vocational rehabilitation and day training, care services and further studies, and so on.

The above figures are provided by special schools (excluding hospital schools and schools for social development). The survey on the 2007-2008 school year is expected to be completed by the end of 2008.

As regards the occupations in which the school leavers are engaged and their present unemployment rate, the Education Bureau does not have such information.

- (b) In addition to the Government's efforts, we need the active support of all sectors of society, including the business sector, social welfare sector and local communities to promote the employment of persons with disabilities.

On the Government's part, we have been proactively encouraging government departments, government subvented organizations (GSOs) and statutory bodies (SBs) to employ persons with disabilities. As the largest employer in Hong Kong, the Government all along welcomes applications from persons with disabilities for both civil service and non-civil service posts and is committed to placing them in appropriate jobs in the Government so as to facilitate their integration into the community. A candidate with disability who meets the entry requirements for the post

concerned will not be subject to any shortlisting criteria and will be automatically invited to attend the selection interview. He/she will be given an appropriate degree of preference for appointment if found suitable for employment. Over the years, the percentage of civil service employees with disabilities has consistently remained at more than 2% of the total civil service strength. We will continue to strengthen the understanding of our policy on the employment of persons with disabilities among government departments and to encourage peer acceptance of colleagues with disabilities in the Government.

As regards GSOs and SBs, we have all along requested all government bureaux and departments to encourage the public bodies and subvented organizations under their policy purview to adopt a host of measures to further promote the employment of persons with disabilities. These measures include setting up indicators for the employment of persons with disabilities on a voluntary basis; formulating policies and procedures regarding the employment of persons with disabilities by drawing reference to those for the Civil Service; and publishing the numbers of employees with disabilities in their annual reports.

On publicity and promotional efforts, the Labour and Welfare Bureau and the Rehabilitation Advisory Committee have identified "Promotion of Employment for persons with disabilities" as the major theme of their public education programmes in the coming year. A series of new initiatives have been implemented to enhance public understanding of the working capabilities of persons with disabilities and the support services provided by government departments and rehabilitation agencies for the employment of persons with disabilities with a view to enhancing cross-sectoral collaboration among the business sector, local communities, government departments and non-government organizations (NGOs) in promoting the employment of persons with disabilities, thereby supporting the self-reliance of persons with disabilities and their full integration into the community. These initiatives include:

- (i) encouraging social welfare agencies to take the lead in supporting and promoting the employment of persons with disabilities through visits, regular meetings and correspondence, and discussion with agency management on

specific follow-up measures such as setting up indicators for the employment of persons with disabilities on a voluntary basis and formulating policies regarding the employment of persons with disabilities;

- (ii) visiting the 18 District Councils (DCs) to brief them on various services available for the employment of persons with disabilities and to establish continuous collaborative relationship with the DCs in organizing relevant activities. This will help to engage the local communities in supporting the employment of persons with disabilities;
- (iii) organizing activities, such as seminars and visits, jointly with chambers of commerce, professional bodies and rehabilitation agencies to introduce to the business community various support services available for employers to recruit employees with disabilities, as well as products and services from persons with disabilities. This will help to demonstrate persons with disabilities' working capabilities and to address the concerns of employers in employing persons with disabilities;
- (iv) setting up a dedicated website by the end of the year to consolidate relevant information on the employment of persons with disabilities provided by various government departments and organizations. It will serve as a one-stop resource platform for employers, persons with disabilities and those who are interested in procuring the products and using the services of persons with disabilities;
- (v) subsidizing community organizations in organizing a variety of public education activities under the theme of "Promotion of Employment for persons with disabilities" to enhance public understanding of the working capabilities of persons with disabilities. This will help to secure public support for self-reliance of persons with disabilities and encourage persons with disabilities to join hands with other members of the community to contribute to the society; and
- (vi) promoting the relevant message through a series of activities launched by the Marketing Consultancy Office

(Rehabilitation) (MCO(R)) of the Social Welfare Department, including television and radio announcements of public interest (APIs) and a drama script-writing competition, and so on. The MCO(R) will also organize seminars and fairs to promote the services and products of persons with disabilities and to deepen public understanding and acceptance of persons with disabilities.

The above initiatives have generally received positive response from social welfare agencies, DCs and the business sector. For instance, more and more social welfare agencies have shown their support by setting up indicators for the employment of persons with disabilities and formulating policies and procedures in this regard. Many DCs have planned to organize promotional activities relating to the employment of persons with disabilities. The Organizing Committee of the International Day of Disabled Persons has adopted "Promotion of Employment for persons with disabilities" as the theme of this year's event and will, in collaboration with the 18 DCs, give commendations to the "caring employers" of the 18 districts who support the employment of persons with disabilities. A number of business corporations have also responded promptly by offering jobs to persons with disabilities with the assistance of relevant government departments and rehabilitation agencies and by making wider use of the products and services from persons with disabilities. This shows that our efforts have started to bear fruit.

- (c) Given the ever changing economic and social environment of Hong Kong, able-bodied people and persons with disabilities alike have to keep abreast with changing market demand by acquiring various vocational skills so as to enhance their working capabilities and update their knowledge. The Government reviews from time to time whether training courses and employment support for persons with disabilities are adequate and appropriate to their needs.

For instance, apart from full-time courses, the Skill Centres of the Vocational Training Council (VTC) also offer part-time evening courses for a duration of one year and special tailor-made short courses in flexible attendance mode to meet the specific needs of persons with disabilities. These programmes are reviewed every year for updating and changes where appropriate, with input from

relevant government departments, NGOs, special schools and experts from different industries who are on the Committee on Vocational Training for People with Disabilities of the VTC. For example, programmes on desktop publishing, webpage design, logistics services, workplace English and Western bakery and pastry, and so on, have been added or updated in the light of the demand of the employment market and the aspirations of persons with disabilities.

To promote open employment of persons with disabilities and to enhance public understanding of their working capabilities, the Selective Placement Division (SPD) of the Labour Department (LD) regularly organizes various public education and publicity activities, such as holding seminars, producing APIs on the successful employment of persons with disabilities, printing booklets and leaflets, and making visits to employers of specific trades to explore suitable job opportunities, and so on. The placement officers of the SPD will also keep a close watch on developments in the job market and actively approach employers to encourage them to provide suitable places for persons with disabilities.

The above services have proved effective in helping persons with disabilities secure employment. For instance, in 2007, the SPD of the LD had provided employment service to a total of 3 666 job seekers with disabilities. Among them, 2 169 secured employment, representing a success rate of 71.4%.

### **Impact of Financial Tsunami on Waste Recycling Activities**

12. **MR FREDERICK FUNG** (in Chinese): *President, it has been reported that the current financial tsunami has struck a heavy blow to the recycling industry in that the recovery prices for waste paper and scrap metals have plummeted, thus affecting in varying degrees the workflow of waste recycling activities in the community. For instance, some recyclable waste collectors have ceased operation, some of those participating in the recycling programmes in housing estates have refused to accept certain kinds of metal and reduced the number of basic necessities items that can be exchanged with waste paper, which in turn have discouraged the public from participating in such programmes. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the impact of the financial tsunami on activities to reduce waste and the work to promote waste recycling activities, including the impact on the recycling industry at various levels, the overall quantity of waste collected in the short term and medium term and the implementation of recycling programmes in the community by subvented community organizations and environmental groups; and*
- (b) *what measures, including those to assist the recycling industry, will be put in place to ensure that such recycling activities can continue to be carried out during an economic downturn?*

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

- (a) All trades and industries in Hong Kong have been hit by the global financial tsunami, and the recycling industry is no exception. The market prices of major recyclables, like those of other commodities and raw materials, have significantly dropped. The market prices of waste paper, scrap iron and waste plastic have plummeted from the peak of about \$2,000, \$4,500 and \$1,800 per tonne to the present \$700, \$500 and \$800 per tonne respectively. This has affected the work on waste reduction and the promotion of waste recycling.

In respect of waste material exporters, apart from the plunge in the recovery prices, they are faced with difficulties such as a decline in the number of orders and more harsh terms of orders. Given the exporters' stricter requirements on waste quality amidst the market downturn, there have been recent cases of substandard waste being rejected and returned to collectors. Nevertheless, the information we have obtained shows that the export of waste has generally remained normal.

As for the collectors, given their relatively small scale of operation in general, they have to make significant adjustment in both cost control and quality management of waste at a time when the recovery prices of waste remain low. With the plunge in the recovery prices of waste, the profits that can be shared with upstream parties have dropped accordingly. Nevertheless, the public,

community organizations and green groups should continue to actively promote waste recovery and reduction, which will also help alleviate the problem of generation and disposal of solid waste on the whole. The Government will continue to encourage and support the education and promotion work on waste reduction carried out by various organizations.

- (b) The Environmental Protection Department (EPD) is closely monitoring waste disposal at landfills. For the time being there is no sign of large quantity of recyclables being delivered to landfills for disposal.

Through the established network of the source separation of waste programme, the EPD has encouraged property management companies and residents of housing estates to continue participating in source separation of waste in the face of diminishing financial incentives. In view of the recent market situation, the EPD is keeping a close watch on the waste recovery work in housing estates. After checking with over 400 housing estates, we learned that waste recovery operations for most of them remained normal. However, the waste recovery prices offered by recyclers have dropped in response to changes in market conditions. Some estates have been informed by their recyclers that collection services at their estates would be suspended. We have advised these estates to find temporary storage for the recovered materials while we help them look for other recyclers.

To cater for the needs of small and medium enterprises, including the recycling trade, the Government has promptly amended the SME Loan Guarantee Scheme (SGS) to help the trade tackle their cash-flow problem. The EPD has disseminated the message to the recycling trade associations immediately to encourage them to make use of the SGS to tide over the difficult times. The Government will continue to lease short-term tenancy sites exclusively to the recycling trade and maintain close liaison with the trade to actively study other measures that will help alleviate their difficulties, such as providing more short-term tenancy sites to the trade for temporary storage of recovered materials. The EPD will continue to closely monitor waste disposal at landfills.

**Traffic Control Installations in Private Areas Open for Public Use**

13. **MR KAM NAI-WAI** (in Chinese): *President, it is learnt that the vehicular tunnel located beneath Garden Road, which connects Cheung Kong Center with Citibank Plaza, is a non-exclusive vehicular right of way and is required to be open for public use. However, the management companies of the two buildings installed vehicle gates and a traffic light near the exits of that access tunnel a few months ago, resulting in a longer journey time for vehicles using that tunnel. In this connection, will the Government inform this Council whether the above management companies had applied to the Transport Department (TD) and the Lands Department before installing the vehicle gates and the traffic light; if so, of the date on which the applications were made and the reasons for approving the applications; if not, whether the Government will examine if the installations are in breach of the terms of the land lease concerned or the relevant provisions of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G); if the installations are found to be in breach of the Regulations, whether the Government will institute prosecution, and whether the Commissioner for Transport will order the management companies to remove the above installations immediately?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, according to the lease conditions governing Citibank Plaza, the owner of Citibank Plaza shall permit the owner and the occupiers of Cheung Kong Center, their *bona fide* visitors, and persons using the public car park within Cheung Kong Center, passage by motor vehicles only (except construction vehicles) through the "Non-exclusive Vehicular Right of Way" connecting Cheung Kong Center and Citibank Plaza. The recent installation of the vehicle gate and traffic lights within the lot boundary of Citibank Plaza near the exit of the "Non-exclusive Vehicular Right of Way" by the management company of Citibank Plaza does not contravene the aforesaid lease conditions.

According to the Road Traffic (Traffic Control) Regulations (Cap. 374G) and Specification of Traffic Signs and Road Markings for Private Roads Notice (Cap. 374P) ("traffic control regulations"), for installation of traffic lights on



private roads, prior approval from the TD is required, unless they are placed on alternate one way roads and comply with regulations under relevant legislation and directions specified in the "Code of Practice for Private Roads" drawn up by the TD. The management company of Citibank Plaza has not obtained the TD's approval before installing the traffic lights. According to the traffic control regulations, the TD may by notice in writing require the owner of a private road to remove traffic lights installed on private roads within a specified period. As for vehicle gates installed on private roads, normally no application to the TD is required if they comply with the directions in the "Code of Practice for Private Roads".

Upon learning the installation of the traffic lights by the management company of Citibank Plaza, the TD immediately contacted and wrote to the management company, drawing the latter's attention to the relevant traffic legislation and the company's responsibility, and requested the management company to rectify the situation. The TD also reminded the management company of the department's power to require the removal of any unpermitted traffic signs in accordance with the law. In this regard, the management company had replied to the TD indicating that they would remove the vehicle gate and traffic lights shortly. At the same time, in view of the recent influx of vehicular traffic, it has been examining the introduction of other traffic management measures on the private roads within its premises (including the installation of automatic vehicle gates), so as to enhance road safety. The TD is in the process of examining the proposed measures in accordance with the law and providing technical advice.

### **Non-means Tested Loan Schemes**

14. **MISS TANYA CHAN** (in Chinese): *President, quite a number of tertiary students and graduates have told me that repaying loans under the Non-means Tested Loan Schemes poses a heavy financial burden for graduates. In this connection, will the Government inform this Council:*

- (a) *of the respective loan amounts approved under each scheme in the past five academic years, the interest income thereof, and its related administrative expenses;*

- (b) *of the respective number of cases in each scheme with two or more consecutive quarterly instalments in default during the last academic year, and its respective amounts of principal and interest overdue;*
- (c) *whether it will make reference to the methods for determining interest rates and calculating interests in the means-tested Financial Assistance Scheme for Post-secondary Students (FASP) and review the relevant arrangements for the Non-means Tested Loan Schemes; if it will, of the review timetable; if not, the reasons for that;*
- (d) *of the existing measures to recover arrears from defaulting borrowers and the effectiveness of such measures; whether it has reviewed the ways to recover arrears; if it has, of the review results and follow-up actions; if not, the reasons for that; and*
- (e) *whether new measures are in place to help borrowers with financial difficulties reduce their financial burden; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION** (in Chinese): President, the Government has currently in place the following three non-means-tested student loan schemes which aim at providing loans to assist eligible applicants to pursue their studies.

<i>Loan Scheme</i>	<i>Eligible Applicants</i>
Non-means-tested Loan Scheme (applicable to full-time students eligible for the Tertiary Student Finance Scheme (TSFS) — Publicly-funded Programmes)	Students who are covered under TSFS, that is, registered full-time students pursuing recognized courses offered by the University Grants Committee-funded Institutions, Hong Kong Institute of Vocational Education of the Vocational Training Council, the Prince Philip Dental Hospital and Hong Kong Academy for Performing Arts, and who fail to or do not wish to go through the income and asset tests under TSFS.

<i>Loan Scheme</i>	<i>Eligible Applicants</i>
Non-means-tested Loan Scheme (applicable to full-time students eligible for FASP)	Students who are covered under FASP, that is, registered full-time students aged 25 or below pursuing locally-accredited self-financing post-secondary education programmes leading to a qualification at sub-degree level or above, and who fail to or do not wish to go through the income and asset tests under FASP.
Non-means-tested Loan Scheme (applicable to students not covered by TSFS and FASP)	Registered students of the Open University of Hong Kong, Hong Kong Shue Yan University, part-time publicly-funded programmes or self-financing local award-bearing programmes offered by publicly-funded institutions (including their Schools of Professional and Continuing Education), Project Yi Jin, and continuing or professional education courses provided in Hong Kong by registered schools, non-local universities and recognized training bodies.

My specific replies to the questions in seriatim are in the ensuing paragraphs.

- (a) In the 2003-2004 to 2007-2008 academic years, the amounts of loans disbursed under the respective non-means-tested loan schemes are as follows:

<i>Loan Scheme</i>	<i>Academic Year</i>				
	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>
Non-means-tested Loan Scheme (applicable to full-time students eligible for TSFS)					
Loan amount disbursed <sup>1</sup> (\$ million)	298.5	284.6	225.9	189.3	184.8
Non-means-tested Loan Scheme (applicable to full-time students eligible for FASP)					
Loan amount disbursed <sup>1</sup> (\$ million)	242.9	315.9	330.9	315.0	364.9
Non-means-tested Loan Scheme (applicable to students not covered by TSFS and FASP)					
Loan amount disbursed <sup>1</sup> (\$ million)	480.9	586.4	483.8	402.6	401.7

<sup>1</sup> "Loan amount disbursed" in part (a) refers to the actual amount of loan paid in a particular academic year, while "Interest received" refers to the interest received in a particular academic year for the loans approved over the past years. The two figures have no direct relationship with each other.

In accordance with the existing terms and conditions of the non-means-tested loan schemes, loan borrowers are required to repay their loans in quarterly instalments within 10 years upon completion or termination of their studies. In the 2003-2004 to 2007-2008 academic years, the amount of interest<sup>2</sup> received from repayment accounts of loans approved over the years under the respective non-means-tested loan schemes is as follows:

<i>Loan Scheme</i>	<i>Academic Year</i>				
	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>
Non-means-tested Loan Scheme (applicable to full-time students eligible for TSFS)					
Interest received from loans approved in the past years <sup>1</sup> (\$ million)	34.1	44.0	70.6	77.9	71.3
Non-means-tested Loan Scheme (applicable to full-time students eligible for FASP)					
Interest received from loans approved in the past years <sup>1</sup> (\$ million)	3.5	9.1	24.9	39.1	45.9
Non-means-tested Loan Scheme (applicable to students not covered by TSFS and FASP)					
Interest received from loans approved in the past years <sup>1</sup> (\$ million)	13.6	28.4	62.4	78.3	92.0

Regarding the administrative expenses<sup>3</sup> of the non-means-tested loan schemes, since the Student Financial Assistance Agency (SFAA) is administering these schemes in an integrated manner, we do not have a breakdown of administrative expenses for each scheme. In the 2003-2004 to 2007-2008 academic years, the total administrative expenses for the three non-means-tested loan schemes are as follows:

	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>
Total administrative expenses (\$ million)	23.7	20.7	27.0	31.0	29.3

<sup>2</sup> The interest is charged on a no-gain-no-loss and full-cost-recovery basis. The principle is that Government shall not make profit or suffer from any losses (including losses in interest income from the loan amounts) through the various non-means-tested loan schemes.

<sup>3</sup> The administrative expenses refer to the costs incurred by the Student Financial Assistance Agency in processing the loan applications and administering the loan accounts.

- (b) Statistically, the SFAA classifies loan borrowers who have failed to repay two or more consecutive quarterly instalments as defaulters. This does not include those who have been allowed to defer repayment. In the 2007-2008 academic year, the accumulated number of default cases, and the amount of loan principal and interest<sup>4</sup> involved under the respective non-means-tested loan schemes are as follows:

<i>Loan Scheme</i>	<i>2007-2008 Academic Year</i>
Non-means-tested Loan Scheme (applicable to full-time students eligible for TSFS)	
Accumulated number of default cases	2 130
Loan principal in default (\$ million)	25.6
Interest in default (\$ million)	14.1
Non-means-tested Loan Scheme (applicable to full-time students eligible for FASP)	
Accumulated number of default cases	1 283
Loan principal in default (\$ million)	18.3
Interest in default (\$ million)	12.9
Non-means-tested Loan Scheme (applicable to students not covered by TSFS and FASP)	
Accumulated number of default cases	7 577
Loan principal in default (\$ million)	37.9
Interest in default (\$ million)	26.5

As at 2007-2008 academic year, the total amount of the loan principal and interest in default under the various non-means-tested loan schemes is about \$135 million. The total amount of the undemanded loan principal under the defaulted accounts concerned is about \$393 million. In the event that these undemanded loan principals are also in default, the total amount in default would amount to \$528 million.

- (c) To ensure that no post-secondary students will be deprived of education for lack of means, TSFS and FASP seek to provide eligible applicants with low-interest loans (interest rate set at 2.5%) to assist them to meet their basic living expenses. The concerned applicants are required to go through the income and asset tests to ascertain their eligibility for the relevant financial assistance.

<sup>4</sup> In accordance with the terms for the loans, if the loan borrowers of non-means-tested loan schemes fail to repay a quarterly instalment by the due date, they will be required to pay an overdue interest for the outstanding quarterly instalment in addition to the interest pertinent to their loans.

The non-means-tested loan schemes aim to provide loans to post-secondary students, who are unable or unwilling to go through the income and asset tests under TSFS and FASP, and to those eligible applicants who are not covered by TSFS and FASP. Since the loans are not subject to means test and are unsecured, these schemes have to operate on a no-gain-no-loss and full-cost-recovery basis in order to ensure the proper use of public money. The prevailing interest rate for the non-means-tested loan schemes is 4.382% (including a 1.5% risk-adjusted factor to cover Government's risk in disbursing unsecured loans). This interest rate is far below the interest rates of other unsecured loans in the market.

We consider it inappropriate to make direct comparison between the above two types of loan schemes which have different policy objectives, or to align their terms and conditions.

- (d) Under the existing terms and conditions of the non-means-tested loan schemes, loan borrowers are required to repay their loans in quarterly instalments within 10 years upon completion or termination of study. In case loan borrowers fail to repay a quarterly instalment by the due date, and have not approached the SFAA to provide explanations, the SFAA will write to them to demand immediate repayment of the loans. If the concerned loan borrowers still fail to repay the loan without reasons despite repeated requests, the SFAA will arrange to refer the default cases to the Department of Justice for debt recovery through legal means.

We are concerned about the default problem, and will endeavour to ensure the proper use of public money. The SFAA has reviewed the debt collection process, streamlined the workflow, and deployed additional staffing resources to expedite debt recovery through legal means. In addition, the SFAA has enhanced publicity on prudent financial management. It has been working closely with the post-secondary institutions to brief students on various loan schemes and loan repayment arrangements, to remind them of the need to seriously consider their financial requirements and repayment ability before applying for loans, and to emphasize the importance of prudent financial management and making repayment on time.

In view of the rising number of default cases, the SFAA has been seeking the advice of the Joint Committee on Student Finance

(JCSF) on measures to reduce the number of default cases. Some members suggested that the SFAA should provide information of the defaulters to relevant credit reference agencies so as to deter loan borrowers from defaulting loan repayment without reason. The SFAA is considering the feasibility of the suggestion and will consult the JCSF further on the proposal.

To ensure more effective protection of public money, we will continue to monitor the default situation and review the debt recovery measures as and when necessary.

- (e) The SFAA appreciates that individual loan borrowers may encounter difficulties in repaying their loans. It has therefore put in place an effective mechanism for handling such problems. If loan borrowers are unable to repay their loans on grounds of financial hardship, further studies or serious illness, they may apply to the SFAA for assistance with support of documentary proofs. The SFAA will, on the basis of individual merits, approve deferment of loan repayment or temporary adjustment of the quarterly repayment amount.

In the 2007-2008 academic year, the SFAA has approved about 2 700 applications for deferment of loan repayment or adjustment of quarterly repayment amounts under the various non-means-tested loan schemes. We consider the existing mechanism effective in providing appropriate assistance to loan borrowers who are unable to repay their loans.

### **Emergency Ambulance Service**

15. **MS LI FUNG-YING** (in Chinese): *President, the Government earlier indicated that in view of the increasing demand for emergency ambulance service (EAS), it was examining various options, including introducing a medical priority dispatch system, for better deployment of resources. Moreover, the Government would replace ambulances by phases so as to maintain the quality of EAS. In this connection, will the Government inform this Council:*

- (a) *of the current numbers of ambulances and ambulancemen in each division under the Ambulance Command;*

- (b) *whether the authorities will, apart from replacing the existing ambulances, consider increasing the numbers of ambulances and ambulancemen to cope with the increasing demand for the service; if they will, of the details; if not, the reasons for that; and*
- (c) *of the details of the above study on the medical priority dispatch system (including the work arrangements for the proposed system)?*

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

- (a) The current numbers of ambulancemen and ambulances in each division under the Ambulance Command are listed below:

<i>Region</i>	<i>Establishment of the Ambulanceman grade<sup>1</sup></i>	<i>No. of ambulances</i>
Hong Kong Island	440	43
Kowloon	711	65
New Territories	1 124	108
Total	2 275	216

- (b) The Administration attaches great importance to the performance pledge<sup>2</sup> made to the public on EAS and monitors the situation very closely. In order to meet increasing service demand and to maintain the service level in our pledge, the provision of additional ambulancemen and ambulances will be considered in the context of the Government's resource allocation system having regard to the public's actual demand on emergency ambulance calls.
- (c) The Fire Services Department has commissioned a consultancy to study the feasibility of introducing a Medical Priority Dispatch System (MPDS) in Hong Kong. The preliminary results indicated that such a system would allow us to better differentiate the seriousness of incidents or patients, and give priority to the more critical patients accordingly. The Department is now working out the specific options and detailed proposals. When these become available, we will consult the Panel on Security of this Council as well as the public.

Note <sup>1</sup> : Figures as at 1 October 2008.

Note <sup>2</sup> : The performance pledge of the Fire Services Department in respect of EAS is to handle 92.5% of the emergency ambulance calls within a target response time of 12 minutes.



**Buying Shares of Eastern Harbour Crossing and Western Harbour Crossing**

16. **DR RAYMOND HO** (in Chinese): *President, it has been reported that CITIC Pacific Limited (CITIC) has incurred huge losses due to the holding of leveraged foreign exchange contracts, and that the company may need to sell its assets to resolve the problem of liquidity crunch. In this connection, will the Government inform this Council whether:*

- (a) *it has considered expeditiously buying, at a reasonable price, the shares of the Eastern Harbour Crossing (EHC) and the Western Harbour Crossing (WHC) held by the company, so as to adjust the tolls of the three road-harbour crossings (RHCs), thereby resolving the long-term traffic congestion problem of the Cross-Harbour Tunnel and its link roads; if it has not, of the reasons for that; and*
- (b) *it has commenced negotiation with the management of the company regarding buying the company's shares of the road-harbour crossings; if it has not, of the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, the Government is determined to improve traffic flow distribution at RHCs and alleviate traffic congestion in Central and Wan Chai, but we will not underestimate the complexities involved. Buying the shares of the EHC and the WHC held by CITIC alone would not solve the problem of uneven traffic distribution among the three RHCs and traffic congestion. We need to consider all relevant factors, including the optimal traffic distribution of RHCs, how toll levels should be adjusted, the capacities of connecting roads before the completion of Central Wan Chai Bypass, the valuation of RHCs, financial implications, future organizational and management structure as well as legal issues. If we buy back the shares of RHCs, a significant amount of government spending will be involved, and the above issues must be considered to account for any decision we will make.

We also have to examine very carefully how the Government may influence the toll regime of the three RHCs for effective traffic management through controlling the shares of the tunnel companies. To illustrate, CITIC holds only 35% of the shares of the WHC. Even if the Government bought all of CITIC's shares, it could exert only limited influence on the toll level and operation of the tunnel. As for the EHC, even if the Government purchased all

of CITIC's shares, it would need to take into consideration the interests of other shareholders.

To conduct a comprehensive analysis, we will commission a consultancy to identify the optimal distribution pattern of traffic flow; the toll regime, financial and asset control arrangements and management structure conducive to such a pattern; and the legal issues to be resolved. A focus of the consultancy study will be valuation of the three RHCs, the EHC and WHC in particular. The consultancy will last 12 months.

In parallel, we will also seize the opportunity to continue to communicate with tunnel companies. In fact, over the past few years, we have maintained communication with the shareholders and management of the EHC and WHC to explore various options, including buyback, to boost tunnel utilization.

### **Carbon Audit Guidelines**

17. **MR JAMES TO** (in Chinese): *President, in July this year, the Environmental Protection Department and the Electrical and Mechanical Services Department launched the "Guidelines to Account for and Report on Greenhouse Gas Emissions and Removals for Buildings of Commercial, Residential or Institutional Purposes in Hong Kong" (the Guidelines) to assist companies or organizations which have signed the Carbon Reduction Charter and become "Carbon Audit • Green Partners" in conducting carbon audits on their buildings. In addition, in his policy address delivered last month, the Chief Executive proposed to partially subsidize building owners to conduct comprehensive energy and carbon audits and undertake energy efficiency projects. In this connection, will the Government inform this Council:*

- (a) of the current number of companies or organizations which have become "Carbon Audit • Green Partners";*
- (b) whether it has determined the basic qualifications for the personnel or independent auditors commissioned to conduct carbon audits; if so, of the details of the qualifications;*
- (c) given that the Government will legislate for the mandatory compliance of the Building Energy Codes, whether it will determine the professional qualifications of "Energy Auditors" or the like, so as*

*to complement the carbon audit campaign and support the development of the profession;*

- (d) whether the two aforesaid schemes for energy audits will include residential buildings, and of the implementation timetable for these schemes; and*
- (e) whether it has considered including environmental and energy efficiency items in the current building maintenance subsidy schemes, so as to raise the awareness of owners to use green construction techniques such as rooftop greening?*

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

- (a) The Government launched the "Green Hong Kong • Carbon Audit" campaign in July this year to encourage property managers and users to conduct carbon audit on their buildings. To date, more than 40 organizations including those from property development and management sectors, professional bodies, universities, non-profit-making organizations and other business organizations have become "Carbon Audit • Green Partners". The Environmental Protection Department will continue to encourage different sectors in the community to join the carbon audit campaign and update the list of "Carbon Audit • Green Partners" on its webpage from time to time.
- (b) To complement the implementation of the "Green Hong Kong • Carbon Audit" campaign, the Government had, after taken into account internationally recognized approaches as well as local circumstances, launched in July this year a set of the Guidelines for buildings in Hong Kong. The Guidelines aim to help building owners and management companies account for and report on the greenhouse gases (GHG) generated during the operation of their buildings. The Guidelines provide a systematic and scientific method on the collection of the information required in reporting and sample reporting format. Therefore, personnel with good knowledge on the operation of the buildings concerned should be able to calculate the amount of GHG emissions in accordance with the Guidelines, and identify areas for improvement.

- (c) To improve energy efficiency of new and existing buildings as soon as possible, the Government is preparing the legislative proposals on the mandatory implementation of the Building Energy Codes. We aim to introduce the proposed legislation into the Legislative Council in 2009. We propose that under the new legislation, verification of energy efficiency and energy audits for buildings should be conducted by professionals approved by the Electrical and Mechanical Services Department. We have formed a stakeholder task force to discuss with relevant trades the qualifications for and registration of such professionals.
  
- (d) As set out in this year's policy address, the Chief Executive proposed reserving \$150 million under the Environment and Conservation Fund (ECF) to provide funding supports to building owners to conduct energy-cum-carbon audits. He also proposed to reserve another \$300 million under the ECF to provide funding support to building owners for conducting energy efficiency improvement projects. We will consult the ECF Committee on the detailed arrangements of the funding schemes, including the types of buildings to be covered and specific eligibility criteria. Subject to the Committee's views, we expect to introduce the two funding schemes within 2009.
  
- (e) Eligible property owners may apply for loans or subsidies under the Building Management and Maintenance Scheme of the Hong Kong Housing Society (HS) to carry out environmental protection works in their premises or in the common areas of their buildings, such as installation of energy conservation or water saving devices and green landscaping. They may also apply for loans under the Comprehensive Building Safety Improvement Loan Scheme of the Buildings Department if they use environmental and energy-efficient construction techniques, materials and devices in the maintenance and improvement works for building safety. In addition, elderly owner-occupiers can apply for assistance grants under the Building Maintenance Grant Scheme for Elderly Owners administered by the HS.

On the other hand, in supporting and promoting environmental protection, the Urban Renewal Authority (URA) is considering some new features for its Materials Incentive Scheme, including the

provision of free environmental devices such as energy efficient lighting and waste separation recycling bins to owners' corporations which intend to use those items for improving the common areas of their buildings.

The URA is mindful of the statutory requirements under relevant environmental legislation on the materials it provides under the Materials Incentive Scheme. For example, all paints provided for external walls should meet the standards of the Air Pollution Control (Volatile Organic Compounds) Regulation in order to reduce volatile organic compound emissions of paints. In promoting the waterproof re-roofing of old buildings, the URA, apart from reminding owners to pay attention to the waterproof design of the roof, will also encourage them to use thermal insulation materials which can directly reduce air-conditioning usage and electricity consumption of top floor residents. For various rehabilitation works, the URA often encourages property owners to consider greening of their living environment.

The ECF managed by the Environment Bureau provides funding for environmental and conservation projects (including rooftop greening works) conducted by non-profit-making organizations such as schools and social service agencies. The ECF has subsidized the greening works of 47 schools or social service agencies since April 2008. The Government will continue to promote rooftop greening in buildings through this subsidy scheme.

### **Short Selling Activities**

18. **MS EMILY LAU** (in Chinese): *President, in a study report published on 24th last month, Morgan Stanley, an international investment bank, pointed out that since the outbreak of the financial tsunami, HSBC Holdings PLC ("HSBC Holdings") was the only financial institution in the world whose share price had not experienced a sharp fall. Moreover, it estimated that HSBC Holdings would reduce its dividend payments. As such, it had adjusted downward HSBC Holdings' target share price to \$75. On the same day, the share price of HSBC Holdings dropped from \$95 to \$88 and further to \$75 on 27th last month. Some members of the public doubted if the above situation involved short selling activities. In this connection, will the executive authorities inform this Council whether:*

- (a) *it will investigate if someone had deliberately disseminated news unfavourable to HSBC Holdings and gained profits from the fall of the company's share price through short selling activities; if it will, of the details; if not, the reasons for that; and*
- (b) *it will follow the practice of various financial markets in Europe and the United States to ban short selling activities so as to maintain the stability of our financial system and strengthen investors' confidence; if it will not, of the reasons for that?*

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

- (a) As the regulator of the securities and futures markets, the Securities and Futures Commission (SFC) ensures that the market operates in an efficient, fair, orderly and transparent manner. The SFC will investigate and follow up those cases where any persons or institutions are suspected to have provided false or misleading information to the market, or where such persons or institutions are suspected to have deployed the false or misleading information in market misconduct activities.

If the information provided by the persons or institutions to the market is true, or if the information consists of an opinion or a recommendation which has been formed in good faith or is otherwise reasonable and justifiable in all circumstances, providing such information will not amount to market misconduct.

The SFC does not comment on individual cases.

- (b) The Administration is aware that a number of overseas jurisdictions have introduced temporary measures to restrict or prohibit short selling activities in response to market volatility and the situations of their financial markets.

We also note that some of the measures recently introduced by overseas jurisdictions against short selling have indeed been

included in our existing short selling regime. For example, many European markets, including Germany, France and Italy, have recently banned naked short selling<sup>1</sup>. In fact, in accordance with the Securities and Futures Ordinance, naked short selling is prohibited in Hong Kong<sup>2</sup>.

Besides, the Administration has tightened its regulation of short selling regime after the Asian financial crisis in 1998. Currently, only covered short selling for certain designated securities, as prescribed by the Stock Exchange of Hong Kong Limited (SEHK), is permitted. Meanwhile, brokers/agents may execute short selling only on the SEHK's trading system at or above the best current asking price. Moreover, the relevant rules also require a full audit trail to be kept for covered short selling. Clients must provide documentary confirmation (including written confirmation, tapes or electronic documents) to their brokers or agents when the short selling is effected.

Generally speaking, the current short selling regime in Hong Kong is robust. Short selling activities are not the major cause for the recent decline of the stock market. Despite recent volatility in the global financial markets, short selling activities in Hong Kong remain at levels consistent with those prior to the current global financial turmoil.

Although the SFC has not found any abusive short selling activities at this stage, the SFC has, as a preventive measure, issued earlier a circular reminding intermediaries to strictly comply with the short selling rules. The Hong Kong Securities Clearing Company Limited has also doubled the default fee for failed settlement of short selling transactions.

The SFC will continue to closely monitor short selling activities in the stock market and will introduce market-wide control measures (including restriction of short selling activities) where necessary.

<sup>1</sup> Covered short sale requires the seller to have borrowed the stock or to have obtained a confirmation that the lender has the stock available to lend out at the time of sale. In contrast, naked short selling involves selling of securities without borrowing the stock or without having obtained the abovementioned confirmation.

<sup>2</sup> Naked short selling has been prohibited in Hong Kong since short selling was first introduced in 1994.

**Assistance Provided to Recycling Industry**

19. **MR CHAN HAK-KAN** (in Chinese): *President, it has been reported that as Hong Kong has recently been hit by the global financial tsunami, the waste paper recycling industry has shrunk significantly. Due to the lack of orders, major recyclable waste collectors have suspended the collection of waste paper, and it is uncertain when the situation will return to normal. It has also been reported that a waste paper plant has accumulated some 900 tonnes of waste paper in one week. In this connection, will the Government inform this Council:*

- (a) whether it has uncovered cases of recyclable waste collectors dumping the accumulated waste paper in the landfills; if so, how it will handle such waste which has suddenly increased to a large quantity;*
- (b) whether it will consider reducing the rents for the government sites which have been leased to recyclable waste collectors on short-term tenancies, so as to help them tide over the present difficult times;*
- (c) how the Government determines when it is necessary to co-ordinate or assist the operation of the recycling industry; and*
- (d) given that it has been reported that the shrinkage of the recycling industry will further shorten the life of the three landfills, whether the Government has comprehensively reviewed the current environmental protection policy, so as to prevent our environment from deteriorating as a result of the shrinkage of the recycling industry?*

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

- (a) All trades and industries in Hong Kong have been hit by the global financial tsunami, and the recycling industry is no exception. The recovery price of waste paper has plummeted from the peak of about \$2,000 per tonne to the present \$700 per tonne. Nevertheless, the information we have obtained shows that the export of waste paper has generally remained normal. The Environmental Protection Department (EPD) is closely monitoring the waste disposal at landfills. For the time being there is no sign of large quantity of recyclables being delivered to landfills for disposal.



(b) and (c)

The Government will continue to lease short-term tenancy sites exclusively to the recycling trade to provide affordable land resources to them. There are currently 35 such sites with an aggregate area of 7 hectares. It is estimated that the waste processed on these sites represents about 16% of the territory's total. Moreover, to cater for the trade's common needs, the Government has taken a series of measures to help the trade tackle their cash-flow problem, such as prompt amendment of the SME Loan Guarantee Scheme (SGS). The EPD has disseminated the message to the recycling trade associations immediately to encourage them to make use of the SGS to tide over the difficult times. Moreover, the Government will continue to maintain close liaison with the trade to actively study other measures that will help alleviate their difficulties, and provide them with appropriate support.

(d) Indeed Hong Kong is faced with a serious and pressing waste problem. To solve the problem in a comprehensive manner, we have to adopt a three-pronged approach of waste reduction at source, waste recovery and modern waste treatment facilities. All these three elements are indispensable. In this connection, the Government has been promoting green living, for example, avoiding excessive packaging and switching to reusable tableware. In addition, an environmental levy will be imposed to deter the indiscriminate use of consumables such as plastic shopping bags. The Government has also been pushing ahead with waste recovery and recycling. To this end, a package of measures has been adopted, such as promoting source separation of waste in housing estates and commercial buildings, placing 3-coloured waste separation bins in public areas and implementing producer responsibility schemes for various products. To facilitate recycling of recovered materials, the Government supports the development of environmental industry through the EcoPark and green procurement. For unavoidable waste, the Government plans to construct integrated waste management facilities to achieve bulk reduction of waste. These policies and measures are complementary to each other in helping Hong Kong achieve sustainable development.

As mentioned above, we will closely monitor changes in the economic environment and review waste management policies and

measures from time to time. In particular, we will strengthen communication with the environmental industry, and actively consider and implement measures aimed at supporting the industry to ensure that our environment will not be affected by economic problems.

### **Assistance to Small Shop Tenants**

20. **MS EMILY LAU** (in Chinese): *President, the Administration stated in its reply to my question on 29th October that it "shall write to The Link Management Limited and urge the latter to try to assist small tenants in its properties and provide them with appropriate support measures, so as to help them tide over the difficulties arising from the current financial crisis". In this connection, will the executive authorities inform this Council whether:*

- (a) *they have written to The Link Management Limited (The Link); if they have, of the date and content of the letter, and whether The Link has replied to the letter; if so, of the details of the reply;*
- (b) *they will write to the proprietors of other major shopping malls to make the same appeal; if they will not, of the reasons for that;*
- (c) *they will find out from The Link and the proprietors of other shopping malls the levels of increase in shop rental and the number of tenants whose tenancy agreements have been terminated since this year; and*
- (d) *they have plans to lower the rental of the shops under the Government in order to help the tenants tide over their financial difficulties; if so, of the details; if not, the reasons for that?*

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

- (a) We wrote to The Link at the end of October this year, relaying the concern of its tenants about the rates of rental increases. We also mentioned in the letter that many small shop tenants were suffering from credit squeeze and weakened consumer confidence, and appealed to The Link to consider providing small shop tenants with

appropriate support measures so as to help them tide over the current difficulties. We have yet to receive a reply from The Link.

- (b) We have written to the Real Estate Developers Association of Hong Kong making the same appeal. The Association has replied that it will distribute our appeal letter to its member organizations.
- (c) The occupancy rate and tenant mix in The Link's premises and other private commercial premises involve the operational arrangements of these companies and commercially sensitive information. In addition, tenancy arrangements between owners of private premises and their tenants are private transactions, in which the Government should not intervene.
- (d) Together with the relevant bureaux, departments and organizations, we are now actively examining the feasibility of introducing more support measures for small and medium enterprises, including that mentioned in this question. We will make public announcements as soon as the decisions are available.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Legislative Council (Powers and Privileges) Ordinance.

I now call upon Dr Raymond HO to speak and move his motion.

## **PROPOSED RESOLUTION UNDER THE LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE**

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

President, in my capacity as Chairman of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee), I move that the motion as printed on the Agenda be passed. The motion seeks to authorize the Subcommittee to exercise the powers

conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

The collapse of the subprime mortgage market in the United States last year triggered off a series of credit crises, culminating in a financial tsunami that has swept across the whole world. The closure of the Lehman Brothers Holdings Inc. (Lehman Brothers), an American investment bank, has rendered related entities unable to discharge their obligations associated with Lehman Brothers-related structured financial products. According to the statistics of the Hong Kong Monetary Authority (HKMA), there are roughly 43 700 buyers of Lehman Brothers-related structured financial products in Hong Kong, involving a total investment of more than \$20.1 billion. Most of these investors purchased through retail banks a kind of structured financial product called minibonds. These investors have sustained huge or even total losses, and they are utterly dissatisfied with the sales practices of the banks concerned. They allege that the banks concerned never explained clearly the compositions and investment risks involved, or disclosed the involvement of Lehman Brothers, when trying to persuade them to invest in this type of financial product. They question whether there were any irregular sales practices on the part of the banks concerned, whether the Administration, the HKMA and the Securities and Futures Commission (SFC) have exercised effective control on structured financial products and the sale of securities by banks, and whether there is adequate protection and assistance for investors.

In view of the widespread concern about this incident, the House Committee of this Council convened a special meeting on 13 October to listen to the briefings of the Administration, regulatory bodies, the Hong Kong Association of Banks and some 20 financial institutions. Members expressed particular concern about why such complex and high-risk structured financial products could be sold by retail banks to the public as capital-preservation and low-risk products. They wanted to know what responsibility the Government and regulatory bodies should bear and how the present regulatory framework could be improved. They also thought that the most pressing task should be to ascertain how the Administration and financial institutions could assist the affected investors. Members subsequently agreed that a Subcommittee should be established under the House Committee to follow up this incident and any related matters. And, on 17 October, the terms of reference of the Subcommittee were passed as follows: Studying issues arising from Lehman

Brothers-related minibonds and structured financial products and making recommendations where necessary. Such were the terms of reference agreed by Members at that time for adoption by the Subcommittee.

At its meeting on 17 October, the House Committee discussed the proposal of Mr James TO and Mr KAM Nai-wai on authorizing the Subcommittee to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) when discharging its duties. Some Members were of the view that in order to fully understand and grasp the background to the whole incident, the relationship between the marketing banks concerned and Lehman Brothers and the sales strategies of banks, the Subcommittee must be authorized to exercise the powers of summoning witnesses and requesting regulatory bodies, financial institutions and other related persons to submit information, including sensitive commercial information, internal documents and any other information that must be kept confidential under the existing legislation. Some Members also held that persons who were summoned to the meetings of the Subcommittee under the Legislative Council (Powers and Privileges) Ordinance must answer members' questions truthfully and submit the requested documents, and since any evidence from them would be under the protection of the Ordinance, they would not have to worry about any subsequent charges or claims.

However, other Members maintained that the Legislative Council should first allow the Subcommittee to commence its work and let it decide on its own whether it was necessary to seek any authorization from the Legislative Council for it to exercise the powers conferred by the Ordinance. These Members were of the view that the most urgent task now should be to explore various possibilities of helping investors to recover their losses as soon as possible, including ways of urging banks to implement the Government's buy-back proposal and the establishment of an effective mechanism, whereby banks and investors who have sustained losses could arrive at reasonable settlements. Some Members felt concerned that if the Subcommittee exercised the powers conferred by the Ordinance at this stage, banks might be forced to spend huge resources on attending the hearings and delay the work of buying back.

At the House Committee meeting on 17 October, a majority of the Members agreed that the Subcommittee should seek the approval of the Legislative Council for it to exercise the powers conferred by section 9(1) of the

Legislative Council (Powers and Privileges) Ordinance. At its first meeting on 27 October, the Subcommittee also agreed that I should move a relevant motion at the Legislative Council meeting today.

President, in the following part of my speech, I shall give my personal views on the motion.

The debate on the resolution today and the voting outcome of the Council will have far-reaching implications on the development of Hong Kong's financial institutions, the confidence of the international community and the general public in our financial systems, Hong Kong's development as an international financial centre and its international status. Of equal importance is of course how and when the numerous victims can be delivered from their plight. Most of the victims are small investors. Other members belonging to the Professional Forum and I have recently met with three batches of victims. They have toiled hard all their life to amass a sum of money, just a modest sum of money, for their old age and families. But all their hard-earned savings may be lost. Many of them are on the verge of nervous breakdown. Every single minute thus matters a lot to them.

I believe that Members will make wise decisions. As for the Professional Forum, I will respect individual decisions. We will make our individual voting decisions.

I have been elected Chairman of the Subcommittee. After prudent consideration and extensive consultation, I have decided that it is most appropriate for me to be present while abstaining from voting.

President, I so submit. Thank you.

**Dr Raymond HO moved the following motion:**

"That the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of the Ordinance for the purpose of studying issues arising from Lehman Brothers-related minibonds and structured financial products and making recommendations where necessary."

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, during the past month or so, my colleagues and I have on several occasions discussed with Honourable Members in this Chamber ways to follow up the Lehman Brothers minibonds incident (the Lehman Brothers incident) and reported to Members the progress made by the Government in co-ordinating various parties to assist affected investors. Now, let me start with a report on the latest progress made under the efforts of the Government, regulatory bodies, the Hong Kong Association of Banks (HKAB) and distributor banks over the past week or so.

Regarding buy-back proposals, following the acceptance by the Task Force set up by the HKAB and various distributor banks of our buy-back proposal, a consensus was reached last Tuesday (4 November) by the Task Force and the distributor banks on the calculation method of the valuation of collateral, and efforts to buy back all minibonds with value are expected to commence in early December. As advised by an independent financial consultant commissioned by the HKAB, the present value of the minibonds in each series is dependent upon the valuation of their collateral, and hence the present value of the minibonds in each series may differ. It is understood that the collateral in some series still has value; therefore, investors could get back cash should the buy-back proposal be implemented.

We have put forth this buy-back proposal to distributor banks in the hope that affected minibond investors can get back the present value of their investment expeditiously so that they can be spared the complex and tedious liquidation procedures. We believe this is the most pragmatic way to assist affected investors.

With respect to investigations, like Honourable Members, the Government and regulatory bodies will not condone mis-selling. In this connection, the HKMA and the SFC have injected additional resources and undertaken to handle the relevant complaints fairly and promptly. Up to last Friday, a total of 96 complaints involving give five distributor banks had been referred to the SFC by the HKMA. Furthermore, up to last Thursday (6 November), formal case investigations had been launched by the HKMA into nearly 700 complaints. At

the same time, further information is being collected by the HKMA in connection with some 3 100 complaints.

A top-down approach is adopted by the SFC to thoroughly investigate the selling practices and policies of relevant banks and brokerages, including ascertaining whether these products had been mis-sold to certain investors due to systemic faults or improper management and monitoring. As the focus of the SFC is on systemic problems, the process would be more complex than the handling of individual cases. At the same time, in order to prevent the outcome of the investigations from being challenged in court, the SFC must ensure all investigation procedures are proper and conducted in accordance with the law. Nevertheless, the SFC has undertaken to complete its investigations expeditiously.

Should allegations of distributors' involvement in mis-selling be confirmed by the abovementioned investigations, the SFC may in consultation with the HKMA impose sanctions on the distributors involved. The sanctions include reprimands, fines and suspension or removal from the list of licensees or registered persons. It is worth emphasizing that the SFC may impose on non-compliant banks or brokerages a maximum fine of \$10 million or three times the amount of their profits.

In considering sanctions to be imposed, the SFC will consider actions taken by the relevant persons or institutions to remedy or mitigate the consequences of their misconduct. Therefore, banks and brokerages are encouraged to expeditiously investigate the relevant complaints and reached mediation agreements with affected investors. Corresponding actions have been taken by some of the banks.

We appreciate investors' concern about whether and when they can get back the capital of their investment can be returned. Therefore, in addition to requesting distributor banks to expeditiously come up with buy-back proposals, we also encourage them to expedite the reaching of settlements with affected investors, in particular elderly or inexperienced ones. In order to facilitate investors of Lehman Brothers products and distributor banks in resolving their compensation problems, the HKMA announced the launch of mediation and arbitration service more than a week ago (31 October). The HKMA will also bear the cost of the service for investors whose complaints are tentatively



established. The arbitration centre has received a lot of enquiries from a number of investors who have purchased Lehman Brothers products. Some of the cases have already entered the mediation process.

Individual investors may also hope to seek compensation through legal channels. With respect to the 5 000 complaints already received, the Consumer Council has deployed manpower to, on the one hand, inform relevant banks in an attempt to seek settlements and, on the other, it is considering using the Consumer Legal Action Fund to institute proceedings for 50 cases which are found to be more justifiable and obviously involved mis-selling for the purpose of seeking compensation from banks. The Government has also undertaken to, if necessary, inject funds into the Consumer Legal Action Fund.

Furthermore, the HKMA has issued guidelines requiring banks to provide telephone records to clients who have purchased investment products. The clients may make a request to banks to, in the company of their friends or relatives or consultants, listen to the records and take notes. It is believed this will help expedite the mediation, arbitration or litigation procedures.

From these reports, I believe Members will also agree that certain progress has been made in our efforts. Over the past week or so, there have been media reports about some banks having, one after another, proposed and reached settlements with their clients. In particular, priority will be accorded to processing cases relating to elderly and inexperienced clients. Apart from welcoming these moves, the Government will continue to encourage other distributors to expeditiously engage in negotiations with affected investors in pursuit of solutions acceptable to both parties.

Actually, the Government has been sharing the same goal with Honourable Members in striving to provide the most suitable assistance to affected investors. Judging from the progress so far, I believe the most effective way is to continue to facilitate distributors and clients in agreeing on buy-back arrangements and address the compensation issues through mediation or arbitration. At the same time, the HKMA and the SFC will also strive to race against time to complete the relevant investigation work in the hope of finding out the truth and the root of the problems.

As some progress has been made in the relevant work, I hope Honourable Members can support the Government, regulatory bodies and banks to continue

focusing their attention on dealing with the incident through the abovementioned channels and give them room to bring their function into full play.

We absolutely respect the right of the Legislative Council to exercise the powers conferred on it under the Legislative Council (Powers and Privileges) Ordinance. We also understand Honourable Members' intention of pursuing the Lehman Brothers incident through exercising their powers. However, we have reservations about whether doing so is the most appropriate way to help affected investors and in the best overall interest. I propose that Honourable Members give consideration to several aspects as follows:

- (a) Is the banking industry capable resource-wise of coping with investigations not conducted by regulatory bodies while ensuring the progress of its buy-back and settlement efforts is not compromised?
- (b) Is the intervention by the Legislative Council conducive to facilitating the buy-back or settlement proposals? Will the timetable for investors to get back the present value of their investment become uncertain as a result? Some banks have told us that, since responding to the Legislative Council's summons is like attending public hearings, they must concentrate all manpower and resources to cope with this. At the same time, as it is feared that proposing buy-back or settlement to investors before the completion of the investigation will prejudice their interest, they are likely to wait until the investigation has completed before deciding whether and when the relevant work should be continued.
- (c) Will the exercise of relevant powers and privileges by the Subcommittee stifle the investigation currently being conducted by the regulatory bodies?
- (d) If Honourable Members agree that a buy-back of the minibonds is the best way to help investors to get back the present value of their investment, I believe Members will also agree that priority should be accorded by banks to injecting resources to implement the buy-back arrangements to prevent new problems from cropping up at the present stage. With their experienced and professional investigations teams, the two regulatory bodies, namely the HKMA

and the SFC, will identify the causes of the Lehman Brothers incident and the responsibility to be borne by distributors.

My colleagues and I share the hope that Honourable Members can make joint efforts to ensure that investors are given the most appropriate assistance.

Thank you, President.

**MR KAM NAI-WAI** (in Cantonese): President, I was the first one to act in response to this incident, and at the House Committee meeting on 10 October, I proposed the establishment of a select committee to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) for the purpose of investigating the matter. Members can certainly recall that at the meeting on that day, my proposal was negated. However, the incident then developed very rapidly, so rapidly that just a week later, on 17 October, the House Committee agreed to authorize a Subcommittee to exercise the powers conferred by the Ordinance. Why has the incident been developing so dramatically? Today, the Legislative Council must make a final decision.

Members are aware that this incident actually affects large numbers of people. Although there are only 40 000 or so affected investors, the number of families involved may as large as some 40 000. Several hundred thousand Hong Kong people are thus impacted. As a result of the incident, banks in Hong Kong, which have commanded our trust for years, have been described as swindlers. All such problems have shocked all Hong Kong people greatly. On 10 November, the Hong Kong Association of Banks issued a statement in conjunction with 19 banks. This statement says, "The Hong Kong banking industry is known for having amongst the highest professional standards in the world." I want to ask a question. There was a victim aged around 80, and the media took pictures of him outside the Bank of China Building yesterday. He said he was happy with the compensation, the settlement. Why were minibonds sold to an elderly person aged around 80 despite the highest professional standards? Is this what is meant by the highest professional standards?

As reported by the press, some bank employees even forged the signatures of customers in order to sell such minibonds. Is this what is meant by the highest professional standards? On 12 September this year, banks were still

selling Lehman Brothers bills to their customers. Is this what is meant by the highest professional standards? Has the banking industry ever done any self-examination?

As we all know, the Hong Kong Monetary Authority (HKMA) has received more than 15 000 complaints. The Democratic Party has also received more than 7 200 complaints, involving more than \$4 billion in total. Members can all notice from this incident that there are obviously problems with the financial systems and the banking industry. Hong Kong's status as an international financial centre has also been affected by this incident. News crews of many foreign media from Japan, the United States and France have come to Hong Kong to cover the story. This incident has aroused the concern of not only Hong Kong but also the international community.

We know very well that the Legislative Council is neither a regulatory body nor an enforcement agency. We cannot investigate every complaint or open a case file for it. The Legislative Council is not a judicial institution either, so it will not make a ruling on every complaint. Nor is the Legislative Council a banking institution, so it will not pay compensation to every victim in the Lehman Brothers incident.

The Secretary has explained that all such work is being undertaken by the HKMA, the Securities and Futures Commission (SFC) and even the police and banks. Last week, banks started the process of reaching settlements with certain victims. But I can tell the Secretary that the progress has been extremely slow.

As representatives of public opinions, we are duty-bound to monitor the Government and the executive. The executive authorities should monitor the sale of financial products by banks. The executive authorities and the Government should also ensure that the existing system and complaint mechanism can function effectively as a channel of redress for the people.

Members may remember that the Legislative Council passed a motion sometime ago, condemning the Government for inadequate monitoring. I think the Legislative Council is naturally duty-bound to find out the causes of the incident and ascertain whether there was any negligence on the part of government officials and what responsibility they should bear. All this is the constitutional duty which the Legislative Council cannot refrain from discharging. The investigation this time around aims mainly to examine what

has gone wrong with the present monitoring system. Our focus is not the relationship between banks and their customers.

As also pointed out by the Secretary just now, according to many press reports, the top management officials of some banks have openly criticized that if the Legislative Council invokes the Ordinance, the process of conciliation will be affected. The Secretary has also mentioned this point. And, he has also remarked that doing so will be like a public trial of the banks concerned, which is bad to an international financial centre. He further asked whether Hong Kong was to continue to uphold the rule of law and said that people might thus want to reassess the political risks in Hong Kong. All this is pure alarmist talk.

I must point out that the House Committee of the Legislative Council has already agreed on establishing a Subcommittee authorized to exercise the powers and privileges conferred by the Ordinance. Dr Raymond HO, Chairman of the Subcommittee, has already explained the terms of reference of the Subcommittee, so I shall make no repetition here. We do understand that in the course of investigation in the future, the Subcommittee may require banks and their employees to provide certain sensitive commercial information. When necessary, we think that the Subcommittee may convene closed-door meetings.

As a matter of fact, such an arrangement was also adopted in the past. Having looked up the records, I discover that in the case of the substandard piling works incident, for example, 13 out of the 140 meetings held by the Legislative Council were convened in camera. People who gave evidence in these meetings included Housing Department officials and the representatives of private-sector companies such as civil engineering companies, boring works companies, construction companies and architectural firms. All these are private-sector companies.

I wish to point out that we can make reference to the experience of other countries. The case of the United States Congress is an example. Representatives of financial institutions have been summoned to attend various public hearings. In the recent Lehman Brothers case, its former Chief Executive Officer was summoned to attend a public hearing of the Congress to give his views and answer questions. Even if we pass this motion on authorizing the Subcommittee to exercise the powers conferred by the Ordinance, I simply cannot see how this may make the political risks in Hong Kong any higher than those in other countries.

In the past, the Legislative Council of Hong Kong also exercised the powers conferred by the Ordinance in the public hearings on many major social incidents, such as the chaos in connection with the opening of the new airport, the substandard piling works incident relating to public housing blocks and the dismissal of Alex TSUI and Laurence YEUNG by the Government. Actually, all these hearings have never tarnished the reputation of the aviation industry, the architectural sector and the Government of Hong Kong. And, there have been no worries about any damage to the business environment in Hong Kong.

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

The international community will certainly understand that this is the constitutional duty of the Legislative Council, and that when necessary the Legislative Council should exercise its constitutional powers. Therefore, Honourable Members will certainly agree that it is absurd for some people to question Hong Kong's commitment to the rule of law when the Legislative Council intends to conduct an inquiry. On the other hand, if the international community observes that the Legislative Council is so timid in discharging its constitutional duty, allowing regulatory regimes to go totally unchecked and failing to offer investors any protection, how will foreign investment institutions rate Hong Kong? This will totally destroy Hong Kong's core values.

The Secretary also mentioned the "buy-back" measure. Will an investigation by the Legislative Council delay the process of any buy-back? Members can observe that while a debate on whether the Ordinance should be invoked is scheduled for today, the banking industry already started talking about compensation and settlement in a high profile. The answer is therefore very clear as to whether the invoking of the Ordinance will speed up or slow down the process of settlement and compensation.

Earlier on, the Democratic Party assisted many victims in preparing for instituting legal actions or turning to the Small Claims Tribunal. All such legal actions are one of the indirect means of speeding up the conclusion of settlement between banks and victims. Secretary Prof K C CHAN has also pointed out one very important thing: Upon the completion of the investigation by the SFC, when decisions on whether any banks should be disciplined by condemnations or fines,

the SFC will consider whether a certain bank has reached settlement with the victims or at what time settlement will be reached. The SFC's consideration of these factors is the best means to make banks expedite the conclusion of settlement. I think all such measures are in the interest of both banks and victims. I cannot see how the invoking of the Ordinance will lead any banks to delay the process of settlement and compensation. And, the SFC's disciplinary actions mentioned just now are the most effective ways to expedite the entire process.

In order to investigate the Lehman Brothers incident, the Legislative Council must exercise the powers conferred by the Ordinance. Once we can exercise these powers, we will be able to summon the persons concerned, including the relevant financial officials, top bankers and front-line employees. This is very important because, as mentioned just now, some bank employees who have already resigned also want to come to the Legislative Council to voice their views and describe the situation at that time. If the Legislative Council can exercise the powers conferred by the Ordinance, they will be able to attend the hearings and provide true information without any fear of being disciplined for disclosing commercial secrets. This means that they will be able to speak the truth, and this is one of the important purposes of the Ordinance. Later on, other Members belonging to the Democratic Party will explain in detail the privileges and protection provided for in the Ordinance.

However, I wish to point out that both the Government and the banking industry have been trying to dissuade the Legislative Council from invoking the Ordinance. But I must advise the Government not to conceal the matter any more. This incident reminds us of the Watergate Scandal relating to President NIXON of the United States. In the Watergate Scandal, NIXON was eventually forced to step down because he wanted to cover up the truth. Are the Government and the banking sector repeating what was done in the Watergate Scandal, trying to hide some particular information? Do they want to cover up the inadequacies of the financial regulatory bodies? Or, do they want to avoid the issue of culpability resulting from the investigation?

Finally, I wish to make an appeal to all those Members who have not decided whether they should support the motion. In particular, I want to say to Dr Raymond HO that since he is the Chairman of the Subcommittee, his attempt to remain neutral by abstaining from voting is actually tantamount to casting a

negative vote. I very much hope that Members can all support the motion by all means. We very much hope that the truth can be uncovered, that justice can be upheld and done to all victims.

With these remarks, I hope Members will not lightly give up their rights and evade their responsibility. I hope that they can all support the motion. Thank you, Deputy President.

**MRS REGINA IP** (in Cantonese): The adverse consequences of the application on 15 September by Lehman Brothers, an investment bank in the United States, to the United States Government for bankruptcy protection have surfaced in Hong Kong very soon. Because of Lehman Brothers' bankruptcy, more than 40 000 local investors who have purchased Lehman Brothers-related structural financial products are very likely to see their investment go down the drain, and might face loss of their lifelong savings. Over the past two months, some retail investors went to different places seeking assistance from the Government. That they are mentally and physically exhausted is easily imaginable and understood. After receiving their cases, the relevant government departments had adopted mainly an approach of conducting investigation before requesting banks to buy back, to be complemented by mediation and arbitration, to help victims of the Lehman Brothers incident who have bought different financial products. What is more, Honourable colleagues have spared no effort to fight for their clients.

Like most Honourable colleagues, I have also received a lot of complaints and requests for assistance. Unlike political parties, I as an independent Member am not backed by enormous resources, but still I have met with two groups of victims and some individual victims in the hope that I can do all I could to help them. Insofar as victims claiming to have been subject to improper marketing are concerned, they have only two requests: First, getting the full amount of the face value of the Lehman Brothers-related instruments; second, seeking justice from the Government and banks. Today, this Council is going to vote to decide whether or not the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) should be exercised to investigate the Lehman Brothers incident, including the sales practices of banks. Before the voting, my most crucial consideration is whether the conferment of statutory powers and privileges on this Council can really help the victims. This is my paramount consideration.



After my recent deliberations in pursuit of a proposal which can truly help the victims and resolve the Lehman Brothers incident, I have come to the conclusion that the Government's buy-back proposal cannot truly offer effective assistance to them. As revealed by the latest news released by a Task Force set up by the Hong Kong Association of Banks to deal with the Lehman Brothers incident, according to a minibond buy-back scheme put forth in early December, the projection of buy-back prices will be based on the estimate by investment banks of the market value of collateral. It was pointed out to me by a financial expert that there had been no transactions of minibond assets as the secondary market had already come to a halt. Hence, allowing investment banks to carry out valuation at this time to enable distributor banks to buy back the minibonds is tantamount to selling the minibonds at pathetic prices. Since investment banks might suppress the prices because of the great likelihood of them buying back the minibonds, the proposal is like forcing minibond holders to cut loss by selling their minibonds at pathetic prices, and it might not be possible for Lehman Brothers-related products to get to their desired market value in the short run. Joseph YAM, the Chief Executive of the HKMA, might be a person of foresight — he indeed had foresight — the remarks made by him at a special meeting held by this Council on 13 October were prophetic. He said that it might be better for some problematic assets to be put up for sale later because no one in the present market would be interested in buying them. When the bailout package is put into implementation in the United States later, these financial products might be priced more accurately. This is why I have to ask the Government this question: If it is well understood that a buy-back proposal is not necessarily good given the present market situation, why is the Government still advocating the buy-back proposal to allow clients to cut loss at pathetic prices? Furthermore, as the buy-back proposal does not cover other Lehman Brothers-related products, such as private instruments, these people will end up losing their hard-earned capital. In that case, the Lehman Brothers incident cannot be fully resolved. Summing up the various points mentioned above, I think the buy-back proposal is not truly beneficial to the victims. I am greatly surprised that the Government is still relying on this approach to address the problem.

So, can this Council truly help the victims by exercising its powers and privileges to investigate the Lehman Brothers incident? In my personal opinion, the answer is in the negative. Undoubtedly, the Legislative Council is the place for Members to discuss politics and monitor the Government. However, once this Council exercises its statutory powers and privileges, this Council will

become a court. Bankers and government officials attending hearings here must cautiously seek legal advice on whether the disclosure of certain information would contravene the confidentiality clauses of legislation relating to banks, thus delaying the process of the investigation. At the same time, banks might need to halt all internal investigations and various compensation efforts because of the need to attend hearings in this Council. As a result, the offer of compensations to victims of the Lehman Brothers incident will continue to be delayed. At present, the local banking sector is already at the teeth of a storm. Owing to its shrinking confidence, it has tightened its credit policy on various trades and industries, particularly small and medium enterprises (SMEs), delayed its payment to business operators accepting purchases on credit cards, and resorted to retrenchment. At the same time, a number of bank employees are on the verge of collapse because they have to continuously handle the complaints lodged by the victims. In my personal opinion, conferring privileges on this Council to widen the scope of the investigation is actually not conducive to maintaining the stability of the banking system. Nor can this help the local economy to resist the financial tsunami.

Furthermore, it was pointed out in a recent commentary published in *Asia Weekly* that "the investigation powers of the SFC can be described as alarming" and "because the SFC has the powers to ..... request any person to assist in its investigation before adequate evidence is produced, and the person being investigated has no scope to refuse and, what is more, no right to remain silent. The SFC is undoubtedly more powerful than the police and the Independent Commission Against Corruption". Given the limited number of Members possessing financial expertise, it is indeed questionable as to whether the court-like hearings conducted by scores of Members of this Council can bring about an effective investigation.

After detailed study and consultation, I hereby propose this solution which I believe is the right remedy to the problem.

In my personal opinion, in order to address the suffering of the victims of the Lehman Brothers incident and pursue the truth, the Government should demonstrate greater courage and commitment by following Britain and the United States in taking the lead to set up a transitional fund similar to the Tracker Fund of Hong Kong, with the capital shared equally between the Government and various distributor organizations, as well as setting up a company for management. The fund should make an immediate face-value offer — not an

exceedingly low price for cutting loss — to buy back all Lehman Brothers-related instruments from all members of the public (instrument holders) claiming to be victimized by improper marketing. After the buyback, the investigation work led by the SFC will continue. If the outcome of the investigation demonstrates that members of the public have not been misled, then the payments already made must be refunded. If a certain sum of money remains in the fund upon completion of the entire investigation, it should be returned to the Government and relevant financial institutions on a pro-rata basis.

According to the information provided to this Council by the HKMA, the Lehman Brothers-related instruments involve a total sum of approximately \$20 billion. According to this computation, about \$10 billion of the fund will be met by the Government, while the remaining \$10 billion will be shared by financial institutions on a pro-rata basis. For instance, if the market share of a certain bank is 10%, it will need to pay \$1 billion; if its market share is 3%, it will have to pay \$300 million.

Of course, we will have to address moral risk problems as well. In helping instrument holders claiming to have been subject to mis-selling, the Government should also ensure fairness to banks. A detailed and systematic approach of investigation must be adopted by the SFC. For instance, the SFC must thoroughly investigate the age, academic qualification, profession, salary, investment experience, and so on, of every complainant for the purpose of assessing the possibility of instrument holders being subject to mis-selling. If it is revealed that some people have not been misled or it is impossible for them to be misled, then the Government might recover the payments for banks by using the practice used by the Inland Revenue Department in recovering tax. However, I am convinced the vast majority of the people in Hong Kong will not sacrifice their personal integrity for the sake of making up for their personal loss arising from investment when they have not been subject to mis-selling. The fact that evidence so far demonstrates that two thirds of the victims of the Lehman Brothers incident have not lodged complaints for compensation does serve as perfect evidence.

Up to 6 November, the HKMA has received a total of 15 000 complaints, accounting for one third of the investment accounts. It is thus evident that many informed investors have simply not lodged any complaints. I also personally know many such investors. It can thus be inferred that if all the complaints received by the HKMA are proved to involve improper marketing, the amount of

payment to be made by the Government in the end will be \$3.5 billion. With the fiscal surplus of the 2007-2008 reaching \$115.6 billion, the Government has even handed out \$44 billion during the first eight months of this year. In comparison, if the Government can demonstrate greater courage and commitment, the amount of money that would probably be spent would amount to \$3 billion only, and yet the Government could have resolved many of the problems and hardship facing the victims. I think it is worthwhile for the Government to do so.

The impact of the current financial tsunami is enormous. In order to stabilize the banking system, central banks around the globe have repeatedly joined hands in reducing interest rates. The United States and Britain have even separately endorsed bailout packages amounting to US\$700 billion and £400 billion respectively. As an international financial centre, Hong Kong must study more concrete measures to stabilize the local financial system. It was for the same reason that hundreds of billions of dollars were injected into the local market to set up the Tracker Fund when Hong Kong was hit by the Asian financial turmoil.

The Lehman Brothers incident has now evolved into a social issue. Fortunately, although the victims involved are physically and mentally exhausted, they can still act rationally in seeking assistance through legal channels in a peaceful manner with self-respect. If the Government can share the worries of the people within its affordability to achieve social harmony, why does it not consider similar proposals? As far as I know, it is not true that the Government has not considered similar proposals at all; its hesitation is attributed to two reasons. The first reason concerns moral risk. The Government does not want to be accused of acting like an "underwriter". However, as pointed out by me just now, it must be proved that financial institutions had adopted misleading sales practice before face-value buybacks are to be made, and this must be thoroughly investigated by the SFC. Therefore, if the Government acts according to my proposal, it will definitely not be taken as raising money to pay the bill for the investment losses incurred by experienced investors. Second, according to sources close to the Government, the Government resists such proposals because it does not want to admit fault in the Lehman Brothers incident. If the Government finances any proposal, it will be taken as apologizing for its improper monitoring in the Lehman Brothers incident. However, there is no denying that the publicity leaflets on Lehman Brothers-related instruments were approved by the SFC, and the HKMA was responsible for supervising the operation of the banks involved. This is most

puzzling to me: Given that even Hector SANTS of the Financial Services Authority in Britain and Alan GREENSPAN, the former Chairman of the Federal Reserve of the United States, have already apologized to the public for their negligence in monitoring, why do senior financial officials in Hong Kong still lack the courage to make the same commitment?

Although an investigation into whom should ultimately be held responsible for the Lehman Brothers incident has not yet begun, I personally believe that a number of Members and members of the public have already got an answer in their minds. I also believe the public will gradually come to realize that the Government's current solution and the proposed exercise of powers and privileges by the Legislative Council are not truly beneficial to victims of the Lehman Brothers incident. In view of this, I will not vote in favour of invoking the Ordinance. I would also implore the public, the Government and Honourable colleagues to support the proposal raised by me for addressing the Lehman Brothers incident in order to seek justice for the victims affected by improper marketing in the shortest possible time.

With these remarks, Deputy President, I will oppose this motion.

**DR DAVID LI:** Deputy President, I declare that I am the Chairman and Chief Executive of The Bank of East Asia, one of the banks that acted as a distributor for Lehman Brothers-related financial products.

The motion now before this Council may or may not have operational implications for the Bank.

The motion will not have any direct financial impact, as The Bank of East Asia is already committed to addressing any and all cases of mis-selling of Lehman-related financial products, and to seeking outside mediation and arbitration, if necessary, to resolve all cases.

I personally do not hold any Lehman-related financial products.

Despite the above, I recognize that some Members believe that I have a direct pecuniary interest in the motion to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance), and are of the opinion that I should not take part in the vote.

I must point out that I have an obligation to represent my constituency in this Council. Even if I had a direct pecuniary interest, Rule 84 subrules (1) and (1A) of the Rules of Procedure contain an express provision allowing Members to exercise their right to vote, where their interests is in common with a sector of the Hong Kong population.

Therefore, I will not withdraw.

I intend to fulfill my obligations and reflect the common view of my fellow members of the Finance Constituency. My constituency must be permitted to have a voice on a matter of such vital importance.

I am disturbed by the notion that, particularly in the matter of Lehman Brothers-related financial products, the interests of the banking sector and the interests of the Hong Kong public at large are somehow opposed.

I must therefore state for the record that our interests are perfectly aligned.

We all want to ensure a sound and transparent regulatory environment, where the risks and rewards of investing are clear and understood.

We all want to preserve trust. We want to preserve trust in the stability of the banking system; trust in the stability of individual banks; and trust in long-term banking relationships.

It is only if investors trust the regulatory environment and the relationship with their banks that they will be willing to look to the banks for assistance in managing their financial affairs.

Banks want the truth about issues arising from the Lehman incident to be revealed. Only then can flaws be corrected. Only then can trust be restored.

We must review and improve our regulatory system. We must restore trust.

The question now before us is: How?

Are the wide powers of the Ordinance the answer?

Members must consider very carefully whether it is in the best interests of our community to bring the wide powers under the Ordinance to bear.

The motion as written would apply equally to the public and private sectors. The major role of this Council is to monitor the performance of the Government. It would create a highly unwelcome precedent to apply the sweeping powers of the Ordinance to the private sector.

Hong Kong aspires to be a leading international financial centre.

The current financial crisis has revealed the central role that financial services plays in an advanced economy.

Financial services is not only a high value-added industry. It is a strategic industry. It is vitally important to the security and well-being of a country.

The global impact of the current crisis underlines how vitally important it is for our country to develop its own world-class financial centre. And no city within our country is better prepared to play that role than Hong Kong.

What are the implications of applying the wide powers under the Ordinance to the international banks that operate in Hong Kong?

What harm will be done to Hong Kong's status as an international financial centre if international banks are forced to reveal privileged information to a subcommittee of the Hong Kong Special Administrative Region Legislative Council?

These are serious questions, which must be given serious consideration.

We must also recognize that the collapse of Lehman Brothers was an extraordinary event in extraordinary times. The collapse sent shockwaves throughout the global financial system, forcing governments around the world to commit hundreds of billions of dollars to stabilize the global banking system. Even today, we do not know whether this commitment will be sufficient to prevent further shocks.

At this very difficult time for the global economy, we are not merely dealing with a possible local regulatory or management failure; we are witnessing the fallout from an unprecedented global financial crisis.

Local banks are working very hard under extremely trying circumstances to address the real concerns of the holders of Lehman Brothers-related financial products.

Bringing the wide powers of the Ordinance to bear on and subjecting the banks to what amounts to unlimited power to demand documents and the appearance of bank managers before the Subcommittee will only draw resources away from the great effort banks are making to assist those who need and deserve our help.

All banks in Hong Kong that acted as distributors for the Lehman Brothers-related financial products have responded very quickly to set up special teams to investigate the circumstances of each and every transaction. Individual banks have begun the long process of identifying possible cases of mis-selling, and contacting those affected to begin settlement talks.

Banks are committed to identifying and compensating victims of mis-selling as quickly as possible. However, banks are also facing numerous complaints from holders who entered into contracts with full knowledge of the risk involved. Resolution of all cases will of necessity require both significant resources and considerable time.

While everyone will have full sympathy for those who have suffered losses, if we are to honour the rule of law, a contract freely entered into must be upheld. As such, banks have a clear obligation to look at each case on its individual merits, and attempt to first settle those where clear evidence of mis-selling exists. Those cases that do not involve clear evidence of mis-selling should be dealt with according to due legal process.

The initiative to put in place a mediation and arbitration mechanism to handle cases where it has not been possible to reach an agreement will assist this process, and has been welcomed by the banks.

For those who wish to dispose of their holdings, banks have taken the unprecedented step of offering to purchase the outstanding Lehman Brothers-related products from all clients at current market prices. This process is likely to begin in early December and continue thereafter, as the valuation of each series is determined.



I urge Members to allow these efforts to continue unhindered, without the additional demand that invocation of the Ordinance will impose upon banks during this difficult period.

I trust that you will share my concern that it would not, and it would definitely not, be in the best interests of all concerned — and especially those that are the victims of mis-selling — to approve the use of the exceptional powers under the Ordinance.

Acting in my role as the representative of the Finance Constituency, I will vote against the motion.

Thank you, Deputy President.

**MR CHAN KIN-POR** (in Cantonese): Deputy President, besides causing the bankruptcy of the Lehman Brothers, the financial tsunami that has swept across the whole world has also resulted in a spate of minibond catastrophes in Hong Kong. According to the statistics of the Hong Kong Monetary Authority (HKMA), there are some 40 000 investors of minibonds and related products in Hong Kong, involving as much as \$20 billion.

As Legislative Council Members, we must ask ourselves which issue we must consider first when we are faced with the minibond catastrophes and all the discussions on whether the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) should be invoked for the purpose of investigating the minibond incident. We must also ask ourselves what the public would like to see most.

I believe that no Members would take exception to the view that the most pressing task and objective of the Legislative Council should be to focus on catastrophe relief and helping victims of minibonds to claim the compensation they deserve. Following this, the culprits of the turmoil must be identified. It must be ascertained whether there were any blunders on the part of banks, the Securities and Futures Commission (SFC) and the HKMA. And, ways of improving the present system must be worked out, so as to restore people's confidence in Hong Kong as a financial centre.

If it is decided that expeditious relief should be our top priority, Members must then ask themselves whether the invoking of the Ordinance is an appropriate course of action and the most effective means of delivering the victims from the catastrophes. We must further assess whether such an action will bring any impacts on society as a whole. Looking at the present system from the perspective of a functional constituency Member, I think functional constituency Members must bring the voices of different trades and industries into the Legislative Council, so that the Legislative Council can strike a balance between the views of directly elected Members and the representatives of different trades and industries.

Therefore, as the representative of the insurance sector, I will first present the views of this particular functional sector. Following this, I shall explain the views I hold after meeting with the victims of the Lehman Brothers incident.

As indicated by the findings of the consultation with my functional sector over the past one week, most of the respondents think that the Legislative Council should not lightly invoke the Ordinance. The respondents also expressed reservations about and varying degrees of opposition to the idea.

The functional sector has three major concerns. First, it holds that once a precedent is set of invoking the Ordinance by the Legislative Council for the purpose of investigating commercial transactions will lead people to worry about the exposure of the commercial information relating to banks and their customers. This will not only impact the banking industry greatly but may also affect other trades and industries. In the end, this will damage Hong Kong's status as an Asian financial centre and compromise the principle of "big market, small government" and free economy upheld by Hong Kong all these years.

Second, if it is thought that there were problems with the business and sales practices of banks, or even deliberate misleading of customers, Members can always try to assist the victims by making use of the existing channels, such as the judicial process, the HKMA, the SFC and the Consumer Council. All these channels have been working effectively for a long time. Naturally, I am aware that such existing channels must still be improved. In the case of the Consumer Council, for example, more funding should be provided, so that the victims can claim compensation in a faster and more convenient manner. Most importantly, instead of requiring the victims to bear the litigation costs, a fund should be set up

to meet all the related expenses. Invoking the Ordinance for the purpose of investigation may not necessarily be more beneficial to the victims. Quite the contrary, this may even delay the process of buying back or compensation. The main reason is that, fearing that the investigation may plunge them into unpredictable political and financial risks, some banks may defer their handling of the matter until after the investigation. Members all know that according to past experience, we will need nine months to one year to complete such an investigation.

Third, my functional sector is worried that as the matter turns more and more political, the progress of review and working out a solution may be delayed. And, it also fears that the lengthy investigation process may delay the making of compensation to the victims and also waste huge sums of public money, thus imposing a burden on taxpayers.

As a matter of fact, in the past, the Legislative Council did invoke the Ordinance on a number of occasions, summoning the authorities or individual public officers to give evidence or provide the required documents. But generally speaking, Members would only use this "Sword of Imperial Sanction" only when it was suspected that the Government might have intentionally withheld some secrets. Such powers and privileges were rarely exercised in cases involving private organizations. This is precisely the worry of the business sector.

Doubtless, some of the concerns and worries voiced by my functional sector are indeed very similar to those expressed by the public. Although I am a functional constituency Member, I must still make it very clear that as a responsible Member concerned also about the whole community, I must at the same time consider the opinions of those outside my functional sector, including those of the victims, of course.

Yesterday, I met with the representatives of the Lehman Brothers Victims' Alliance (the Alliance). One of them, a vegetable hawker, told me that he was illiterate, and the bank staff concerned did not tell him that the financial product was of high risk. He said that it was only after the repeated lobbying of the bank that he finally decided to cancel his fixed deposit and transferred his several million dollars of hard-earned savings to the purchase of toxic Lehman Brothers bonds. I think there is a problem in his case obviously. I believe, and I also

hope he will win his case. When I met with the representatives of the Alliance, they told me that they were not very concerned about the progress of buying back, as they only wanted the Legislative Council to see to it that justice is done. Personally, I think that the Government and the banks concerned must take active steps to work out proactive solutions that can deliver the victims from their plight. I also hope that the victims will not expect too much, thinking that the passage of this motion will really solve all problems. They must continue to exhaust all other possible means before they can really solve their problem. Another point is that some victims not belonging to the Alliance have expressed the worry that the invoking of the Ordinance may delay the banks' progress of work.

Over the past few weeks, we have heard many views from both sides. My situation now is exactly the same as the situation faced by those in my functional sector during the consultation. When responding to my opinion survey, many top-management representatives of the insurance industry remarked that in their personal capacity, they would agree that the invoking of the Ordinance might well be the most effective means, but if they were to consider business operation as representatives of their companies, they would worry that the invoking of the Ordinance might have far-reaching implications on the business sector.

Deputy President, I believe many Honourable colleagues will support the invoking of the Ordinance today. But I hope that after the Council has endorsed the invoking of the Ordinance, the select committee concerned can exercise its powers prudently, especially when it deals with any confidential documents of the banks concerned. It must maintain total confidentiality and convene meetings in camera whenever necessary, so as to ensure that while it can accomplish its mission of investigation, it can also address the concerns of the financial sector. I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Deputy President, on behalf of the Hong Kong Confederation of Trade Unions (CTU), I support the invoking of the Legislative Council (Powers and Privileges) Ordinance for the purpose of investigating the Lehman Brothers incidents. Many Members (including Dr David LI) have advanced some mere sophistry, arguing, for example, that the most important task now should be helping the victims. But I wish to ask them one question. At the time of the tainted formula milk incident, we must of

course deal with the related medical issue, that is, the treatment of patients. But should this lead us to refrain from finding out how the tainted formula milk came to be distributed in the market? Should we totally ignore the root cause of the problem, focusing only on helping the victims? I believe what the victims want now is not so much any assistance from us. They only want to see that justice is done. In order to achieve this aim, an investigation must be carried out to ascertain why all these toxic bonds came to be distributed in the market, and why the banks concerned sought to sell them with such misleading sales practices. The victims do not ask for sympathy from others. They only want to make sure that justice is done.

I think justice is very important in this incident. First, I maintain that an investigation must be conducted to find out why the banks concerned adopted such misleading sales practices. Members may look at the backgrounds of all the victims. Even I myself find the figures extremely shocking. As many as 6 000 people out of the 40 000 victims are aged 65 or above. Members can easily imagine how these people were persuaded to invest all their savings in these bonds. Members can often see how Mandatory Provident Fund (MPF) advertisements advise people that they should adopt a more conservative investment strategy as they grow old, meaning that they should choose low-risk investment products. Actually, many victims have told me that they were all aware of the very low risks of fixed deposits. But the bank employees concerned instead told them that the Lehman Brothers was very reliable, that if even the Lehman Brothers collapsed, there would be a global financial meltdown. Now, this is really the case. The bank employees concerned even claimed that all those financial products were of very low risk. In the end, all the customers have become victims.

We must find out why banks have degenerated into "con men", adopting such misleading sales practices. I am afraid that in the future, the Police Report must also give some coverage to this new type of confidence tricks. I think the degeneration of Hong Kong into such a state is rather bad indeed. Therefore, the investigation must focus first on why banks have come to adopt such sales practices. Besides, we must also do justice to the front-line employees of banks. Although they might have assisted in the sales, we must still ask why they did so in the very first place. Were they pressurized by their supervisors? What sales techniques did their supervisors teach them? This is a problem with bank management and the top echelons. This involves the teaching of sales

techniques, the exertion of pressure on employees and orders on selling the products concerned. Therefore, we must also do justice to the front-line bank employees.

The second issue to be investigated concerns why the Securities and Futures Commission (SFC) should approve the sale of such products in the very first place. In the whole world, such products were only sold in Hong Kong and Singapore. They were not sold even in the United States because even intermediaries had reservations about these products, so instead of marketing them to individual investors, they only sold them to institutional investors. Then, why were these products marketed to individual investors in Hong Kong? Can the SFC disclaim responsibility? As far as I can remember, the SFC once remarked in this Chamber that one must not think that "minibonds" were bonds just by looking at the name, and that one must also note the terms and conditions. I do not know whether the Government can still remember this ..... Mr Tommy CHEUNG is not present now. He is most concerned about the issue of tobacco smoking. It was said that there was a problem with the name "Mild Seven" because the word "mild" could be misleading. That was why the Government also wanted to impose regulation on the naming of tobacco products. But then, there was no regulation regarding the name "minibond". The Government was so very sensitive even though it was just the name of a cigarette brand. Members also know that the brand name "Mild Seven" had been in use in Hong Kong and Japan for many years. But the Government was still so very concerned. This time around, however, the SFC remarked that one should not look only at the name. This is simply absurd. Why did the SFC approve the sale of such products? Something has gone wrong not only with the SFC but also with financial officials. Why was the sale of such products to individual investors allowed policy-wise?

It is a pity that we cannot observe any feelings of regret on the part of the Hong Kong Monetary Authority (HKMA), the SFC and financial officials. Nor have we heard any admission of blunders by them. Even Alan GREENSPAN must admit having made a mistake. But no one in the Hong Kong Government has even admitted any mistakes. All of them think that they are very competent. Joseph YAM of the HKMA has been claiming that he has foresight. Since he has so claimed, I think the investigation must ascertain whether he has ever monitored the compliance of banks after issuing the guidelines with such foresight. Has he ever considered whether there are any better preventive measures than the simple issuing of guidelines? All this warrants an

investigation. We simply do not know what Joseph YAM has done. So, we must seek to know what he has done and whether his actions are adequate.

In the final analysis, this can aptly account for the failure of financial officials and government policies nowadays. We have all along been told that the regulatory policy seeks to ensure transparency, and that with sufficient transparency, all will be fine. No consideration has ever been given to any financial products from the perspective of whether or not they are suitable for individual investors. Therefore, practically all kinds of products are allowed to be sold. The financial policy of Hong Kong as such, it is small wonder that the Lehman Brothers incident has occurred.

Deputy President, I listened to the whole speech of Dr David LI just now, and he even gave us a letter which explains why the banking sector is against the invoking of the Ordinance. The first reason he gives is that the resources for helping the victims will be drawn away and reduced, thus slowing down the progress of making compensation. I cannot help wondering why local banks have suddenly turned so competent, so helpful to the victims. But I do not think that he is helping the victims anyway. Rather, he is just trying to manipulate resources to appease the victims, to turn them dizzy. I really feel very sorry for the victims.

(Applause in the public gallery)

**DEPUTY PRESIDENT** (in Cantonese): Those in the public gallery please keep quiet.

**MR LEE CHEUK-YAN** (in Cantonese): It is thus evident that the banking sector has resources to appease the victims. It claims that resources must be spent on resolving the problem. But I do not think that it is doing so. Rather, it is just trying to kill the problem, with the only aim of getting rid of the victims as the solution. To those victims who want to see that justice is done, this is simply no solution. Speaking of resources, why can the banks not bear the responsibility of increasing resources to resolve the problem? Resources can be used to help the victims in their pursuit of mediation and studies on compensation. Resources can also be spent on helping them to attend hearings in the Legislative Council. Why can't resources be used in these ways?

Speaking of resources, banks should increase the resources required, right? The point is that when they wanted to deceive customers, they had the resources, but when they must now clean up the whole mess, they claim that they do not have enough resources. The whole issue has nothing to do with resources. It is just about the sense of responsibility of banks, their willingness to assume responsibility.

If banks and the banking sector really want to bear responsibility, they should increase resources. This can facilitate attendance of hearings and the proper handling of resultant problems. They should not put the blame on the Legislative Council, arguing that we are wasting their resources. The remarks of Mrs IP just now are even more horrible. According to her, banks will thus be deprived of the resources required for their normal business operation in the midst of the financial tsunami, such as the lending business. I think this is indeed a very serious accusation. The messages of her remarks are that whenever banks run into any trouble, we must not interfere with their operation, that banks must not be required to bear any responsibility, and that if we interfere with their operation, the economy of Hong Kong will be adversely affected. What is the logic of such an argument? It sounds as if banks do not have to bear any responsibility at all.

Deputy President, I find this attitude of the banking industry most detestable. It all sounds like keeping hostages at bay. Banks are holding their customers as hostages, vowing that they will resolve the problem. But they suggest at the same time that they will push their customers down the cliff if we launch any investigation. Why do they behave in this way? The situation in reality is of course not quite so lively or extreme as I have described. But this is in fact the case. Banks are actually telling the whole community that once an investigation is launched, they will push all hostages down the cliff, ignore them and stop all discussions on compensation.

I simply fail to catch the point here. Are there any places in the world where investigation and discussions on compensation cannot be conducted in parallel? It has long been our practice to conduct litigation on the one hand and seek settlement on the other. This has been the practice under the judicial system of Hong Kong. What can possibly stop the discussions on compensation and conciliation? Therefore, they must not try to hold anyone as hostages, turning victims into hostages to hold the Legislative Council to ransom.



Another reason put forward by David LI is that by so doing, the Legislative Council will scare private organizations, because the Legislative Council's primary duty is to monitor the Government. First, I must point out that our investigation this time around is also aimed at monitoring the Government. Second, besides monitoring the Government, the Legislative Council also has the responsibility of safeguarding the public interest. Since banks are suspected to have injured the public interest in the present case, we have the duty and power to launch an investigation. We are just trying to honour our oaths as Legislative Council Members. It is wrong for David LI to argue that the Legislative Council's main duty is to monitor the Government, not private organizations. Actually, if what private organizations do involves the public interest, we may also launch an investigation.

And, it is not true to say there is no precedent. I do not know whether David LI voted against an inquiry into the substandard piling works incident years ago. With the exception of the Housing Department, all organizations involved in the incident were private companies. I also took part in the inquiry, and we summoned the engineers and architectural firms concerned, in a bid to find out how the whole thing happened. Even though a criminal investigation was also underway at the same time, we still conducted our own inquiry because we were able to exercise our powers in a very responsible manner. Whenever we knew that our inquiry might affect the criminal investigation, we would conduct meetings in camera or proceed very cautiously, lest we might touch upon any sensitive issues. Members were all clearly aware of our legal responsibility, so we did not lightly exercise our powers and privileges. Obviously, there is already a precedent of investigating private organizations — the substandard piling works incident.

David LI also claims that Hong Kong's status as an international financial centre may be adversely affected. I think it is indeed shameless of him to say that. The Lehman Brothers incident is the only thing that will affect Hong Kong's status as an international financial centre. That elderly persons were deceived and an elderly person aged 80 or so is satisfied with the settlement is the only thing which makes Hong Kong lose face as an international financial centre and accounts for its debasement. Our investigation will not affect Hong Kong's status as an international financial centre. The reason is that the United States is also an international financial centre, but investigations into private organizations are also conducted frequently. Chief Executive Officers are invited to attend hearings for fact tests. Such investigations are very common, an inevitable way

of life in a democratic society. Therefore, there should be no reasons for exempting private organizations or the business sector from monitoring in public interest.

Deputy President, we hold that David LI's grounds of opposition are not at all tenable. Finally, I must repeat that by conducting an investigation, we only wish to do justice to the victims and examine the whole system in detail, with a view to preventing the recurrence of similar incidents in Hong Kong. But I also wish to point out that the membership of the Subcommittee is very large. My experience of invoking the Ordinance over all these years tells me that a large membership will make things more difficult to handle. I therefore hope that Members will consider how they can strike a balance between finding out the truth and efficiency, because we all wish to complete the task as early as possible. I therefore hope that Members can follow the division of labour adopted for the short-pile investigation. At that time, one or two Members were tasked to ask questions on one single project, while others would do the work of "scavenging". But ideally, such "scavenging" should be kept to a minimum by all means because the Members primarily responsible should perform their task. I hope that the task can be completed as soon as possible, because I believe that all the victims and the entire community will expect us to do so. Finally, I hope the investigation can be conducted in an efficient manner if we can really invoke the Ordinance.

Thank you, Deputy President.

(Applause in the public gallery)

**DR PRISCILLA LEUNG** (in Cantonese): Deputy President, when I was walking past the Central MTR Station earlier on, I saw a huge signboard carrying the words "Retirement Protection Scheme". I am not a victim in the Lehman Brothers incident, but when I saw the two huge signboards in Central, I had a very different feeling. Actually, apart from the victims in the Lehman Brothers incident or the minibond incident, many other people have also lost confidence in the derivatives marketed by banks. However, I also wish to take this opportunity today to discuss my views on an investigation into the Lehman Brothers incident.

Today, we discuss the establishment of a Subcommittee authorized to exercise the powers conferred by the Legislative Council (Powers and Privileges)

Ordinance (the Ordinance). But I did not receive any letter from Dr David LI until as late as yesterday morning, in which he urges Members not to support the motion.

Last Friday, I personally raised the same question with Mr HE Guangbei and told him directly that the banking industry seemed to be evading the problem all the time. I told him that the banks concerned had never disclosed openly and honestly the criteria according to which compensation would certainly be paid or not to be paid. That day, I also asked Mr HE whether it was possible for banks to show their sincerity, their degree of commitment, as early as possible, so that all can know clearly what they were prepared to bear. I said that they should not seek to put up delay on the excuse of internal investigation. As a matter of fact, we have never received any answers. Therefore, the voting outcome today is a foregone conclusion because the entire process is indicative of the outcome.

Referring to those of us wanting to vote for the motion, some critics have recently accused us of being slow in realizing the situation, of scrambling to jump onto the bandwagon only at this very late stage. I am strongly dissatisfied with such an accusation. Actually, as early as 29 September (when I was still a Legislative Council Member-elect), I already published an article in *Wen Wei Po* and advocated the establishment of a select committee. Several days after that, some newspapers accused me of "trimming my sails to the winds" and following the democratic camp. But at that time, I simply ignored this accusation. Independent Members and professional Members all know my position because I have been lobbying them for a very long time, explaining why I advocate the establishment of a select committee. I shall respect the respective decisions of all independent Members. I think independent Members must be treated fairly. Whether we choose to vote in favour of or against the motion, we must not be accused of following political parties or "trimming our sails to the winds". Our decisions shall be the pure reflections of our personal views.

This is the first time that I mention my article on 29 September. Incidentally, on 10 October, in response to Mr KAM Nai-wai's amendment, I once again proposed an investigation into the Lehman Brothers incident and requested the formation of a select committee. However, since the scope was so wide, I was eventually persuaded to agree that it was more appropriate for Mr KAM Nai-wai's motion to focus only on a "Lehman Brothers-related investigation". I am strongly discontented with the attempts made by some

people to exert pressure on us in various ways, to ambush us, so as to make us vote against the motion. Frankly speaking, I have every respect for the last-minute lobbying of the banking industry, and I listened to what they had to say very patiently. It seemed that the banking industry was asking us to give them a break by casting a negative vote. But I could not detect any sincerity on their part.

Over the past one and a half months, I have accompanied many victims to various banks. There are two cases here. In one of these cases, the bank is prepared to offer \$1 million as settlement. This is quite a large sum of money, and the victim actually invested some \$3 million. I said the same things to the bank, telling it that rather than evading the problem, it must disclose the issues it was investigating. Frankly speaking, our decision to assist a victim is always based on *prima facie* evidence. But usually, banks will reply that all must depend on whether there are any relevant tape-recordings. Therefore, in the other case, we brought along the relevant tape-recordings to the bank. Eventually, the bank made an offer very quickly. We have heard the stories of many victims. These victims are usually unable to produce any documentary evidence. As a result, when their cases are heard in court or dealt with by arbitration or mediation, all must depend on the judgment of mediators, arbitrators or judges. As far as judgments are concerned, there is no need for totally substantiated evidence, because in civil arbitration, only a belief in the trustworthiness of one side is required. Many underprivileged victims, such as those in the cases mentioned just now, simply do not have any investment experience. In a number of cases I have handled, some elderly persons simply made their investments through the banks concerned. I am handling a most miserable case. There is this elderly person. He had several million dollars in cash, and the bank concerned offered to open under his name an account with a credit line of \$20 million. Now, he must close out every day and must repay a sum of \$30,000 a month. This elderly person is a retiree. I have referred to this case not so much because I want the bank to do anything in particular. I only want to emphasize that banks must show some sincerity. Honestly speaking, by launching an investigation, we do want to help the victims, in addition to doing justice to them. If we do not do so, we will fail to play our most important role.

I can remember having given assistance to some indigenous inhabitants who raised chickens. At that time, the Government ordered the culling of

chickens, but some indigenous inhabitants only raised chickens as pets. They therefore sought assistance from us, in the hope of applying for a judicial review. Some indigenous inhabitants even wanted to sleep on rail tracks. The incident was eventually resolved. Why? I can remember clearly that at that time, Mr LAU Wong-fat offered a very wise solution. He offered a golden chicken for every chicken culled as compensation. He even exhorted indigenous inhabitants not to complicate the matter. In the end, therefore, the aggrieved decided to accept a peaceful settlement. Therefore, in the end, the matter was resolved peacefully only because Mr LAU Wong-fat did not want villagers to stir up any serious clashes and sleep on rail tracks.

I have always advised the Government that it must extinguish the fire. And, sometime ago, I already suggested in newspapers that the Government must establish a banking contingency fund as early as possible. The contingency fund proposed by me is not to be financed by the Government or taxpayers. Rather, it is to be financed by banks themselves, because this is indeed the responsibility of banks. How should banks show their sincerity? By using money. Resolving this problem is just like extinguishing a fire. To extinguish a fire, water is required. To resolve the Lehman Brothers incident similarly requires water, only that "water" in this case means "money".

Having read my article, some victims sent a fax message to the Hong Kong Monetary Authority (HKMA), requesting the establishment of a contingency fund. Following this, the HKMA gave me a telephone call. Shortly after lunch today, I received a most innovative request from the victims. They wanted me to use a fire extinguisher. What is this fire extinguisher supposed to be? The fire must be extinguished. I do not have any money to make any golden fire extinguishers. But it will not be too much for me to ask every bank to pay \$100 million. The reason is that in this financial turmoil, banks have sustained huge losses elsewhere, and the loss may be as much as dozens of million in each case. Why do they refuse to bear their responsibility in this particular case and extinguish the fire in co-operation with the Government?

I have the impression that since the very beginning, the Government has been the only one who does all the lobbying. It seems that the Government's lobbying has been even more active than that of banks. I do not know whether this is because banks in Hong Kong have been over-protected, so they do not want to face the situation. But the banks I have approached are even more bureaucratic than the Government. Every time when I talked to them, they

always gave me bureaucratic and stock replies. It is therefore very difficult for us to look at things from their perspectives because we simply cannot see any sincerity on their part. Frankly speaking, money is the most significant show of sincerity. But we are not asking to spend all the money. No one wants that.

However, I believe that in the case of those victims who can produce *prima facie* evidence, who are in urgent need and who are on the verge of nervous breakdown, the banks should be able to make quick decisions as long as there is a detached third party. This is the kind of moral courage banks should show. If they are really committed to resolving the matter, they should finance the establishment of a contingency fund, rather than spending any money on taking out any huge advertisements in MTR stations and newspapers to advertise their integrity. Any money left should be used for providing a safety net. I think this is the only way in which banks in Hong Kong can show that they do have moral courage.

If banks do not have any moral courage, how can they induce more Hong Kong people to deposit large amounts of cash in the banks? Making such deposits is actually the manifestation of total confidence. Many elderly ladies have told me that they have now started buying gold as a means of preserving the value of their money. This is a return to the old way. They have lost confidence in the rules of game of banks.

I hope the Government can make attempts to facilitate the establishment of the proposed fund. But I must repeat that I am not asking for any government subsidy. I maintain that the fund must be financed entirely by banks. The sincerity and commitment must come from them.

In regard to the Subcommittee concerned, I think the Legislative Council must pay close attention to several points. I also hope that banks, the Government and the victims can all have faith in Legislative Council Members. First, I have always hoped that a review can be conducted to plug all the loopholes of the law relating to the financial system. Apart from ascertaining culpability, so doing can also prevent what I regard as extremely unprofessional practices, such as misleading advertisements and the imposition of business quotas on bank employees. Second, it must be ascertained whether the Securities and Futures Commission (SFC) has failed to discharge its monitoring duties properly, and whether there is any negligence on its part. Third, the codes of professional practice of banks must be disclosed, and so must their systems of

training up employees authorized to sell minibonds with large face values, so that it can be ascertained whether the employees concerned can meet the requirements of the system. Fourth, since we all know that banks are in possession of lots of commercial and customer information, I hope that the Legislative Council can do its utmost to respect the privacy of those not involved in the incident and ensure the continued stable operation of the banking industry in Hong Kong while exercising the powers conferred by the Ordinance.

At this very stage, I can only say that banks are much too bureaucratic. And, I must also say that the Government has been much too conservative and bureaucratic in its response, focusing only on its technical perspective in considering this issue. Actually, a single spark can eventually set the whole prairie ablaze. If banks had been willing to spend any money on extinguishing the fire at the very beginning, the whole matter might not have developed to the present situation. Why has the matter developed to the present situation? The main reason is the factor of time. Banks and the Government have been urging us to wait two or three months more. But the victims cannot wait any longer. Why? There are financial reasons, and besides this, some victims who are not at the meeting today may well be unable to withstand the psychological pressure any longer.

I am worried that a month later, some victims may collapse mentally. I do not wish to see any such tragedy. Therefore, I have no alternative but to exert pressure on the Government and banks and impart to them this clear message. If the investigation really discovers any improper sales practices that sought to circumvent the laws, or if it is discovered that deliberate attempts were indeed made to sell minibonds to unsuitable customers, the Government must take punitive actions rather than issuing mere condemnations. If there is any doubt about the integrity of an organization, the relevant standards must be raised after investigation. It is only in this way that public confidence can be restored. If all such loopholes can be plugged, people will naturally deposit their money in the banks again.

Therefore, I hope the Government can seriously consider our proposals. Besides extinguishing the fire, it must also consider various ways of restoring public confidence in banks. Thank you, Deputy President.

**MR JAMES TO** (in Cantonese): Deputy President, I have just received an email from a victim who tells me that I must disclose something on his behalf. I have

really struggled mentally for quite a while before deciding whether I should comply with his request. But in the end, I have decided that it will do no harm for me to do so.

There is a certain type of Lehman Brothers-related product called "smart bonds". "Smart bonds" are Credit-Linked Notes with Lehman Brothers as a reference entity. They are issued by a company called Victoria Peak International, which is held by Morgan Stanley. And, Morgan Stanley is also one of the swap guarantors for smart bonds. Secretary Prof K C CHAN's wife is one of the top management of Morgan Stanley Hong Kong.

I have disclosed this because the victim says that he has no confidence in any handling process under the charge of Secretary Prof K C CHAN. He thinks that there will be bias. I have known Secretary Prof K C CHAN for more than a decade, so I naturally have more confidence in him than the victim. But why do we want to establish a Subcommittee on Lehman Brothers and authorize it to summon witnesses? This is precisely the key issue under discussion now.

We have already established a Subcommittee, meaning that we have decided to launch an investigation. Even if the resolution today is negated, it will not change the fact that we will launch an investigation. The only difference, however, is that in that case, people invited to assist in our investigation can choose to come or not to come, can choose not to bring along any documents if they do not want to, or choose not to bring along certain documents if they do not feel like it. I do not know whether Members will find all this very odd and absurd.

(THE PRESIDENT resumed the Chair)

With all my simple experience of exercising the coercive investigation powers of the Legislative Council on several occasions in the past decade or so, I can say that if such experience is applied to the present case, there are tentatively four major reasons for vesting the Subcommittee with coercive powers in order to ensure that the investigation can be comprehensive. First, very simply, under certain Hong Kong laws, some documents must be kept confidential. I have received some documents from Mr Joseph Yam, Chief Executive of the HKMA, in which he replies that he cannot provide the correspondences between the



HKMA and banks between November last year and January this year because under the ordinance governing the HKMA, such letters must be kept confidential. This is the first time that he invokes the confidentiality provision as a reason for refusing to disclose certain documents vital to our scrutiny of legislation or understanding the truth of certain incidents.

Members may still remember that Mr Joseph YAM said that he had foresight. I was the first Member to ask a question at that time. I said that since he had foresight, I would like to know whether he had provided banks with any information or reminded them to classify Lehman Brothers-related products as high-risk products. He replied in the affirmative, saying that he had exchanged emails and letters with banks. And, he also said that there were of course verbal exchanges with bank directors and Tai Pans. I then said that if he had all those records, he could actually disclose them to us after deleting all the vital information such as the names of the banks concerned, so that we could know what foresight he really had, so that he could "eat chickens mightily" (these were the exact words I used at that time). He replied that he would have to search for such information first. In the end, he simply answered, "I am sorry. Under the ordinance governing the HKMA, such information must be kept confidential and must not be disclosed to you."

We want to have access to such documents simply because we want to find out at which stages of an incident, whether at the very beginning or in the middle of the whole process, actions could have been taken to prevent the incident from happening. Now, we cannot even have access to the relevant emails, letters and documents because of the need for confidentiality. But if we can have the power to summon witnesses, then on the basis of past examples, we believe that we will likely be able to get all those documents.

The second reason is that when we exercise the power and summon government officials to give evidence, they will have to "speak the truth and bear the resultant responsibility". If they lie, they may face criminal prosecution. This explains precisely why government officials would all follow the "government line" when we were unable to exercise the power to summon witnesses, and to require them to tell the truth under oath (I am not saying that government officials will always refrain from telling the truth). What I mean is that the Government would require officials to roughly follow a predetermined position on the incident concerned. Government officials would be unanimous on what happened and when it happened, and when the Government took what

actions. In this way, all details would be concealed behind an overall government perspective and personal viewpoints were not important at all.

But if we are to know what happened in the entire process, such as ..... Please let me digress a little bit. We will notice from other incidents that the witnesses summoned will all seek self-protection in times of dangers, so to speak. For example, when a certain government official is summoned and he knows that he must speak the truth, he will tell the Legislative Council truthfully all he has said on the incident in his official capacity. In the Legislative Council, he may even produce some documents to prove, for example, that he already sought to remind the chairmen of certain committees that Lehman Brothers bonds were unreliable and must not be sold. The documents may even prove that the chairmen concerned simply said no, remarking, perhaps, that Hong Kong was a financial centre, and that without introducing such products, Hong Kong could not get any tax revenue. It may even be pointed out that the chairmen concerned wanted to introduce these products regardless of any risks even if they had to tighten regulation. The government official may claim that he did request a certain someone to tighten regulation, but that he realized later that the regulatory body never followed up the matter after approval was given. Or, the official may claim that he was not aware that someone warned him against the risky products.

But when they are summoned to appear before the Legislative Council and submit the relevant documents, all government officials must submit all the information they know of. They can only speak the truth and tell the Legislative Council what they actually said on the matter. Members may recall that in the case of the chaos in connection with the opening of the new airport, some government officials really advised at internal government meetings that the new airport must not be opened at that time, or there would be great troubles. What happened in the end? In the end, the inquiry committee commended these officials. Members can certainly remember that some government officials were condemned for opening the airport at that time. This is the second reason. All must "speak the truth and bear the resultant responsibility" instead of presenting the Government's official position.

There is a third reason for summoning witnesses by invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance). Under certain circumstances, if we ask a bank certain questions, it could actually give us the answers. For example, we may ask a bank how much commission it can get

from such products. Understandably, the bank will likely think on the one hand that since the question involves commercial information, it is best to avoid giving an answer by all means. But it will, on the other hand, think that it is not so good to refuse to answer a question posed by the Legislative Council. In the end, the legal adviser of the bank may well tell the bank president that even if he wants to answer the question, he must not do so. The bank president may be told that the Legislative Council does not have the power to summon witnesses. That being the case, he must not disclose to the Legislative Council any information (confidential commercial information) about the sharing of commission between the bank and other organizations. And, the bank president may be further advised that if he really does so, the bank may be sued by a company outside of Hong Kong. That is why he must not do so.

Some have been saying that many legal advisers from different countries have flown into Hong Kong to tell their local branches that nothing, absolutely nothing, must be disclosed. Therefore, invoking the Ordinance is the only means through which we can find out the truth. This is only one example.

Fourth, we must never assume that all witnesses summoned by the Legislative Council are reluctant to comply. We must not think that all are reluctant to give evidence, so we must summon them and make them comply. This is only one kind of witnesses. We call them reluctant witnesses who do not want to submit any documents. But many other people who know the truth do want to give evidence. Some may even write to us, telling us that they know this or that part of the truth. But they at the same time attach one condition, the condition that the Legislative Council must summon them as witnesses. If they are not summoned, they will not come. One example may be a former government official who is on pension. He knows some facts, but he is bound by the official secret legislation — part of the proposed legislation on implementing Article 23 of the Basic Law also touches upon this issue. As a result, he is not allowed to say anything about the government administration at that time. But if he is summoned by the Legislative Council, he will be prepared to disclose all he knows. The reason is that he wants others to know that he was actually aware of the possible problems and did try to advise his successor, only that he was ignored. This is another example. This former government official cannot disclose certain information because the information is about the Government's internal operation and its disclosure is thus regulated by official secret legislation. If he discloses such information, he may lose his pension or even be prosecuted.

Another possible scenario is about certain individual bank employees (some of them have actually approached me). A bank employee once told me that he knew the truth. I am, of course, talking about an individual bank employee only. But at the same time, he also said, "If the Legislative Council does not summon me and invoke the Ordinance to protect me ..... Mr TO, do you want me to die? If I testify before the Legislative Council, I will be branded a 'villain'. My colleagues will hate me because they will think that I want to testify against my colleagues." He also said, "Many of my colleagues were indeed pressurized by their supervisors, so they must meet the quotas. If they do not sell these products, they will be dismissed. Many of my colleagues were pressurized this way." His words remind me of the prevalence of police corruption several decades ago. At that time, a police officer would often be given a bag and asked to open it. There was some money inside the bag. If the police officer refused to take the bribe, his career would be finished the very next day. What happened was that every bank employee was bound by the entire system to market all these products. No one could ever refuse to do so. What exactly happened differed from case to case, depending on the kinds of customers different bank employees came across, their marketing practices and whether they adhered to the proper sales procedures. Therefore such bank employees will be willing to testify before the Legislative Council only when they are under protection. We call them "willing witnesses". There were plenty of past examples.

However, I must assure Members that since we are aware of the immense powers conferred by the Ordinance, we will exercise them very prudently. In the past, we always screened witnesses very carefully. As can be expected, many people are willing to "tell the truth". One may want to testify because one thinks that the "loot" has not been divided fairly. Or, one may simply want to defame others. Or, one may just want to take revenge. Or, one may hate one's supervisor very much. Or, one may even be an abandoned mistress of one's supervisor. There are all sorts of reasons. And, in the past, many such persons did express their willingness to give evidence or write to us. There are all sorts of different reasons. We will carefully screen the witnesses to be summoned. And, we will also consider whether anyone under the protection of the Ordinance will endlessly attack a certain bank, tell lies and mislead Members and the public. We will be very careful, very careful, when exercising the powers because the witnesses will be under protection. For all these reasons, we always screened witnesses very carefully in the past. I can assure everyone that having handled

many similar hearings in the past, the Democratic Party (including me) is well aware of the know-how and implications of the whole thing. Our intention is not to pick on the banking industry. Nor do we want to pick on any individual banks.

In response to the views expressed by some Members just now, I would like to say a few words here. A Member thought that exercising the power of summoning witnesses would turn the Legislative Council into a courtroom. Frankly speaking, over the years, we have invoked the Ordinance a dozen times. But never was the Chamber turned into a courtroom. The important thing is that we want to find out the truth and investigate some important issues affecting the public interest. If we do not invoke the Ordinance, it will be impossible for us to carry out an investigation. We have never intended to turn the Chamber into a courtroom. Past examples can all testify to this.

Someone has advanced another argument, questioning whether doing so will result in the endless expansion of the Legislative Council's scope of investigation, causing specific impacts on the business sector and completely changing its rules of the game. Mr LEE Cheuk-yan has cited several examples. I may perhaps give one or two more for the purpose of illustration. When investigating the substandard piling works incident, we summoned many relevant construction companies in the piling industry. We examined the relevant contracts and practices. Many organizations were from the private sector, and some of them were even large construction companies. Besides, there was also the chaos in connection with the opening of the new airport. Since we wanted to examine the consultation system, we asked for many contracts and questioned various consultants and outsourcing contractors. As for the issue of imported labour for the new airport, we questioned many companies involved in the importation of labour. These are all examples of the private companies summoned by the Legislative Council in the past. However, when summoning private companies, we will be equally cautiously, or even more cautious than ever.

Yet another argument is connected with foreign companies. Dr David LI said that if we also summoned the Hong Kong branches of foreign banks, the commercial secrets of foreign companies would have to be disclosed in Hong Kong. First, Members must realize that there are many such precedents in common law jurisdictions, and one of the precedents even involves the famous Chase Manhattan Bank. Second, it is actually nothing new for foreign banks to appear before local legislatures (legislative assemblies) to face investigations into

incidents affecting the public interest, and to submit information about the setup of their local branches or other confidential information.

The British Parliament, for example, has conducted many such investigations, and so has the United States Congress. One must not say anything like "Britain and the United States can certainly do so. But Hong Kong is such a tiny place, so how dare it ask the headquarters of an American or British bank to submit any confidential information? Does Hong Kong still want to be part of the global financial community?" I do not think we should look at things that way because if we really want to remain an international financial centre, we are duty-bound to investigate the whole incident. Since such products are never sold in large quantities in other international financial centres, we must investigate this incident in order to protect Hong Kong and international investors. Therefore, invoking the Ordinance is the only and absolutely necessary means.

**DR LEUNG KA-LAU** (in Cantonese): As far as I know, the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee) currently comprises 25 members, including me. I joined the Subcommittee almost on the last day, and I was also almost the last Member to join. Many journalists have been asking me whether I will support the resolution. Well, anyone who is observant, anyone who knows me at all well, and bearing in mind that I joined the Subcommittee at the very last minute ..... Anyone who is observant can actually know that when I decided to join the Subcommittee, I already wanted to support the resolution. If I do not support the resolution, I will be wasting my own time.

(Applause in the public gallery)

**PRESIDENT** (in Cantonese): Those in the public gallery please keep quiet.

**DR LEUNG KA-LAU** (in Cantonese): Before that, I already heard extensively the opinions of my constituents and the wider community. Even some well-educated people are victims. We medical practitioners, for example, know only how to use scalpels, and we frankly know nothing about financial investments. Many of my constituents, notably elderly, retired medical

practitioners, were misled into investing a good part of their savings in this type of bonds. They can only smile wryly, saying, "Minibonds are 'wily bonds' indeed." Some medical practitioners have even told me that all because of the "wily bonds", some long-time patients of theirs must now seek medical consultation on credit.

Several days ago, I discussed my perception of the Subcommittee with a number of victims, expressing the hope that they would not harbour too many unrealistic expectations. I also hope that Members will not harbour too many unrealistic expectations either.

There are nearly 40 000 cases in this incident. Some victims were obviously misled by the banks concerned. But I also understand that other so-called victims were in fact clearly aware of the associated risks, and that they managed to gain interests and benefits that were greater than those yielded by ordinary bonds. In such cases, it is very difficult to determine who are in the right. I do not think that the Subcommittee is an appropriate body to deal with this question. And, I also think that if any victims want to claim compensation, they should individually negotiate with the banks concerned on the merits of their own cases or even initiate proceedings.

However, as mentioned by some Members just now, most of the victims who were misled do not have any ability or channels to access the essential information, such as the records of communication between the Hong Kong Monetary Authority (HKMA) and banks. As a result, they are unable to access the required information for any proceedings. One of the main functions or duties of the Subcommittee is to seek the truth. And, apart from recommending improvements to the mechanism to avoid similar incidents in the future, the Subcommittee shall also aim to uncover the documents required for putting misled victims in a more advantageous position. I do not think that the Subcommittee is able to ask for any compensation from banks. It can only seek the truth. But I am of the view that the operation of the Subcommittee and the various settlement proposals, such as the packages put forward respectively by Mrs IP and the Government for buyback, or various conciliation and arbitration proposals, should not be mutually exclusive.

I have also explained to the victims that I myself have been involved in an ongoing lawsuit for seven years. Therefore, they should be psychologically prepared that all previously proposed packages may just be empty talks. In the end, the matter may be taken to court, and it may take three to seven years before

they can get any compensation. The only thing that the Subcommittee can do is to put them in a more advantageous position. Whether they will win or lose in the end must depend on the respective circumstances of their cases.

Finally, after listening to the worries of the Government and the banking industry, and for fear that the Subcommittee may do a disservice, I have personally exchanged views with other Members, I mean, Mr KAM Nai-wai. And, I have managed to get an undertaking from him that whenever any sensitive information is involved, the Subcommittee will always try to exercise the powers and privileges cautiously. When necessary, meetings will be held in camera, so as to avoid any negative impacts on Hong Kong's status as a financial centre.

All I have to say is so simple. Thank you, President.

**MR CHEUNG MAN-KWONG** (in Cantonese): President, my speech today is mainly meant as a reply to Dr David LI's remarks. It is a pity that although he claims to represent the banking industry, he simply left after speaking. This is very regrettable. He should listen to Members' views.

Since yesterday, David LI has been arguing that if the Legislative Council really passes the resolution on invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) for the purpose of investigating the Lehman Brothers-related Minibonds incident (the Lehman Brothers' incident), the banking industry will find it very difficult to focus resources on handling the problems of investors. He also claims that invoking the Ordinance to investigate banks will also set a very undesirable precedent which may have impacts on Hong Kong's status as an international financial centre. He therefore asks Members to note the serious impacts of the resolution on Hong Kong.

Frankly speaking, it has been two months since the Lehman Brothers incident first surfaced. The victims have been trying to air their grievances, seek assistance, approach various authorities and stage many petitions. They have shed tears, knelt down to beg for help and staged marches and protests. They have accepted every indignity and shown immense grief. Members can see that many victims are grey-haired elderly persons who have lost their hard-earned "funeral expenses". But despite all their efforts and bitterness, what have they got in return? The answers are the shifting of responsibility among government



departments, the HKMA and the SFC and also the indifference and stalling tactics of the banking industry. So far, there have only been 50 cases of compensation in the market. And, in many of these cases, the banks concerned were not willing to reach any settlement and pay compensation until political parties made it clear that legal actions would be taken against them. This shows that the compensation mentioned above is just meant to silence the victims, to avoid exposing banks' unscrupulous (or even deceptive) practices in marketing Lehman Brothers minibonds.

Large numbers of pitiable elderly persons have lost all their savings just because they had faith in the banks concerned or even because they believed the sweet words and capital preservation guarantees of sales staff. How can any persons with a conscience, including bankers with any moral integrity, not help feeling sorry for them, feeling ashamed? How can they turn a blind eye to all these helpless elderly persons? Even though some miserable elderly persons are now offered compensation, they still do not know how much they can get back and when the compensation will be paid. The only certainty is that there is no longer any capital preservation. Or, precisely, they may have to suffer total losses. Naturally, they are discontented, so they still want to see an investigation, so as to expose how they were deceived. Was there any serious negligence on the part of the Government, with the result that banks were able to sell high-risk Lehman Brothers notes to elderly persons and plunge them into this black hole of investment? Were the banks concerned guilty of profiteering, of being unscrupulously result-oriented, to the extent of targeting even on elderly persons and other customers. Were these banks guilty of plunging their own kaifongs and long-time customers into the trouble, with the result that they can no longer live a peaceful life in their old age, having to take part in marches to vent their grievances all the time?

The Legislative Council cannot remain indifferent to the misery and grief of elderly persons or bank customers. The Legislative Council cannot let them lose all their hard-earned savings while also being denied the truth and justice. If the banking industry represented by David LI claims that any investigation will draw resources away from handling the problems of investors, we must ask, "What resources have you people amassed to handle investors' compensation claims over the past two months? When you people marketed Lehman Brothers minibonds, you could have plenty of resources and manpower. All bank employees were instructed to take part, and all customers were lobbied with no exception. Now, when the Legislative Council says that it wants to investigate

the matter, you suddenly discover that there are insufficient resources and manpower. How can that be?" Sometime ago, the banking industry kept talking about paying compensation, but there were just mere noises. No cash was ever paid. It was not until the Legislative Council started talking about invoking the Ordinance that banks started, very slowly, to pay compensation in no more than 50 cases, in the hope of cooling down sentiments in the Legislative Council and creating specious reasons for opposing an investigation by the Legislative Council.

This shows that such compensation was never paid with any sincerity. Worse still, David LI's opposition to invoking the Ordinance and his argument that this will draw resources away from entertaining investors' requests are no different from intimidation. He is actually telling the Legislative Council that the launching of an investigation will mean no compensation, and that the duration of investigation and the time taken for paying compensation will increase proportionately. He is in fact saying that they want to pay compensation, but they are constrained by manpower shortage. The banking industry should feel embarrassed and shameful for having advanced such absurd logic and hypocritical arguments.

According to David LI, invoking the Ordinance for investigating banks will set a very bad precedent that may affect Hong Kong's position as an international financial centre, thus bringing forth serious consequences in Hong Kong. But Hong Kong is not the only financial centre in the world. Even in the centre of all international financial centres, that is, the United States, the very culprit of the present financial tsunami, the former Chief Executive Officer of Lehman Brothers has been summoned before a Congress hearing to state his views and answer questions on the financial tsunami.

Summoning banks before the Legislative Council must not be regarded as any indiscriminate exercise of its powers and privileges. Rather, such an action is just meant to uncover the truth and uphold justice, to plug the large loopholes in Hong Kong's financial and banking systems, to remedy the regulatory blunders of the Government, the HKMA and the SFC, and to ascertain their culpability, so that even if the victims are to lose all their money, justice can still be upheld for them.

Actually, the Lehman Brothers is not the first private organization summoned before the hearings of the United States Congress. In today's issue of

the *Hong Kong Economic Journal*, two significant examples are given by LIAN Yi-zheng. For reasons of the accounting fraud of WorldCom from 1999 to 2002 and the scandal involving Hewlett-Packard in 2006, the top management of both companies were summoned before the Congress to give evidence, so as to assist in the enactment and amendment of legislation.

Why have we never heard any opinions that the summoning of the Lehman Brothers, WorldCom and Hewlett-Packard will affect the United States' status as a financial centre, will set a bad precedent and will lead to adverse consequences in the country? Dr David LI is a world banker who has many connections with the financial and banking sectors in the United States. But he has still advanced such sophistry and absurd arguments. His words are intimidating and exacerbating. His remarks will only increase the public discontent with the banking industry. The banking industry's practices of selling Lehman Brothers minibonds and stalling tactics have already aroused the criticisms and anger of all. People will surely be utterly disappointed at hearing Dr David LI's exacerbating remarks on rejecting an investigation by the Legislative Council. Has it ever occurred to the banking industry that it must do some serious self-examination in the wake of the financial tsunami? Has it ever occurred to the banking industry that it is both morally and commercially obligated to assist the Legislative Council in conducting hearings? Does the banking industry really think that it is superior to all and can resort to intimidation and various absurd arguments as a means of preventing the Legislative Council from passing the resolution, from launching any investigation? Does it really think that it can act like an ostrich, sweep all the loopholes of the financial systems underneath the carpet and silence all people?

According to Secretary Prof K C CHAN, an investigation by the Legislative Council will hinder the investigation conducted by government regulatory bodies. But honestly speaking, the Legislative Council wants not only to investigate the sales tactics of banks. It also wants to investigate government regulatory bodies, such as the HKMA and the SFC, so as to find out whether there was any negligence on their part in this incident. Even the Government, which Secretary Prof K C CHAN represents here, is also the target of investigation. Therefore, both the HKMA and the SFC must be subjects of investigation. Asking the Legislative Council not to launch any investigation, not to exercise its powers and privileges and not to play its constitutional role of monitoring the Government is much too lame as an argument. This only shows that the Government's position is not tenable at all.

President, today is a very important day to the Legislative Council, for it is about to honour its commitment to electors and the public by exercising its power to find out the truth in the Lehman Brothers incident. It wants not only to get compensation for investors. It also wants to plug all loopholes and promote justice. And, justice can only be upheld fully when the whole truth is uncovered.

President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, Secretary Prof K C CHAN said in a radio programme a few days ago that the banking sector was very worried about the Legislative Council invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) for the investigation of the Lehman Brothers incident because of the possible impacts on our image as an international financial centre.

President, it is a pity that the Secretary did not make clear the impacts he referred to. Similarly, Mrs Regina IP was only frightening the others with a bomb when she criticized Secretary Matthew CHEUNG. But the question remains the substantial impacts. The Secretary has not given any explanation.

President, I would like to tell the Secretary that, if the Ordinance is invoked for the investigation of the Lehman Brothers incident, there will really be positive impacts on our position as an international financial centre. What is wrong or why is it unfavourable if it has positive impacts? Why did the Secretary not expound in depth this issue in the radio programme? He only told us that there would be substantial impacts without going into the substantive contents; he was just bluffing but it shows that the Government is irresponsible, unjust and unfair. The Legislative Council has set up a Subcommittee, and if the Ordinance is invoked for the investigation of the Lehman incident, it will make the whole truth come out. If it can conduct hearings and investigations in an impartial manner, it will reveal all acts of the victims and the banks, and the work of the Government's regulatory bodies in the incident, which would help establish Hong Kong's status as an international financial centre.

Nevertheless, the Government, Secretary Prof K C CHAN in particular, has only told us that there will be impacts but not in concrete terms. I have an

impression that the Government would like to cover up the shameful state of affairs. Yet, I wish to tell the Secretary that he can hardly cover up the shameful business because the problem of the financial tsunami has spread and all the ludicrous behaviour and scandals have been exposed. There is no concealing the truth. The Secretary should positively encourage the banking sector to be frank and give the public an account of the whole incident in an open and aboveboard manner in order to make matters clear to the victims and the general public. A responsible Secretary should have done so, but it is too bad that the Secretary only wanted to cover up the incident for the sake of saving our international reputation, which has conversely done great damage to and injured our international status.

President, a lot of Honourable colleagues support invoking the Ordinance for the investigation of the Lehman Brothers incident, which has significant meanings contradictory to the four objections that the Secretary referred to a while ago. First, the Secretary has said that buybacks would not be possible when the Ordinance is invoked.

President, it has been two months since the outbreak of the incident, how many buy-back and compensation cases have been concluded? If the Ordinance is not invoked for the investigation of the Lehman Brothers incident, we will only find the process slowed down and the problems unsolved. We should not say that invoking the Ordinance will slow down the progress or affect buybacks. That is already the case now and I cannot see any difference.

Second, the Secretary has told us that the banks would be affected, for they cannot focus staff resources on handling the matter after they have deployed employees to deal with the hearings. President, we have got news about layoffs in the banking sector; they should not lay off employees if they do not have enough manpower, right? Regardless of whether the sector has sufficient manpower or not, it is only making an excuse. The crux of the problem lies in whether they have the will. If they have the will, they can naturally solve the problems. If they do not have will, they cannot solve the problems irrespective of the manpower situation. To what extent have the problems been solved now that almost two months have passed? To what extent would the problems be solved if nobody attends Legislative Council hearings? Therefore, all this shows that this is just an excuse, but the Secretary has surprisingly helped to make this excuse stronger.

Third, the Secretary has told us that there will impede the investigation into various organizations. President, a few Honourable colleagues have just said that we not only want to investigate into the operation of the banks to find out if there are misleading or fraudulent acts because it is most important for us to find out if the Government has a regulatory mechanism for effective regulation of the operation of a financial centre. I think this is conversely an important objective of the investigation in the future.

President, a number of Honourable colleagues have cited some past experiences earlier and I would like to share mine. I was a member of a team helping foreign domestic workers who had been exploited badly. Some imported workers had to appear in court and Honourable colleagues set up an ad hoc group to study the problem at that time. The work progress was not obstructed at all and various parties worked smoothly, and in the process we assisted the Labour Department in considering how to effectively review the policy on importation of labour as a whole. Similarly, if an investigation is conducted by invoking the Ordinance today, the regulatory authorities concerned, the Securities and Futures Commission, and so on, must thoroughly review their respective operation to find out if there were dereliction of duty and default in the past. Has there been insensitivity or have they unwittingly allowed the banks to arbitrarily cheat the victims with such bonds? This is the most important thing. If impeding market development is cited as a reason, then I think it is an unpleasant reason that can hardly be accepted.

Fourth, the Secretary has said that we should try not to complicate the issue. President, I am not sure about the meaning of not complicating the issue. If there is no problem with the basic operation of the banks, what harm will their being investigated do? Everything will simply be fine. Unless the Secretary is worried about their having problems of immense depth, the investigation will complicate the issue only if it uncovers all kinds of problems. Is the Secretary worried about that? Is the Secretary worried that all kinds of problems will be found and the Government will then be at a loss as to what to do? If so, I think the Secretary should be worried because there are so many victims and there may also be problems with the supervisory mechanism. However, a responsible government official or Secretary should face the reality. In other words, he should address the problem squarely and try his best to solve it, instead of evading the problem and burying his head in the sand like an ostrich.

We often say that a person of integrity can stand severe tests; if everybody, the banking sector in particular, government officials and regulatory bodies in particular, have not done anything problematic and can disclose everything, why do they not allow an investigation? Would it be better for those concerned to reveal everything so that everybody will find that the victims are greedy and the banks are not at fault? Would it be better for us to confirm that the banks and the Government are innocent and that regulation has been comprehensive? Why have we been negative but not positive about the issue? President, for this reason, I fully support authorizing a Subcommittee to exercise the powers conferred by the Ordinance in order to confirm that some parties to the incident are innocent and to do them justice.

When I met and talked to some victims, they told me that bank employees had kept persuading them to buy the products but they had not told them that the products were bonds; they just told them that they were alternative fixed deposits with higher interests. The bank employees also told them not to worry because there would not be any problems. But the assurance of no worries has now become this result? The problems must be solved. Many retired victims rely on the money for a living. What are they going to do now that all the money has gone?

An Honourable colleague has just told us that the victims not only have financial and livelihood problems but also mental problems, which is most important and miserable. Their mental problems can hardly be cured. So, we can procrastinate no more and we have to handle their cases as quickly as possible. We agree with the Secretary that we should expeditiously help the victims get compensation and the due returns. But this does not mean that it is unnecessary to conduct a thorough investigation into the matter with a view to making everything clear. An Honourable colleague has asked today whether invoking the Ordinance will tarnish the image of the industry or our society. In my view, those who object will always say so whenever we discuss invoking the Ordinance — that is true and those opponents made more or less the point in previous incidents. I would like to ask Honourable colleagues who are opposed to this how our reputation was affected after the Ordinance had been invoked in the past. Was our reputation tarnished? Has our image become better on the contrary? Have Honourable colleagues thought about that? If not, I really hope that they would conduct a review, do some soul-searching and reconsider these cases before voting.

The rule of law must be upheld in Hong Kong and the spirit of the rule of law must be intact before there can be progress and our status and international reputation will be established. After invoking the Ordinance this time, I hope that we could also promote the building of a sounder and better international reputation.

I so submit, President.

**MS AUDREY EU** (in Cantonese): President, I have said in public for more than once (also in this Council) that I held Lehman Brothers-related financial products. I have not bought them myself and I have not lodged a complaint, and these products are not related to the 20 banks under complaint. Just like other Hong Kong people, I have held the consistent position, opinions and objectives of finding out the loopholes in the system and the lessons to be learnt, and how the system can be perfected.

President, history is always making fun of us. Today is 12 November, on this day nine years ago (in 1999), the then United States President CLINTON signed a bill into law that repealed the Glass-Steagall Act of the United States with 66 years of history. The law was passed in 1933 when the United States was experiencing the Great Depression. The United States Government made the law to protect bank depositors by prohibiting the banks from engaging in other businesses such as insurance or investment.

However, the banks had opposed the Glass-Steagall Act all along, considering that it would affect their development. After 66 years' of lobby, the United States Government repealed the law on this day nine years ago and allowed the banks to engage in investment and insurance businesses. Then came this new word "financialization" in the 21st century, which means that the finance sector does not engage in genuine financial transactions but speculations. The toxic products we often talk about today are produced through financial packaging. Products with high risks or bad debts containing CDO and SIV have been repackaged into trendy financial products and sold to retail investors through the banks. President, the problem we are facing today is closely associated with the law passed in the United States on this day nine years ago.



President, the United States general election was recently held and the expression "Wall Street greed, main street suffer" was often been quoted by OBAMA.

Investors have become speculators since the financial bubble has started, and some have said that the banks have not attended to their fundamental business. I am not going to use excessive descriptions but the banks really ..... small depositors thought that the products were secure fixed deposits but they soon discovered that they had bought and sold high-risk financial products. Lehman Brothers victims were the first hit when Lehman Brothers among the top four investment banks in the world went bankrupt. I wish to tell Members that they not only had monetary losses; many of them called our offices quietly when their husbands had left home for work because they dared not tell their husbands the truth. A great blow has been dealt to many families. Many victims intended to spend the money on medical expenses or education of their children. Although the banks have said that compensation would be given to those with special needs as soon as possible, I can tell the Secretary today that he will find some victims downstairs who are already 71 years old or are suffering from certain diseases. When I came up to the Chamber a while ago, I saw many victims whose cases had not been handled.

President, I would like to point out that it has been two months since the outbreak of the incident, but the progress has been rather slow and unsatisfactory. The regulatory bodies have not admitted their faults so far and they have not explained why such complicated products are sold to retail investors only in Hong Kong and Singapore but rarely in other places.

President, the most typical was the remark made by the Chief Executive in a radio programme. He said that some victims thought that the products were minibonds but they were actually very complicated derivatives. I really want to ask if the Chief Executive has made the remark arbitrarily or the product has been approved by the SFC arbitrarily. How could these products in the form of minibonds be approved for sale by the banks to clients who could only bear lower risks? How could the Chief Executive tell us on radio that these products were mistaken as minibonds by some people?

President, when this social incident — I consider this a social incident because a representative of the Hong Kong Association of Banks (HKAB) has

described this as a social incident in a newspaper — President, may I ask when such a major incident has happened in society how can this Council not perform our duties? Although the current system is disclosure-based, how can there be sufficient disclosure when many experts and financial professionals have told us that they even cannot understand these complicated products? How could we expect front-line employees to explain the products to the older victims, those who had a lower standard of education and could not read the documents whose fonts were so small, and when the products were so complicated?

How can the disclosure-based system work if front-line employees of the banking system are expected to sell certain amounts of financial products a day, a week or a month for certain returns? Is it self-contradictory if they have to sell more products whilst disclosing the risks? President, there are systemic problems. When we ask the banks to provide the relevant information on the internal guidelines or risk assessment of the products, we would like to know if they have knowledge of the products before selling them to the clients. Nonetheless, the banks failed to provide such information. President, how would we know the truth if this Council does not exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance to require the banks to provide the relevant information? When the banks sold the products to their clients, they told the clients that their returns would be a few percents higher than those of fixed deposits. How much commission or return can the banks get? Is there any conflict of interests or potential conflict of interests between the banks and their clients? This is an important and key question.

President, it has been two months since the incident took place and I have written a lot of letters to all the banks. Only one bank has told me in private the commission it charged and no other banks are willing to disclose the relevant information. President, I am not sure if this is the so-called confidential information or confidential commercial information which will affect the financial status of the banks or Hong Kong if disclosed. Yet, it can be easily understood that these facts and information are related to the whole system and whether the system is sound or fraught with systemic problems. We have so far failed to find out what actually happened. I have written a lot of letters and published many press releases, suggesting that the rule of law should prevail, that there should be a process and justice, and that the Government should at least provide a platform for mediation and arbitration. Even if the Government has accepted certain views and conducted mediation and arbitration, it has only conducted "niggardly" mediation and arbitration which has only helped a small

number of victims whose cases have been placed on file for investigation and prosecution. Arbitration on documents only cannot settle the disputes. Thus, it is not very helpful to helping the victims and solving the problems.

President, for the reasons I have just given, I wish Honourable colleagues would understand that we do not intend to affect our status as a financial centre. Just like Mr LEUNG Yiu-chung who has made some remarks a short while ago, I am also saying that an investigation is nothing special and investigations have been conducted in other places. Conducting an investigation under an open and impartial system conforms to the rule of law. I cannot agree with the remarks just made by Mrs Regina IP, that government funding is needed for conducting an investigation. We should investigate into the truth even if we have to ask for government funding. We should find out the extent to which the Government is responsible and the amount of funding needed. At this stage, we should not discuss the amount of funding required, but we should investigate into the truth and find out how the responsibilities should be shared in order to do the victims justice. I would like to tell the victims in the Chamber or in front of the television that there is a rough road ahead and they cannot expect too much. Even if the motion is passed today, we will have a weird investigation team because there was an upper limit to the number of members in a select committee in the past, and there would be division of labour and a system. This Council initially objected to the establishment of a select committee this time, but it later accepted the establishment of a Subcommittee as suggested by Dr Margaret NG. Since there is no upper limit to the number of members, the Subcommittee has more than 20 members now. Let us imagine this: there will be more than 20 members at each meeting who will take turns to speak, and each of them can only speak for two to three minutes. They can only find out the truth intermittently even if they wish to do so; how can the work be efficient and systematic? We wish to work quickly and find out the truth, but there are many objective factors beyond our control. We may accomplish very little even if we exert our best; that is why I told the victims not to expect too much. But, President, it does not mean that we should not perform our duties.

President, I wish to tell the banks that I have read the advertisement placed by the HKAB on newspapers and Dr David LI's letter very carefully. The HKAB has stated in its advertisement that "we need to balance the interests of different parties, including customers, shareholders and employees, and take into account the foundations of Hong Kong's status as an international financial

centre, including the rule of law and market economy". When I attended the cocktail reception hosted by the HKAB, senior bank officers with good intentions told us time and again that they felt grieved about the disappearance of the rule of law from Hong Kong. I would like to tell them that Members of this Council are performing our duties and this Council is part of the system under the rule of law. It is impossible for Honourable Members to evade our responsibilities at the present stage given the development of the incident.

I hope the banks would be fully aware of their responsibilities. They should make the compensations if they have determined to make compensations after internal investigations. The hearings of this Council started in September and I believe it would only summon the banks concerned in December. The banks should have completed the reports for submission to the HKMA and all the internal investigations, and they should have made due compensations then. Thus, the work of the banks would not be obstructed and the buy-back proposals should be made in early December. The time limit would have been exceeded when the banks are really invited to the hearings.

It is stated in Dr David LI's letter that the investigation would intervene in the operation of the private business organizations and create a highly unwelcome precedent, which is similar to the remarks just made by Mr CHAN Kin-por. I would also like to tell Mr CHAN Kin-por that, if he has noticed, the select committees of this Council in the past have investigated into social incidents involving the private sector, and some examples have been given by Mr CHEUNG Man-kwong a while ago. It is very common in foreign countries and will definitely not create a highly unwelcome precedent. If Honourable colleagues have worries, they may consider the work done by the select committees of this Council before. The Clerk to this Council would give us very good advice if they are afraid that concurrent judicial proceedings or prosecutions may be affected. Precedents are surely available to show us that other interests will not be affected.

President, on behalf of the Civic Party, I call upon other Honourable colleagues to perform their duties as Legislative Council Members and vote in support of the motion today to facilitate our investigating into the truth and "learning a lesson" as Premier WEN has suggested.

(Applause from the public gallery)

**PRESIDENT** (in Cantonese): People on the public gallery, you must keep quiet. If you would like to stay, please do not make any noise.

**MR RONNY TONG** (in Cantonese): I would like to supplement the remarks just made by our party leader. A lot of people are worried that Honourable colleagues who indicated support for the motion would disappear from this Chamber at the time of voting. So, besides calling upon Honourable colleagues to change their minds and support this motion, I also call upon them not to disappear from this Chamber then.

President, we have already discussed this motion for two and a half hours and I have stayed in this Chamber most of the time and listened carefully to the arguments advanced by the Government and Honourable colleagues who oppose the motion. However, having listened for two and a half hours, I have not found any convincing arguments that can explain why this Council should not exercise the powers conferred on us by the constitution.

President, the matter is actually very simple; if all investigation bodies do not have statutory powers to conduct an investigation or they do not exercise such powers, I believe they are but empty shells and they can even be regarded as "toothless tigers" unable to fulfil their constitutional or legal responsibilities. President, many investigation bodies have similar powers; for instance, the Courts, the SMC which is related to this incident, the Office of The Ombudsman and the Equal Opportunities Commission have such powers. Would anybody tell them not to exercise their powers in relation to incidents that warrant an investigation within their scope of powers? I think this is just like putting the cart before the horse.

An Honourable colleague has suggested that an investigation be conducted by the Court or the SFC. President, I had breakfast with some staff members of the HKMA including its Chief Executive this morning. I asked them why the progress had been so slow for only dozens of cases had been handled and referred to the SFC. They told me that one difficulty was the lack of the power for investigation. They could only ask the banks to co-operate, but they could not do anything if the banks were not co-operative. The SFC has the power to conduct an investigation but it has not done anything.

President, can the SFC or the Court handle the matters that this Council is going to handle? I do not think so. Honourable colleagues only need to think it over carefully and they will find the difference between the two. The Court will only pass judgment on whether a party is right or wrong on the basis of the arguments about a case, but the investigation conducted by this Council is not as simple. President, we are not pinpointing individuals, but the system and policies. We will conduct an investigation to find out whether there are systemic loopholes, policy blunders or deficiencies in policy implementation. We will also find out if the operation of the banks has violated the rules of our regulatory bodies. President, the Court cannot handle these broad issues of principle that have to be solved. In this connection, I cannot think of any investigation body in Hong Kong that can play this role of this Council.

President, the investigation mechanisms of legislative assemblies are not unique to Hong Kong. As Honourable colleagues have said, other countries and regions have similar systems. Now that we have such a system, why do we let it lie idle? Why do we not use the "Sword of Imperial Sanction"? Do we have to stay at a respectful distance from people with financial capability and clout? President, I do not want this to happen; if that is really the case, it would be very disrespectful and even insulting to this Council and each and every Honourable Member.

President, some Honourable colleagues have risen in opposition and cited lots of reasons based on their personal judgment only. I think such a starting point is entirely wrong. Honourable Members have the responsibilities to exercise our legal and constitutional powers and perform our duties. We should refer to Article 73 of the Basic Law related to the powers and functions to be exercised by the Legislative Council. It is stated that this Council should "debate any issue concerning public interests", and "receive and handle complaints from Hong Kong residents". The most important point is stated in Article 73(10), that is, "to summon, as required when exercising the abovementioned powers and functions, persons concerned to testify or give evidence". President, these are our constitutional powers and functions that cannot be overlooked.

For this reason, the question remains not whether we should exercise the powers as some Honourable colleagues have asked, but whether we need to exercise the powers as stated in our constitution. It has been specified in the constitution that we should conduct investigations and collect evidence, and

whether we need to do so depends on the importance of an issue and the availability of other feasible solutions. But we are now talking about transactions that have affected tens of thousands of Hong Kong people and involve billions of dollars of investments. How can we keep a straight face and tell Hong Kong people not to bother about these "unimportant" matters?

President, I wonder why some Honourable colleagues do not think that performing these functions and exercising these powers specified in our constitution our basic responsibilities. We must exercise our powers to conduct a thorough investigation; otherwise, we would only attempt an ineffective solution and miss the main point.

Yet, I am really astonished at the remarks made by Dr David LI earlier. He said that an investigation would affect our status as a financial centre, and his view is echoed by the Government. President, I will be really sad if he is right. If our status as a financial centre will crumble when we conduct an investigation, how can Hong Kong be regarded as a financial centre in Southeast Asia or China? It would be too arrogant to say that our financial system is so perfect that an investigation is not necessary. President, all systems and policies have deficiencies and we certainly have to identify the deficiencies. Our leaders have told the Chief Executive the same. Why can an investigation not be conducted? It is perfectly alright if the result of the investigation is that nobody has made mistakes, but we are duty-bound to make improvements if it is found at the end of the investigation that improvements should be made, that it is necessary to plug the loopholes in laws or systems, and that there are faults in policy implementation. How can we say that our status as a financial centre will be shaken if an investigation is conducted? On the contrary, our status will be shaken if an investigation is not conducted. Foreign investors will think that we are in an awful state if we do not conduct an investigation into such a significant incident. Should we liken our financial system to a party among friends?

President, another reason cited by Dr David LI is that the banks have lots of confidential information or commercial secrets, and an investigation would compromise them. I would like Honourable colleagues to consider this: The so-called privacy problem or personal data are associated with the investors' information, which can be disclosed as long as they are willing. These investors are now on the public gallery or outside this building, and they have asked us to conduct an investigation; how can the banks use this as an excuse?

President, what commercial secrets are we talking about? We have to consider the sales practices and risk assessment procedures. If these are commercial secrets, all laws regulating these acts will be useless and can be scrapped, right? We have made the elaborate regulatory legislation to regulate such acts, which are precisely sales practices and the risk assessment procedures. Why can an investigation not be conducted when something has gone wrong? What is the purpose of the law?

President, the most absurd argument and the biggest humiliation to Hong Kong people and the Legislative Council is that once an investigation is launched the work of compensation will be slowed down. Let us examine our conscience, are the banks charities? No, they aren't. They make compensations not because they have sympathy, but because they are legally required to shoulder responsibilities of making full compensations.

If this Council finds it necessary to thoroughly investigate the incident, the banks have similar legal responsibilities to submit evidence. People are not able to make head or tail of their shirking the legal responsibilities for the latter under the pretext that they have legal responsibilities for the former. This would have insulted the wisdom of Hong Kong people.

It is a great pity that Dr David LI has not listened to our debate. Even though he is a representative of the sector, it does not mean that he can make such insulting remarks.

President, I have stated very clearly a short while ago that I definitely have not heard or sensed any convincing reasons for not invoking the Legislative Council (Powers and Privileges) Ordinance. Nonetheless, I must say that I am very much astonished by the remarks made by Mrs Regina IP earlier. Mrs Regina IP objects to this Council exercising the powers because she believes this cannot solve the problem. She thinks that the Government and the financial institutions should jointly establish a fund for solving the problem, and each of them should meet half of the funding.

President, I may not have grasped her points fully and I have just given a rough account of her suggestion. I will apologize to her if I have missed anything. But, President, there is basically something wrong with her suggestion. If the banks have not violated the rules in marketing high-risk products, why do taxpayers have to pay out of their pockets to make up for their



investment failures? What are the reasons? Conversely, if the banks have violated the rules in marketing high-risk products, why does this Council have to ask the Government to make taxpayers assume responsibilities for the mistakes made by the banks? These are the legal responsibilities of the banks. In other words, regardless of whether the banks have violated the rules, we can certainly not use taxpayers' money for this purpose, and we can also not use this as an excuse for opposing today's motion. This would be putting the cart before the horse, and attending to trifles to the neglect of essentials.

President, these are not valid reasons, and I call upon Honourable colleagues who have been elected not long ago to give their electors an account. Honourable Members are duty-bound to conduct a thorough investigation into the incident. Thank you, President.

**DR LAM TAI-FAI** (in Cantonese): President, I would like to make a declaration of interest again before I go on to speak. I do not hold any Lehman Brothers minibonds, nor have I directly bought Lehman Brothers-related investment products. But I know from the private investment consultant of my bank that my investments are partly related to the Lehman Brothers Holdings Inc. (Lehman Brothers).

Lehman Brothers filed a petition for bankruptcy in mid September, and it was later disclosed that many Hong Kong people had suffered losses overnight without any indications beforehand. A lot of victims could not assign themselves to it and they believed that their losses were caused by the sales malpractices of the banks. They were intentionally misled when they bought these products, thus wrongly investing in these high-risk products which caused them losses.

This Council quickly responded in the middle of last month and held a special meeting to listen to the explanations given by government officials and the banks, and set up a Subcommittee to investigate into the incident. I clearly expressed my views and sincerely advised at that time that officials and the banks should take the initiative to give an account of the progress of the investigation. There should be an explicit timetable, faults should be admitted and responsibilities should be borne. Those concerned should boldly face up to the situation so as to effectively solve this problem.

Unfortunately, good advice jars on the ear and almost all the officials and bank representatives gave ambiguous replies, not providing any timetable. They

have only said that they would work as quickly as possible. As I have stated, they would not be able to meet the demands and expectations of the public and the victims. As a result, an incident about financial investments has evolved into a social and political incident; and a No. 1 alarm fire has turned into a No. 3 alarm fire.

According to my understanding, the victims are not only asking for compensations, they also wish to affix the responsibilities of individuals. Some of them even think that it would be best if some officials would step down for only then would their anger be pacified. In the light of the developments to date, people and some Members think that only invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) would immediately compel the Government and the banks to address the problem squarely, speed up the search for effective solutions and improve the supervisory system. If officials have listened to my views and advice and if there is a specific timetable and schedule for the completion of investigation, I believe we would not have such a situation today. I can say that officials have only themselves to blame.

In connection with the Lehman Brothers incident, it is undeniable that the sales practices of some of the banks may be problematic, and there may be loopholes in the Government's regulation and approval of these products. The banks and regulatory bodies cannot escape the blame. It gives no cause for criticism when people and the victims ask this Council to invoke the Ordinance to find out the truth and affix responsibilities.

Honestly, I hope to vote on this motion as soon as possible today because many victims have been busy running about, telling us their difficulties in the past two weeks. Even Mr KAM Nai-wai who is not present at the moment has approached me about these victims several times.

Recently, the banks have not only placed advertisements but also released information in private, stating that the buy-back proposals that they are prepared to make may be put off or suspended if the Legislative Council invokes the power and starts holding hearings. According to the banks, if the negotiation process is impeded and put off, it may affect the residual value of the minibonds, and the victims may ultimately get less than they expected. If the motion on invoking the Ordinance is passed, I believe the banks and clients alike would not wish to

reach agreements before this Council passes a judgment in order not to let any irreversible changes bring the whole issue to a standstill. I think a buy-back of the minibonds will not be realized in the foreseeable future.

I do not agree with the comments made by the banks, that they have to deploy a large number of staff to make preparations if the management is summoned, and when some staff are deployed to take up other duties and the management is subject to heavier mental pressure, it would be impossible for them to make every effort to solve the minibond problem. I wish the bankers would understand that this is the internal problem of the banks to be solved on their own. This is not a factor for consideration when Members decide whether they will indicate support or not. Nor is it an excuse for the banks not tackling the buy-back issue early.

The Financial Secretary, Mr John TSANG, has written in his blog that an investigation into the Lehman Brothers incident by the Legislative Council by invoking the Ordinance may render the situation dark and gloomy. I do not understand why our investigation will make the situation dark and gloomy, but I agree to his remark that the recovery of the present value of the investors' investments may not be realized in the foreseeable future. I trust that his remark will most probably be true as there would be great fluctuations in the stock market. According to an official, the impacts of the financial tsunami will continue to spread and finance and monetary officials should summon up their energy for meeting the contingency, but they will be less focused if they have to fight on two sides, and this will not help the overall situation. This I cannot agree more, but I do not agree to their lobbying Members to vote against the motion on this ground. This will only give us an impression that government officials are incapable of tackling the crisis. Now that the Government has full knowledge of the crisis, it should increase the manpower and make plans for fighting the battle rather than associating this Ordinance with the crisis.

Just like a lot of Members, the Government has commented that the investigation will affect the business environment and reputation of Hong Kong. If it is proven upon investigation that the supervisory mechanism is sound and only Lehman Brothers has problems, it will highlight the point that we have a sound business environment and reputation. Not conducting an investigation may not necessarily be good for our reputation for it may conversely cast a shadow on the whole incident.

I would like to point out once again that I hope we can vote on this motion soon. I know that the victims, the Government, the banks and all Members are under immense pressure. The victims have initiated a new round of email sending. I was working on the Mainland the past two days but my blackberry mailbox and my 3G iphone were jammed by their emails. I could not do what I was supposed to do and I could not communicate with others. I am also under great pressure and I really hope that the incident would be settled as quickly as possible.

After reading their emails and faxes, I think that supporting this motion will be doing something righteous. However, those who will vote against the motion are not necessarily doing something evil; we only have different viewpoints and perspectives, not that there is any dichotomy in this. Yet, I am sure about one point, that is, 60 Honourable Members care about assisting the Lehman Brothers victims in expeditiously solving the problem. This is the paramount reason why I have become a member of the Subcommittee to conduct an investigation.

Many think that invoking the Ordinance may not be the best or only method. I would like to ask the Lehman Brothers victims again if they know the merits and demerits of this Council invoking the Ordinance. Do they know that they may have to pay a price for seeking justice because there will be effects on the compensation process, they may get less compensation and officials may not have to step down as they have expected? The outcome may be disappointing. Are the victims prepared to and can they bear responsibilities for the possible consequences?

If the victims are clear about the consequences, pros and cons, and if they are prepared to bear responsibilities for the possibly unfavourable consequences, but they still think that invoking the Ordinance will be the best way to help them, I will not raise any objection. I earnestly wish to give them help so long as they consider that this is the best option. Of course, I will use the "Sword of Imperial Sanction" in a very sensible way.

I so submit, President.

**MR IP WAI-MING** (in Cantonese): President, first of all, on behalf of four Honourable colleagues from the Hong Kong Federation of Trade Unions (FTU), I support that the Subcommittee to Study Issues Arising from Lehman

Brothers-related Minibonds and Structured Financial Products (the Subcommittee) be authorized to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance).

(Applause from the public gallery)

**PRESIDENT** (in Cantonese): People on the public gallery, I am saying for the last time that I have to ask you to leave if you make any more noise again.

**MR IP WAI-MING** (in Cantonese): President, why does the FTU support the Subcommittee exercising the powers conferred by the Ordinance? We met with some victims not long ago and I have talked to a few of them just now. There are lots of questions in our minds and Honourable colleagues speaking before me have also raised similar questions.

Why do we support the motion? We would like to know in connection with the incident whether there are problems with the existing system. Why did the SFC and the HKMA allow the retail sale and marketing of these products by the banks? Why did they allow the sale of these products to clients who are elderly or who have a low level of education? We really want to find out the reasons.

We do not intend to spy into the privacy or other affairs of other people and we only want to know the actual approval process of such products. Why was the sale of such products allowed? Why were these high-risk products approved? As far as we know, these products cannot be bought in the United States. Why they are only sold in Hong Kong? We doubt if the marketing banks understood the products they were selling. The banks have all along claimed that they would look after clients' interests while increasing turnover. We would like to know if that is true. Have the banks blindly believed in the so-called international ratings and recklessly sold these products to the victims for commissions?

On the other hand, in respect of the whole management process and the systematic selling process, we would also like to find out if the bank management

has exerted pressure on front-line employees to sell the products to clients and even the faithful elderly clients. Are there problems with their sales practices? In some cases, when their fixed deposits were about to mature, elderly people who used to put their money in fixed deposits were lobbied by the banks to buy these products. Why did the banks do so? Why did the banks allow these elderly people to buy these products with all their money when they already knew that these people only had hundreds of thousands of dollars? Why did they not tell these people that there would be risks or advise them to keep some cash? We have found a multitude of problems after contacting the victims and handling various cases. We have asked what actually happened, but we have not been given any answers to date.

At a meeting of the House Committee sometime ago, we found that the banks and the regulatory bodies, the SFC and the HKMA, were shirking responsibilities onto one another. Out of the expectation of the general public, the representatives even kept quiet and did not say a word. We also want to clarify if the arrangement for both the SFC and the HKMA to have roles in regulating the banks may have caused the Lehman Brothers incident. This falls within the scope of the relevant investigation.

The FTU supports setting up the Subcommittee and authorizing the Subcommittee to exercise the powers conferred by the Ordinance because we wish to find answers to the questions just mentioned by me and the queries of other Honourable colleagues. I also hope that improvements will be made to the relevant systems to prevent and avoid the recurrence of similar cases and to do Lehman Brothers victims justice.

Lastly, I wish to add that I agree with the remark just made by Dr LAM Tai-fai, and I hope that the victims would act reasonably when asking us to do them justice. We fully support the victims, but they should be careful about their methods lest others should be upset. The mailboxes of a few Honourable colleagues present have been paralysed because they have accumulated too many emails. I hope those concerned would note things like that. They have already affected other people asking us for help because we may not be able to help those people at once.

With these remarks, President, I support the motion.

**MR ALBERT HO** (in Cantonese): President, luckily I do not hold any Lehman Brothers-related products but I have to declare an interest. From today onwards until a certain time in the future, I am going to represent a group of victims holding Lehman Brothers-products in seeking compensation from the banks. I think I should disclose this capacity and the President can make a ruling as to whether this would affect my right to vote. Anyway, I will continue with this work and I would like to do a good job of it.

President, records show that, or as far as I can recall, the Government has never supported any motion on invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) for any investigation into incidents involving the Government before. The Government was evasive when senior officials or certain matters were involved. It was very simple; the Government either did not directly admit responsibilities or it hoped that the significance would be played down with the passage of time. Unlike what it did in the past, the Government has not set up a special committee to investigate into the Lehman Brothers incident this time. As Honourable colleagues may recall, the Government appointed a three-member team to conduct an investigation in connection with the substandard-piling problems in public housing and the team then produced a report. Also, an investigation was conducted by experts in regard to the SARS incident. However, the reports were not accepted by the Legislative Council and the public. I am not saying that the reports were totally incredible or unreliable, but the public insisted on the principle that the Government itself should not conduct investigations to affix the responsibilities of government officials and into the faults in its systems. Since the investigations conducted by the Government itself lacked credibility, they should be conducted by independent bodies or bodies having credibility.

People have trust in this Council and our investigations, and they attached importance to the reports made by this Council when the Powers and Privileges Ordinance were invoked in the past. Our credibility is also recognized.

President, the Lehman Brothers incident has extensive and far-reaching impacts on tens of thousands of victims and their families. From this perspective, we only need a little more political wisdom (if we have it) to realize that we cannot resist a comprehensive investigation that the public considered essential. It is irresistible because all of us have reasons and the rights to find out all the facts and the truth. Yet, this is just the first step; after we have found

out the truth, we can make constructive and helpful suggestions to improve the whole supervisory system, the previous regulatory policies and measures currently in place.

The investigation will inevitably involve some officials, organizations or criticisms of individuals but nothing else because the Legislative Council does not have the power to impose sanctions or punishments. But this is an important step, for we do not know all the facts, conduct reviews, make suggestions or criticisms, we cannot learn a lesson from mistakes or painful mistakes, and we cannot improve our systems and policies or turn over a new leaf. This argument is very simple.

Therefore, I was very astonished to note the comment made by the Secretary not long ago, that this would affect our reputation as a financial centre, even though the Secretary has not said so today. That saying is most astonishing. Honourable colleagues have made similar remarks, so I am not going to make any repetition. We all know that all governments and officials make mistakes, but people would only doubt their sincerity if they intend to sweep their mistakes and the facts under the carpet. People will also think that those concerned do not want to face up to the facts or make changes.

This sort of hearings are frequently held all over the world and we all know that the largest number of hearings have been held in the United States. Why does Hong Kong have to be evasive? Why does Hong Kong not have the courage? Some have said that this will be a shame for Hong Kong. President, a very shameful incident has already happened. Many advanced countries will not sell these complicated products to ordinary people and lots of such products have only been sold in Hong Kong. There are tens of thousands of victims who have lost more than \$10 billion overnight. Many investors have lost the money they earned by hard toil and some have lost their funeral money.

Another shameful thing is that the products are sold to many investors aged over 60; some of them are even aged 70 or 80; they are illiterate and they have not made any investments throughout their lives. They have fallen into the trap because the banks constantly lobbied them, pulled their sleeves and coaxed them. Many say that these victims are greedy and they want higher interests. Is there anything wrong if they only want to have a higher investment return? Can we blame a person who has been robbed on the street for wearing better-looking clothes and more expensive jewellery? Can I be blamed for being greedy when I have bought a less expensive product which has turned out to be a fake?



President, we would be putting the cart before the horse in saying so. We are facing a humiliating problem; there are problems with the systems as well as misleading, even fraudulent acts. It is really a shame on Hong Kong.

President, third, throughout the history of Hong Kong, there has never been any incident that induced complaints against banks by more than 10 000 people. The HKMA, the SFC and the Consumer Council have almost been "turned up side down" now. All their employees are under immense pressure and they have to work round the clock to handle the complaints. They have to bear responsibilities and work very hard so that they will not let Hong Kong people down and they will receive salaries in a dignified way. How could the banks tell us that they could not handle too many matters because of the shortage of resources? They should be ashamed in making that statement. I believe the Secretary understands best the resource issue. The resources of even the smallest bank among the banks under complaint are dozens of times more than those of the Legislative Council. This Council not only handles one thing at a time, and we will deal with a motion on another investigation very soon. We handle a lot of important issues with implications on our laws every day. Despite the funding problems, we have to do such work all the same. We cannot complain, nor can we say we do not have enough resources and use this as an excuse to shirk our responsibility. Therefore, I ask the banks to think about their responsibilities. Regarding the sale of products in the Lehman Brothers incident, the banks may have to deal with many claims for compensation and investors' losses. Nevertheless, the banks should not forget about the wonderful time several years ago when they had considerable profits and their profits grew by more than 30% per annum. How did those money come about? The money was earned by ordinary people by hard toil, their funeral money or pension. The banks have made money by charging interests and selling these products, how can they tell us that they do not have the resources to work in response to our investigation?

President, a lot of the reasons cited are laughable, for example, the claim that the compensation process would be delayed. Does it mean that the banks will make compensations very quickly if we do not conduct an investigation? President, experience tells me that it will not be the case. Concerning the latest batch of compensation cases, if we were not filing a writ in the Court, the banks would not have asked us to hold on for two more days to facilitate their reaching a settlement agreement with and making compensation to each and every client. The banks will not make compensations if they are not pressurized. If we do not put pressure on the banks and help the victims find out the truth, the banks will not make compensations, the Government will not examine itself, and the

regulatory bodies will not admit their faults. This unfortunately reveals the laziness of human beings. We should not listen to what they say, and we should insist that compensations be made in cases where they are due. There are going to be batches and batches of prosecution cases, and the HKMA and the SFC will have to conduct batches and batches of investigations. There can be no evasion of these responsibilities.

President, I am a bit disappointed that two famous and very professional newspapers in Hong Kong that used to make high standard financial reports have strongly objected to our conducting an investigation on this occasion. It does not matter because they may have lots of reasons for raising objections. Nonetheless, it is astonishing because the reasons cited by them are not ordinary reasons that we have expected. For example, the *Hong Kong Economic Times* has made very outrageous remarks; certainly, I do not want my response to be swayed by personal feelings. It is stated that conducting an investigation would affect our reputation as a financial centre and although Europe and the United States conduct investigations very often, the Legislative Council cannot do so because we have all along been politicizing issues extensively, is not practical or realistic, and lacks respect for the others. In other words, the Legislative Council cannot conduct an investigation while all others can because we are not up to standard, we know only playing politics and we do not respect the others. We do not need to say anything if that is the case. Then, that editorial needs not be so lengthy for it only needs to say that the 60 Legislative Council Members are incapable and not up to standard, that they are unprofessional people just playing politics, and they should give way to the others. How can a financial newspaper make such remarks and show contempt of a legislature elected by the people?

The *Hong Kong Economic Journal* has also made an astonishing report and it appears they have not done the homework well. It is reported that the objectives of our investigation have not been clearly stated. Yet, we have said many times that we want to examine the whole system and risk management in connection with the incident. We also wish to find out why the top-level finance and monetary officials of the Government have allowed many investment banks to absorb funds in Hong Kong without regulating them. Why did the disclosure-based regulatory bodies approve these misleading documents that fail to duly explain the risks involved? Why did the HKMA fail to properly regulate the banks despite its powers? Hence, many banks are in trouble. Have banks followed their codes of practice and trained their employees well? Why have

such matters remained unclear? They should have been clear to everybody. The most outrageous paragraph is the comment that the Government and the banks have definitely made mistakes and the Government should produce a report to admit its mistakes and condemn the banks. I wonder how the comment can be justified. The problem now is that the Government has not admitted its mistakes. Thus, we need to conduct an investigation to examine issues that have not been accounted for. If people object to our conducting an investigation on these grounds, it would have been better if they have not given any reasons. They have exposed in giving these reasons that they do not know or understand the whole issue. They have decided upon a standpoint and a conclusion before presenting their specious arguments in a few thousand words. That is really disappointing. Thank you, President.

**DR PAN PEY-CHYOU** (in Cantonese): President, the community has divergent views about whether or not the Legislative Council Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee) should be authorized to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance). In this connection, Honourable colleagues from the Hong Kong Federation of Trade Unions (FTU) have listened to the views and remarks of Lehman Brothers minibond victims (Lehman Brothers victims), the relevant government officials, bankers and employees from the banking sector.

Recently, quite a lot of Lehman Brothers victims expressed through various channels their strong wish that Legislative Council Members would authorize the Subcommittee to exercise the powers conferred to conduct a thorough investigation into the incident. They think that this would give the banks a clear message and make them feel the pressure and realize that ordinary people are not to be bullied. They believe this would speed up the handling of complaints and they hope that the banks would offer more favourable terms so that their losses would be reduced. Although some victims think that so doing will not bring them any substantive benefits, they can at least clarify what has happened and be done justice. I fully understand their aspirations which are most reasonable.

However, some bankers and government officials have raised strong objections to our conducting an investigation. They think that the Subcommittee would set a very bad precedent if it was given the power to summon witnesses,

and the finance sector will then reassess the political risks of business operation in Hong Kong, hence affecting our position as an international financial centre. The sector has stated outright that an investigation will make it hard for the banks which have to concurrently attend to other things. This will slow down the buy-back, conciliation and arbitration processes, as well as the procedures for making compensations to clients who have suffered losses due to sales malpractices. We have contacted trade union members from the banking sector who have told us that they are under immense pressure and are worried that the Government and the bankers pressurized by an investigation would shirk responsibilities. These trade union members are in the hopeless situation of possible layoffs and being made scapegoats. They have to put up with the grievances and anger of the victims and the community's criticisms.

In the light of the above considerations by various parties, we think that there are no winners and all the parties are victims in this incident. The considerations and worries of all the parties should be taken seriously and understood. We do not think that exercising the powers conferred by the Ordinance would have a hundred merits, but we cannot help asking which method would comply with the greatest interests of 7 million Hong Kong people when we consider these complicated issues with extensive impacts. What is the crux of the problem? What are the vital interests?

An Honourable colleague pointed out earlier that the financial tsunami had originated from the United States, and its source is greed, the endless pursuit of profits, the enterprises' performance, and the *laissez-faire* supervisory system. As a result, there was an overflow of structured investment products and a bigger and bigger financial bubble which finally went out of hand. It is not known when the crisis will come to an end and how we are going to tide over the difficulties. The effects of the financial tsunami have gradually appeared before our eyes, and all countries in the world have spared no efforts to deal with the catastrophes.

When the whole world is working together to resist the financial tsunami, the United States Government and the Wall Street financial centre have drawn lessons from the bitter experience. They intend to radically reform the financial system and the investment banks that have been all-powerful on Wall Street for dozens of years and even a hundred years. Some of them have closed down like Lehman Brothers and some others like Morgan Stanley have changed into commercial banks. People of insight from various sectors in the United States are looking for the roots of this big economic disaster.

At a hearing of the United States Congress on 23 October, Former Federal Reserve Chairman Alan GREENSPAN admitted for the first time that he had mistakenly opposed tougher regulation of derivatives when he was in office, and he also felt the current economic situation in the United States heartrending.

What have we learnt from what happened in the United States? We have learnt that we must face up to failures and find out the roots of problems in order to make constant progress. We should also propose a direction of reform and take the right steps before we can walk out of failures towards success. As responsible people, we should follow this right path which will be conducive to maintaining our position as an international financial centre.

Coming back to Hong Kong, Mr IP Wai-ming has just raised a lot of questions on the sale of minibonds. We have to look for the causes of the problems and make improvements; we have to realize and admit our mistakes before the status of Hong Kong as an international financial centre can be consolidated. On the contrary, if we cover up the problems and sweep them under the carpet as a number of Honourable colleagues have drawn the analogy, it would not be conducive to the healthy development and growth of the finance sector.

In fact, Hong Kong has closely followed the wave of stock speculation promoted by the Wall Street all along. The SFC has only asked the issuers to disclose product information, but it has not restricted the sale of products. The HKMA responsible for regulating the situation and practices of banks has allowed the sale of these products by commercial banks. To a certain extent, there is a casual relationship between the policies of these two bodies and the outbreak of the Lehman Brothers incident. How effective would it be if this Council does not conduct an investigation into the incident and allows these regulatory bodies to investigate themselves? I believe Members must have a pretty good idea of that.

In making that statement, we do not intend to play down the achievements and work done by the two regulatory bodies. Considering the current situation of Hong Kong, we do not have a subprime mortgage problem, we have not securitized subprime mortgage loans and we have not packaged the bad assets as good assets for sale in Hong Kong. Our banks have so far been robust despite the blow dealt by the financial tsunami; the credit should go to the regulatory bodies which have made great efforts as gatekeepers.

However, the high-risk structured products of Lehman Brothers were treated as robust bonds and sold at bank counters. A large number of conventional bank customers have been misled, and many conservative investors have unknowingly taken part and lost money in high-risk investment gambling inadvertently. Certainly, this shows that our regulatory system has room for improvement.

For all these reasons, it is essential to authorize the Subcommittee to conduct an investigation and it would demonstrate that the Legislative Council takes responsibilities for Hong Kong people. We certainly understand that the powers conferred by the Ordinance is a double-edged sword that is extremely sharp, but we have confidence and we trust that Honourable colleagues taking part in the Subcommittee's work will exercise the powers very carefully to facilitate the smooth conduct of the investigation without upsetting the normal workings of the community.

With these remarks, President, I support the motion.

**MR CHIM PUI-CHUNG** (in Cantonese): President, our debate today on the Legislative Council (Powers and Privileges) Ordinance will only have two outcomes: the motion will either be passed or negated.

Let us first discuss what would happen if the motion is negated. First of all, the banking sector is going to place an advertisement in the newspapers tomorrow expressing their gratitude for Honourable Members' brilliance, because of which the motion is not passed and the reputation of Hong Kong as a global financial centre is upheld. Second, government officials and Mr Joseph YAM in particular will feel relieved because his empire would be maintained for 10 more years. Although some Members have recently expressed appreciation of Mr YAM and praised him for his capabilities, he should bear responsibilities for the whole incident. I have also talked to the Secretary who has only been in office for two years. He used to be an academic and an armchair strategist, and he has not witnessed such an incident before. The Secretary would like to do more and give more advice but academics who tend to make theoretical comments do not know the actual situation very well. Even if he would like to do more, I wonder if he can. Anyway, I personally appreciate the Secretary's intention and mindset.

Second, what would happen if the motion is passed today? In fact, the motion will certainly be passed because many Honourable Members will trim their sails and some Honourable colleagues have all along wanted to earn political capital. Even though the outcome is unknown, I can predict that 27 Members returned by geographical constituencies through direct elections and 18 to 19 Members returned by functional constituencies will support the motion. All of them are now waiting and, when it has become *fait accompli*, they will show their support and say that they have done something for their electors. Besides Honourable Members with affiliation, trade associations are also affected by their affiliation because the votes were cast for the trade associations but not the Honourable Members concerned, and whoever the trade associations strongly supported have become Honourable Members.

Honourable Members should have conscience and the intuitive ability to know right or wrong. Why do I think the royalists are not at fault? If the monarch supported by the royalists has the people in mind, it is perfectly all right for the monarch to remain in position; the monarch would be fine and his supporters would become public officers. But the monarch should not remain in position if he has violated people's interests. If an Honourable Member is fair and impartial in the face of pressure, he would be supported by the trade or the public.

(A person on the public gallery clapped his hands, and he left the Chamber under the escort of security staff soon afterwards)

President, it has been revealed that the whole incident is caused by the deviations in government policies. The Government's policies intend to make Hong Kong a world-class financial centre. It is not wrong for it to have such an idea, ambition and confidence. Hong Kong no longer has a manufacturing-based economy as it did in the 1950s. As we all know, there is a world of difference in terms of land, wages and all ancillary facilities between the manufacturing industry in Hong Kong and that on the Mainland. Nevertheless, Hong Kong people are highly adaptable and leveraging on the Mainland, Hong Kong people can engage themselves globally; I know that some Hong Kong people have achieved that. Thus, there is actually nothing wrong in focusing on the financial industry under such circumstances.

Although there is nothing wrong, there are deviations in government policies because the Government wanted to achieve quick results and overlooked the force of the United States in particular. The so-called global stock market crash of 1987 has taught us a very good lesson. The Asian financial turmoil in 1997 has exposed the fact that they have taken liberties in a decade. A massacre was basically brewing in 2007. Why did it take place a year later? There was a resisting force on the Mainland, which made it necessary for the financial bodies to handle matters carefully.

We should understand that the force is not a charitable fund but a "massacre fund". They believe that the weak are the prey of the strong and they "prey on" others regardless of whether the market situation is favourable or unfavourable. Besides the professors who are only armchair strategists as I have just described, who else in Hong Kong would know that there is a foreign force brewing? In fact, Hong Kong people are giving their hard earned money away to other regions because they always think that world-class financial bodies and brokers are correct, and local Chinese brokers ..... Mr Joseph YAM personally told me (he can certainly deny it) that I should no longer take good care of local retail investors or small brokers for they would be eliminated. This sort of mindset ..... Of course, he should understand me because I relied on these people who voted for me but ..... I also understand the actual situation; a complementary local force is needed even if foreign investments from all parts of the world have been attracted to Hong Kong. Putting it rudely, the cheater would only be interested if people are willing to be cheated.

The declaration made by the banks has proven that the bankers still consider themselves as superior. It is undeniable that various sectors in Hong Kong including me have close links with banks. Even though I do not owe banks any money, I have deposits in banks and I cannot put all the cash at home. So, there are inseparable links between Hong Kong people and the banks. Yet, the banks have unwittingly been spoiled by the HKMA, believing that they are indispensable. The SAR Government should particularly consider after this incident if it needs to issue new bank licences to enhance competition because there have been acquisitions and mergers of many small banks. Actually, to enhance the competitiveness of a region, this is an essential course of action. I hope the Secretary would hear me though it may not be useful even if he hears me.



President, I know that the SFC was responsible for the vetting and approval of the products involved in the minibond incident. Honourable colleagues have also asked for the thorough disclosure of the details of the approval. Was there sufficient disclosure? As far as I know, the SFC has grown stronger because of taxpayers' money and the force of the market. Has it fulfilled its responsibility? We would like to know that. We have to find out if the leaflets on the products launched are misleading and if the SFC has fulfilled its responsibility.

According to the SFC, the buyers should read the leaflets, other important information and prospectus. Do the contents of the prospectus serve as adequate reference for investors? Are Chinese and English versions available? The Secretary and the Government should pay attention to these points. Meanwhile, are the investigations into the capacity of the issuers and sponsors sufficient? The SFC cannot shirk its responsibilities in these aspects. As regards the capacity of an intermediary, as far as I know, when the stock exchanges were merged in 2002 following the enactment of the Securities and Futures Bill (described by some in the securities industry as the draconian securities law), the securities departments of bank branches were not under the jurisdiction of the SFC. Hence, this mode of operation has all along been criticized by industry players as having "two regulatory authorities for one industry". The reasons I have just given illustrate that the SFC needs to give a detailed account to help people from all sectors understand this incident better.

Let us turn to the HKMA. The HKMA usurped the power of the SFC. I was not a Legislative Council Member in 2002, but a lot of Honourable colleagues had taken part in the scrutiny of the Securities and Futures Bill at that time. The HKMA had undertaken and provided a safeguard to Honourable colleagues who took part in the discussions in the hope that the HKMA would be given the authority to regulate the securities departments of banks. It has the authority now but we can see how skittish Mr YAM was in his remarks, and I would like to use the common expression "bigheaded" to describe him. He even told us that he had already foreseen that there would be problems. If so, he should have regulated banks and caught banks at fault, and he should have even stopped their vicious acts. If he tells us that he does not have the regulatory authority, what is the purpose of his office? He should basically not have usurped that power. Furthermore, he was so cunning that he referred more than 70 cases to the SFC and then told the whole world that they were not within his terms of reference. He told everybody that the SFC but not the HKMA was the

regulatory body. Mr YAM is "great"; no wonder he has an annual salary of \$10 million. He should be given \$100 million a year instead! How capable he is! As the spearhead of our discussions is directed at the Secretary, we have forgotten about Mr YAM who is sitting at a corner. That is the way of a person of excellence; it is worth learning and criticizing.

All along, has Mr YAM been well-versed in the regulation of banks by the HKMA, especially their roles as intermediaries? If he has not or if he has overlooked this duty, it is basically dereliction of duty on his part. How can he make excuses and shirk responsibilities? Soon after the Chief Executive had said that Mr YAM should retire the following year, the Chief Executive nearly had to apologize to him by placing an advertisement in newspapers the following day. Where did the pressure come from? I think that criticisms should be made even if the Central Government had exerted pressure. Of course, nobody in Hong Kong dare criticize the Government, but a certain party must have put pressure on the Chief Executive. I know the Chief Executive; there must be a fairly powerful force behind his action. What has happened is inescapable. As I have just said, who dare guarantee that a certain person is not a foreign force planted in Hong Kong? This deserves careful assessment and review.

As far as I understand it, the HKMA only started investigating the incident when the banks disclosed that there were mistakes. This adequately proves that the HKMA has not paid attention to the operation of the banks. According to the Government, a review would be conducted anew and they would heed good advice and consider how the problem could be solved. Actually, the parties concerned should have discussions on the significant responsibilities to be borne by the HKMA.

I am going to discuss the responsibilities of the banks. Who had the banks contacted when they became agents for the sale of these products called minibonds? What were the conditions? Could a bank as an intermediary earn 4% to 5% or as much as over 10%? The banks owe the community an explanation. What were the relations between the banks and the sponsors and issuers? Were they joint agents or was there a single agent? How did the bank employees contact the victims? The victims should be called creditors because they were not suffering, but they were creditors who should tell the banks how to compensate their losses. Had the bank employees violated the relevant ordinance when they made the cold calls? Why has the Government not taken

any actions? How is it going to give the community an account? Did the bank employees know that the clients were elderly people aged 65? Did they know if the clients had investment experience? All this calls for a review.

Did the clients of the banks know the meaning of 100% capital preservation? The Chief Executive has said that these products are basically not bonds. Did the banks know that these were bonds or not? How could it be proved that they were bonds? If they were not bonds, the banks had misled the clients and they had even intentionally taken a fraudulent device, which would involve criminality. Did the banks have experience in bearing the risks involved when selling the product to their clients? Certainly, some clients who took the initiative to buy the product from the banks should know what they were doing. For instance, if a client asks a broker to buy HSBC shares on his behalf, he cannot blame the broker in case the HSBC runs into problems.

President, I am sure the committee set up by this Council would faithfully fulfil its duty and exert its best to handle the case. It is my hope that those concerned would not expect too much from us, but we will exert our utmost to fulfil our duties for we are duty-bound to meet the demands of the community.

**MR JEFFREY LAM** (in Cantonese): President, I have met with quite a lot of Lehman Brothers victims, and they have conveyed to me their greatest hope that Honourable Members would help them recover most of their capital soon in order to minimize their losses. As I have observed, some of the victims cannot sleep or eat well every day. I have helped them contact the banks by various means in the hope that both parties would reach a settlement and an agreement on compensation or buyback early.

In fact, people from all circles are proactively working in this direction. The Hong Kong Association of Banks (HKAB) has established a task force to follow up the complaints relating to the Lehman Brothers incident, and it is going to submit a detailed buy-back proposal in early December. Individual banks are actively investigating their own cases and reaching settlement agreements with the victims. President, when a group of Lehman Brothers victims and I had a meeting with the senior management of the Bank of China (BOC) last week, we were told that an investigation and arbitration committee had been set up and they would handle the cases involving elderly people aged over 65 and the disadvantaged first.

The senior management of the BOC assured us that they would make full compensations if sales malpractices were proven. In quite a few cases referred by me, both parties are making or have already made settlement arrangements.

The HKMA has referred 96 cases involving sales malpractices to the SFC for further actions, and it has appointed the Hong Kong International Arbitration Centre to propose conciliation to the banks. If conciliation is unsuccessful, the victims can initiate legal proceedings using the Consumer Legal Action Fund of the Consumer Council. President, I would like to point out that there are ways to help the victims seek justice and the community has given a very clear message, that the banks should solve the problems as soon as possible. As the banks also want to maintain their reputation, they are under pressure to handle these complaints expeditiously. Some certainly consider that they are not quick enough. There have been more and more settlement cases and progress has been made. If the Legislative Council invokes the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to conduct an investigation into the Lehman Brothers incident, I am worried that this might slow down the progress of settlement.

President, as I said just now, the most important task at the moment is to help the victims recover the largest amount of capital or compensation soon. Some cases are very urgent because some victims have fallen ill and they are waiting for the money to save their lives. In case this Council holds hearings on the banks, the banks will naturally erect firewalls to protect their commercial secrets, and they may seek considerable legal advice or deploy employees handling Lehman Brothers cases to prepare for their defence in this Council. Will such a situation arise? We do not know. But in that eventuality, I believe it would slow down the whole settlement and buy-back process. I am also worried that, in the course of the relevant procedures in this Council, the legal advice given to the banking sector would lead to changes in the procedures in progress. The victims are tortured by endless waiting day after day, and they think that waiting for another day is far too long already. As we all know, hearings held in this Council take very long and the select committees in the past took very long to handle the relevant matters, and some of them even took more than a year. Taking into account the fact that most Honourable colleagues are not financial professionals, how long are the hearings going to last? We are not at all sure. Lehman Brothers victims may have to wait even longer for solutions because of such hearings, and it would only add to their anxieties.

President, as I have said time and again, given an increasingly volatile market, the value of Lehman Brothers bond collateral would become lower and lower. The banks should buy back the bonds as quickly as possible to allow the victims to recover the largest amounts possible. I am afraid that, the longer the delay, the lower would be the value of currently good collateral. This is the last thing I would like to see.

Some have commented that there are problems with the regulation by the HKMA and the SFC. The HKMA and the SFC are reviewing and improving the existing system because it is essential to remedy the systemic deficiencies and prevent the occurrence of similar incidents. Should we wait until the conclusion of the hearings to know where the problem lies? Some problems are already known now, but should we wait until the conclusion of the hearings to make remedies? I am afraid it might be too late to take actions when we have an outcome from the investigation.

Actually, President, we are now facing the impacts of the financial tsunami and many industries and most Hong Kong people are now in an abyss of suffering. For example, there have recently been a number of layoffs and company closure incidents, making most people and enterprises moan and groan. They would like the Government and the banks to help them survive, develop and remain employed. The Lehman Brothers incident is only the first wave, and there would be the second and third waves. Our economy may continue to worsen and we need more time and manpower to tackle the crisis — an enormous crisis — and to revitalize various trades and industries in Hong Kong, as well as create more job opportunities. In this race against time, should we not strike a balance in resource deployment? If hearings are held in this Council, I believe finance and monetary officials would inevitably have to deploy staff to deal with our investigation. Would this affect their other duties? Would they overlook the crises and challenges to be tackled at the moment?

President, I have great sympathy for these victims, and I will continue to reflect their situation to the banks and urge the banks to reach a settlement with the victims as soon as possible. Nonetheless, can invoking the Ordinance to investigate the Lehman Brothers incident expedite solving the problem? Would it make the problems even more complicated instead such that other challenges might be overlooked? I have lots of worries. I so submit, President.

**MR CHAN KAM-LAM** (in Cantonese): President, in the past two months, thousands of victims in the Lehman Brothers incident have been bustling about. They claimed that they had been misled by banks into mistakenly buying risk-bearing financial products, so they have approached the banks concerned a number of times with a view to recovering their capital. They also went to such organizations as the HKMA and the Consumer Council to lodge complaints, in the hope that they can see justice done. Although the Hong Kong Association of Banks has promised to buy back these Lehman Brothers-related minibond products, at this stage, many victims who have lost hundreds of thousands of dollars and even millions of dollars of their savings can only keep their fingers crossed each day and they are concerned that the prices of the buy-back proposals will be too low, thus making it impossible for them to get back all their capital. On another front, at present, the victims of Lehman Brothers-related ELNs and PPNs still cannot see what lies ahead, so they are feeling all at sea and are gradually losing their patience.

Among the numerous cases received by the DAB, many of them involve elderly people, retirees and members of the public with low education standard and no investment experience. If this group of people were able to understand these Lehman Brothers-related products and bought them willingly, from the viewpoints of common sense and the law, their demands are unjustified. When the banks concerned sold these products, often, they simply exploited their clients' trust in them and evaded the important issues. The common features in their marketing practices are very similar, so it is obvious that this issue involves the overall marketing strategies of these banks.

It has been quite some time since the occurrence of the Lehman Brothers incident. Although individual cases have been resolved with the help of the DAB in the interim, we are concerned that this state of protracted suspense will make the emotional state of the victims in the Lehman Brothers incident deteriorate gradually, thus affecting social harmony.

The banking sector has stressed repeatedly that invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to intervene in this incident would hinder the progress of reaching settlements, and it even threatened to immediately stop the buy-back process, thus bundling the progress in reaching settlements with the investigation into the incident. If the banks concerned think that the victims care only about their capital, they are sorely mistaken. They should understand that apart from caring about their capital, the victims are also

concerned about the regime for the sale of financial products and the responsibility in respect of policymaking. At present, the victims hope very much that the truth can be uncovered. Of course, we know that some of the victims also fully understand that the investigation by the Legislative Council may cause delays to the resolution of the incident. However, so far, we have not heard any voice opposing an investigation. Moreover, the victims have said frequently that this matter could not be settled just by offering compensations and that it is also necessary to face the issue of responsibility squarely.

There is no contradiction between finding out the truth and striving to reach settlements. No matter if the powers conferred by the Ordinance are exercised or not, the banks concerned should still discuss with the victims the claims lodged by the latter as expeditiously as possible. If it is claimed that invoking the Ordinance will hinder the progress of reaching settlements, I believe this is just a deliberate attempt to play down the responsibility that the banks concerned should actively assume at this stage. In using the ground of obstructing settlements as the bargaining chip and in trying to lobby Legislative Council Members, the banking sector has obviously shown itself to have no sincerity in admitting to the fact that a case of misleading exists in this incident. Since this incident has developed to such great proportions, if the Government and the banking sector still regard invoking the Ordinance as a hostile act against the banking sector and seek to avert an investigation by the Legislative Council into the issue of responsibility, such behaviour is unacceptable. Quite the reverse, the banks concerned should take a co-operative attitude, identify the inadequacies together with the Legislative Council in accordance with the Ordinance and strive to resolve this matter at an early date. If sensitive and confidential commercial information is involved, Members of the Legislative Council will certainly handle it very carefully, such that a balance can be struck.

Today, in this legislature, a number of Members have stated clearly that they will not exercise the relevant powers lightly. However, we also agree that in exercising the powers conferred by the Ordinance, the prime principle is that this should not obstruct the progress of reaching settlements. This is very important, and it is also a principle that the DAB has all along insisted on. If the aim of invoking the Ordinance is purely to single out individuals for criticism but the progress in the recovery of capital by the victims is seriously affected as a result, we oppose this. Of course, in the future, we will still insist on this principle and exercise the powers carefully.

Now, the public opinion is very clear. The victims hope that the progress of recovering their capital can be speeded up and at the same time, they also want to find out how this incident came about and evolved. We agree that exercising the powers conferred by the Ordinance will be conducive to meeting these two expectations of the victims. If this incident drags on any further, it will only arouse even greater public discontent and deal an even heavier blow to the governance of the SAR Government.

President, from 6 to 10 November, the DAB polled 702 members of the public on the Lehman Brothers incident to explore the issue of their confidence in the banking sector. Here, I will talk in gist about the results of this survey.

There are 51.4% of the respondents who said that this incident in which a large number of bank clients suffered losses due to the bankruptcy of Lehman Brothers had a serious impact on their confidence in banks. Some 57.2% of members of the public said that in future, they would not let bank employees promote financial and investment products to them anymore. In addition, 65% of the respondents said that banks should not sell such complicated financial and investment products to ordinary members of the public. We also asked several questions concerning the marketing practices of banks and generally, the public think that when bank employees promote investment products, they did not first conduct assessments on the risk that clients can bear. Some 52.8% of the respondents replied in the negative, saying that bank employees had never conducted such risk assessments of them before promoting their banks' financial products to them. As regards whether or not bank employees had fully explained the investment risks that the relevant products involved, 56.5% replied in the negative. They even said that bank employees themselves probably did not have a good understanding of the financial products either. As a result, when banks employees carried out promotion, they did not state clearly the risks that these products entailed or the potential problems. As regards the present disclosures-based regulatory regime in which investors have to assume the responsibility of assessing investment risks, their ability to bear risks and the degree of risk of financial products, 50.4% of the respondents believed that there were problems with the existing system.

President, we can see from the results of this survey that the public are in fact dissatisfied with the existing regulatory regime for Hong Kong as an international financial centre. There is no doubt that the financial industry is a



major pillar of the Hong Kong economy. However, whether or not it can develop healthily and in a sustained manner is an issue that all of us are very concerned about. The lesson of the once-in-a-century financial tsunami is that although many investors have suffered great losses, the positive attitude should be to draw lessons from it and examine our existing system properly.

I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yesterday, some people from Sichuan Province came to Hong Kong to promote investment and I went to their venue to stage a protest. Today marks exactly six months to the day when the serious earthquake took place in Sichuan. As Members all know, I wanted to go to the province to ask what the progress of the investigations into the jerry-built projects was. Half a year has passed but nothing can be found out in any of the cases — or rather, no case has been formally filed. Why do I feel so strongly about this? If, for some reason, we cannot pass the motion to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to investigate the Lehman Brothers incident here today, this situation is no different from that experienced by those people in Sichuan, who perished due to those jerry-built projects and whose grievances have not been addressed.

I heard many people say that if we invoke the Ordinance to conduct an inquiry, there would be many demerits. What demerits are there? There will be delays. Members, long ago, we requested Joseph YAM to do something — he said that he was far-sighted. The HKMA did nothing. Members only have to ask the victims in the Lehman Brothers incident to know what they were told when they contacted the banks concerned. Joseph YAM did nothing. That day, Joseph YAM was criticized by LAM Tai-fai, who queried whether he could deal with one case first. Joseph YAM said that the job could be done within a week. It turned out that what he meant by dealing with a case was not to take any action but to refer the case to the Securities and Futures Commission (SFC) for investigation. What was he talking about? That was a false declaration. He was so bold as to say such a thing in the legislature. If the Ordinance is invoked to conduct an inquiry, would he dare do such a thing? Of course, he would not. One will go to jail for making false declarations. I once staged a demonstration in the public gallery up there, and had the Ordinance been invoked, the offenders would have had to go to jail. See?

Some people claim themselves to be far-sighted ..... I tell you, nowadays, they are still selling those high-risk products. Often, when I was on my way to my office — I forget what bank that was and it was perhaps the Bank of Communications or the China Construction Bank Corporation Limited — an employee would hand me a leaflet and I would withdraw my hand immediately. Buddy, insofar as those products are concerned, it is an offence even just to touch them. It can be seen that those products are still being sold, so why do the authorities not regulate them?

This is also the case with the CITIC Pacific Limited. After so many things had happened to those Lehman Brothers-related minibonds, in which instance did the Government intervene actively? The case involving the CITIC Pacific Limited is simply and purely a case of fraud. Larry YUNG is now having a great time in Beijing. Has he returned to Hong Kong? I wonder if he is being investigated in a specified place and at a specified time. Another person is Henry FAN. He was a former Member of the Executive Council and he was also appointed to the SFC. If they are allowed to continue to play their games here, buddy, this will be in-breeding. In fact, the relationships are extremely intricate and a single person is wearing dozens of hats at a time, so how can we carry out an investigation? If we do not invoke the Ordinance to invite these masters to come here and give evidence, how can we conduct an inquiry? I hope those people can enlighten me on this. If anyone maintains that an investigation can be carried out in the present circumstances, he should be the one to carry out the investigation and I would not want to do it. Let him carry out an investigation and I will look at the report. If the authorities are incapable of carrying out an investigation, why should they hinder us from doing something for the public? Right?

I have pointed out many times that the *Hong Kong Economic Journal* (perhaps I will no longer buy it in the future, although I used to buy it every day) said that such an inquiry was not appropriate. Why? Members of the Legislative Council have to serve the public. At present, debtors or victims can be found throughout Hong Kong. One can say that afflicted people are everywhere and in the future, things may even take a turn for the worse. Why can we not conduct an inquiry? How do we know how many consortia are apparently espousing virtue but are actually rapacious in conduct, gambling on such things as accumulators and decumulators?

Secretary Prof K C CHAN, have you ever assumed responsibility? You represent the Chief Executive. When the Chief Executive looks for you, you look for John TSANG and John TSANG looks for them. I have said that this is "a gang of five": Donald TSANG (I do not know his whereabouts now), John TSANG, K C CHAN, Joseph YAM and Eddy FONG. These people are all beyond the reach of the law. If we exercise our powers and privileges, Donald TSANG surely will not come. Of course, he will exercise his prerogative to avoid doing so but at least, four persons will have to come.

Some people said that we wanted to see heads roll. I dare not. I am only giving them an opportunity to give explanations, so that they will no longer claim themselves to be far-sighted and when we ask them in what way they have been far-sighted, they can no longer say that they do not know. We want to summon the officials responsible for financial affairs because the legislation confers such powers on us. In 2003, the IMF already wrote to them, saying that the situation was very serious. At that time, the issue of off-market trading was not yet mentioned. The authorities replied to it, saying that all was fine because we had a joint committee, that the Government would carry out supervision, the SFC and the HKMA would work together and government officials would also carry out supervision. Buddy, five years have passed and if Joseph YAM were really far-sighted, why had he not spoken up earlier? Why did Prof K C CHAN or his predecessor, Frederick MA, not ask him and say, "Chief Executive, are you really far-sighted? Come on, don't fool me." He just would not do anything if he is not monitored.

Even now, some people still maintain that an inquiry should not be conducted because it would do the victims harm. Perhaps Members can ask the victims what they think. I will state once again that to underwrite the shortfall is not the position of the League of Social Democrats, but that of the DAB. We have never advocated underwriting the shortfall. We only said that we have to hunt the villains and expose all those improper marketing practices and deceptions. If the Ordinance is not invoked, it will be impossible to do so and even initiating proceedings is a dumb thing to do because any legal action will only focus on a specific issue. Of course, we can also take legal action and I have also taken the Government to court frequently. However, the present issue is different and the inquiry we want to conduct is an open one. Can filming be done in the Court? President, filming is not allowed in the Court, nor is taking

photos. One can only draw sketches of the scene, so how can the public at large know what happened in the trial? Moreover, another point is that bankers can buy people over, that is, they can pay "hush money". If the banks think that the situation is serious, they can reach settlements privately with those people and after settlements are reached, prohibit those people from disclosing the reasons, can they not? That will then be a complete black-box operation. Members, I have a black box here. Last time, it was used when I talked about Donald TSANG and a copy of the *Animal Farm* was placed in it. This is a black-box operation, please do not disturb.

President, I know that you are presbyopic, so please look at it carefully. Members, what is in the black box? Let me tell Members. In it, there are these "nether world bank notes". Those people handed over cash in Hong Kong dollars but it was turned into this sort of thing, buddy .....

**MR WONG YUK-MAN** (in Cantonese): Joss money.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... those things called equity-linked notes, that is, bonds, are merely pieces of paper and they cannot be used. Secretary Prof K C CHAN, do you want them? If you were in their shoes, would you be willing to accept them? If you give me \$10,000 right now, I can give you more of these "nether world bank notes" and even a single note carries a value of \$5 million. Do you want them? Secretary, you will not accept them. Even you would not want them, why could our bankers and the issuers of these products force the public to take this sort of things? Not only are there only "nether world bank notes" in this black box, Members, if real gold, silver and cash are put into it, it will only give buyers vouchers like this kind of "nether world bank notes" in return. Do Members want them? Do they still have to guess whether it is worthless or worth \$10?

President, the issue now is that in fact, we want to see what sort of bad things bankers have done, then deal with them in accordance with the law, in accordance with the existing laws of Hong Kong. If we cannot deal with them, the legislation has to be amended. This is the first basis of the inquiry conducted in accordance with the Ordinance. After we have dealt with this, if civil actions

are then taken or some bankers are put into jail, such issues do not concern us. Legislative Council Members are at the service of the public, so what business is it of ours how these banks are dealt with? That is within the ambit of WONG Yan-lung. I think WONG Yan-lung's behaviour also deserves a dressing-down by me. I accompanied the victims in making reports to the police, accusing the banks concerned of deception. The amount of money involved in each case stands at several million dollars, so of course, the Commercial Crime Bureau had to deal with them. Subsequently, we asked the police about the progress of the cases and the reply we got was that all of them had been dealt with and referred to the Secretary for Justice. It seems the Secretary is only concerned about the drug abuse problem among young people. He once said that herein laid the focus of his work and everything he said was related to this area. It looks as though he were the Commissioner for Narcotics. Are these cases being dealt with? The answer was that if there was adequate information, they would be dealt with. Otherwise, they would not be. Even though all the victims had made reports to the police, they could get nowhere. The police have done their work, only that the Secretary is dragging his feet in dealing with them.

The Secretary is very good at dealing with us. Once the Citizens' Radio lost the lawsuit but the judgment was suspended, he applied for an injunction, thus forcing me to commit an act that amounted to contempt of court. He has done whatever should not be done and whatever is unjust. Members can see that government officials are equivocal and bankers are both the police and the thief at the same time. In that case, what can the Hong Kong public hope for? The black box is beginning to work. Apart from banks, President, this is the HKMA, coming out of the black box. Of course, we do not want such an awful HKMA — not any more.

The second one is the Hong Kong Association of Banks. We do not understand what HE Guangbei was talking about, not because of his poor Cantonese. Not matter how he talked, he just maintained that the banks concerned did not have to assume responsibility. Just like Dr David LI, he said that banks did not have to assume responsibility ..... in selling such things and selling fakes, the banks concerned deliberately misled those people. In fact, this can be regarded as fraud, not just misleading marketing practices. Members, is Hong Kong a place upholding the rule of law? The Hong Kong Association of Banks is done for.

In addition, so is the SFC. The SFC said it did not regulate the products and its primary job was that of risk disclosure. Buddy, if I tell you that there is melamine in all these buns, would you still eat them? Since I have disclosed this fact to you, would you still eat them? Buddy, since the SFC has failed and the Department of Justice has also failed, what else can one say? In fact, this is because all these things are in the black box and all that these organizations with so-called credibility could see is only a capital "S" with a vertical stroke, that is, the dollar sign, buddy. Today, a single decision will distinguish human beings from animals. This line comes from a poem written by someone of the last generation. He was put under house arrest by the Communist Party and he was asked to confess to his wrongdoings. He said that a single decision would distinguish human beings from animals, that is, a single decision would tell human beings from animals. Today, if some people continue to regard money as all important, betray their conscience on account of their relationships with companies or their relationships with the rich and powerful, and refrain from casting a vote in support of conducting our own inquiry, they are animals because human beings have conscience.

Members, I will say this again. Will those who do not want to cast a vote in favour please go home to have tea. Do not stand in the way. Do not hinder justice from prevailing. People often say that the Legislative Council is useless. Now, the Legislative Council demands that the Ordinance be invoked to conduct an inquiry, but we are being asked not to do so. What sort of rationale is this? Some people often say that people like me are causing troubles, but what troubles have we caused? All those issues were created by a government that is venal and sides with the rich and powerful. It should not be the victims of the Lehman-Brothers incident who should endure the misery now borne by them. The misery borne by the victims of the Lehman Brothers incident resulted from the collusion between the Government and businesses and money politics. Today, we definitely have to investigate this problem thoroughly. We have to smash the black box and ditch all the black money. We do not want this black box anymore, so we had better crush it.

Members, a single decision will differentiate human beings from animals. The DAB has thought about this matter for a long time and as James TIEN said, it took God six days to create human beings. Now that it said it would change tack, I will "wipe the eyes and wait" (*The buzzer sounded*) .....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up.

**MR LEUNG KWOK-HUNG** (in Cantonese): Do Members know what "wipe the eyes and wait" means? It was WU Zixu .....

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

**DR MARGARET NG** (in Cantonese): President, it is by dint of the discussion on the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) today that we can understand what the powers and the legislation are. It is the powers to uncover the truth.

The Ordinance was passed in 1985. Why was such a course of action taken? President, because at that time, the Sino-British Joint Declaration had been signed and we knew that the future Legislative Council would become a genuinely democratic legislature. Therefore, if we really want to exercise checks and balances on the Government and on the rich and powerful, so that the people who elected these Members can bring their force into play, these Members must have genuine powers and freedom and the most fundamental one is the power to find out the truth.

This being so, why is this power called "powers and privileges"? Why is it described as "privileges"? In fact, "privilege" is a term used by the Lower House of the United Kingdom. It means that when it carries out its work, it is independent, autonomous and free from external intervention. For this reason, it can be said that the word "privilege" is a kind of exemption that protects one's freedom of speech and freedom to debate, as well as the freedom to voice criticisms without being subjected to intervention and threats.

Be it the former Legislative Council before the reunification or the Legislative Council now, it was not, nor is it now, the parliament of a sovereignty, that is, it is not a sovereign parliament. For this reason, the powers and privileges of the Legislative Council at that time had to be protected by legislation. It was for this reason that this piece of legislation was passed at that time and our powers under the Ordinance are subject to greater limitations than those of the parliaments or parliamentary assemblies of other countries.

After the reunification, Articles 73(10), 76, 77 and 78 of the Basic Law all protect these powers and acknowledge that the constitution protects these powers of ours. Moreover, the Standing Committee of the National People's Congress also formally recognizes the Ordinance as part of the legislation in force in Hong Kong. Why is it necessary to put in place this piece of legislation? It is intended to enable us to perform our powers and functions, that is, the power of investigation.

Why do we want to investigate the Lehman Brothers incident this time? What do we want to look into? To me, the objective is very clear, that is, why such high-risk and complicated financial derivatives can be marketed through the banks concerned, which recommended them to their clients, so that even retirees and elderly people turned their safe deposits into high-risk tools? We must demand a clear answer to this question.

It can be said that the Lehman Brothers incident has triggered off a financial catastrophe. When other catastrophes such as the collapse of buildings in Kwun Lung Lau and the SARS outbreak occur, we should also investigate them, particularly when many aspects point to human errors or the failure of the safeguard mechanism, it is all the more necessary to do so. For example, when serious chaos occurred in the airport at Chek Lap Kok, we asked what had actually happened, why things had got into such a terrible mess, so much so that Hong Kong's reputation was affected. For this reason, it was necessary to establish a Select Committee to conduct an inquiry in accordance with the Ordinance.

Before the year 1997 or after it, we have exercised this power of inquiry. Moreover, we have exercised it many times, so why should this Lehman Brothers incident be an exception and why should we not invoke the Ordinance to find out the truth? We can see that this inquiry is actually a trilogy. First, it is necessary to find out the truth about what actually happened, how the banks carried out marketing, what approach was adopted in marketing, what sort of products were involved and what sort of approval were obtained, and so on. Second, it is necessary to ascertain responsibility. I remember that when Mr TAM Yiu-chung was in a press conference, he said something like it was necessary to find out the truth and learn what had happened before it would be possible to ascertain responsibility. Then, the third step is to find solutions and make recommendations, so as to avoid the recurrence of the same kind of incidents in the future.



President, to me, all these questions are only fitting and proper, and I do not even have to be as agitated as Mr LEUNG Kwok-hung. I only think that this is the duty of the Legislative Council, that we have such a duty. In order to enable us to perform our duty, the law and the constitution have conferred these powers on us, so why should the exercise of such powers arouse such a great controversy?

President, some people, including Dr David LI, who represents the banking sector, have given some reasons, saying that firstly, we would set a very bad precedent because in the past, we had only monitored the Government but this time, private companies would be investigated, that doing so would deliver a very bad message. In fact, this time, it is not our intention to focus our investigation on banks. Rather, we want to know how the Lehman Brothers incident happened and in order to find out the truth, it is necessary for banks to co-operate by providing information to us. However, we will not stop here, only that this step is essential to enabling us to examine if there is any problem with regulation or if it is our legal framework that is problematic and in need of change. It is by no means our intention to set a precedent or depart from past practices.

President, in the several select committees of the past, what kind of witnesses did we summon? Some Members also mentioned this earlier. The Select Committee to investigate the SARS outbreak summoned many doctors, people from hospitals, professors in microbiology, and so on. These people all belonged to private organizations, still, we summoned them to attend the hearings and give evidence. In the substandard piling works incidents, apart from government officials, we also invited representatives of the Hong Kong Institute of Architects and construction companies to come here because their evidence had a direct bearing on the inquiry into the incidents. If we want to know the truth, we must summon them. When looking into the fiasco at the airport, not only did we summon the officers of government departments; we even summoned the employees of passenger transport companies. They also belonged to private companies which had entered into contracts with the airport. Why did we want to conduct an inquiry? Because a fiasco had occurred there and prior to this, they also played a part in the design of the airport and in deciding whether it should be commissioned on 6 July. When we wanted to summon them, no one expressed any disagreement.

Why is it that now, after banks have sold so many of those bonds, when we want to learn about the processes of sale and approval, when we want banks to

provide the information and documents, there is such a strong reaction? We have done so in the past and we are doing so now, so this is absolutely an established practice. As regards some people's comment that adopting such an approach in Hong Kong is most inappropriate, Mr CHEUNG Man-kwong also mentioned this just now and Mr LEUNG Kwok-hung also said that the editorial of the *Hong Kong Economic Journal* had infuriated him. Frankly, after reading it, I also felt very angry but I will not cease buying the *Hong Kong Economic Journal* because in it, there was an article entitled "Dr David LI's comments on summoning bank representatives are wrong" written by Dr LIAN Yi-zheng. He gave an explanation on this incident and quoted Dr David LI's viewpoint as saying, "An important function of the Legislative Council is to monitor the Government. It would create a most unwelcome precedent to apply the powers of the Powers and Privileges Ordinance to the private sector." Dr LIAN Yi-zheng is very correct in saying that we cannot just look into the HKMA or the SFC but must extend the probe to the banks concerned before we can see the whole truth and know how the Government should administer the cure according to the illness and be accountable to the public.

As regards overseas examples, just now, Mr CHEUNG Man-kwong also mentioned that in the United States, an inquiry had been made into the MCI WorldCom Corporation, which was in the long-distance call business, and what was the purpose? It was to assist the United States Securities and Exchange Commission in examining how the accounting procedures of listed companies could be improved. In addition, why was it necessary to investigate the scandal relating to the Hewlett-Packard Corporation in 2006? The aim was to examine the tactics used by private detectives to see if such tactics should be outlawed. As we can see, all these are private organizations but the emphasis is always on the roles that the public sector has to play in facing the public.

Before we pass a piece of legislation, often, we would listen to the views of the relevant sectors and we would also hold hearings to listen to the views of members of the public or stakeholders. President, we would do so on every occasion, and very carefully.

If we exercise the powers conferred by the Ordinance this time around, of course, Legislative Council Members have to be very careful because the hearings are conducted openly and the meetings are also open. In the meetings, not only can we observe the demeanor of people who provided the information,

representations and messages, for example, whether officials or the people from the managements of the banks concerned are evasive or co-operative, we can also see how Members perform their duties, whether they have made preparations and whether the questions they ask are fair and impartial.

President, this is the report concerning the inquiry into the departure of Mr LEUNG Ming-yin from his post and this is the verbatim record. At that time, the Chairman was Mr IP Kwok-him. Mr IP Kwok-him said right at the beginning — of course, the Secretariat had done the research and drafted the speech for the Chairman — that the prime concern was fairness and impartiality. When raising questions, we must do so fairly and impartially, then make recommendations according to the factual findings of the inquiry. Only in this way can the responsibility be determined clearly.

Members can also look at the report on the fiasco at the airport, although I have not brought along the verbatim record. All these reports can be found in the library of the Legislative Council. Members only have to read the report to know that the select committees or subcommittees of the Legislative Council would invoke the Ordinance to summon witnesses and obtain documents. When preparing the reports, the choice of words was very fair and prudent. This is definitely where the reputation of the Legislative Council hinges on. President, in the past, on each occasion when the Legislative Council exercised these powers, it also exercised extreme caution and I hope it will also be the same this time.

Therefore, in view of the foregoing points, I really cannot see why the exercise of the powers conferred on us by the Ordinance on this occasion should arouse such a great controversy. Very simply, we have to do whatever should be done and when doing so, we must be very serious and stringent. President, I think we should do so. If we do not do a good job of it, we should be denounced by the public. Therefore, we will conduct ourselves very prudently and I hope all Honourable colleagues will also take the same attitude. Thank you, President.

**MR WONG KWOK-HING** (in Cantonese): President, just now, Mr IP Wai-ming and Dr PAN Pey-chyou already stated clearly the stance of Members from the FTU in voting. I wish to add a few points based on their comments because I have also personally dealt with dozens of cases of victims seeking our assistance and I have helped them to lodge complaints to the Consumer Council,

the Hong Kong Monetary Authority (HKMA) and the banks concerned. Therefore, I also have a very clear idea of their demands. In addition, I also proposed an amendment to a relevant motion moved in this Council last month and the amendment was passed after debate. I wish to add a few comments to the following issues.

First, is it absolutely necessary for this Subcommittee to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance)? I believe that this is absolutely necessary because it can help us find out all the truth in this incident and after that, plug the loopholes in the regulatory regime and in business operation. For this reason, I believe that invoking this Ordinance will be conducive to solving the problem.

In general, I believe there are at least seven questions that must be investigated thoroughly. It is a shame that although a month ago, we had a meeting here for the whole day, we could not find out the answers to these seven questions. The first question is: We believe a thorough probe into the regime for granting approvals and carrying out regulation should be conducted. Why were the approvals given? How did the Government carry out regulation? The Government did not give any clear explanation on any of these questions. This is the first question. The second question is: The responsibilities of the issuers, sponsors and distributors should be thoroughly investigated. What responsibilities do they have to assume? I think it is also necessary to investigate this matter clearly. The third question is related to the channels of sales and this must also be thoroughly investigated. Why were these financial derivative products not sold by registered and licensed professionals? We really want to know the reason for this. The fourth question is: Why did ordinary members of the public who have little knowledge and understanding of high-risk investments become the target of the sale of these financial derivative products? The fifth question has to do with sorting out the name of these financial derivative products. The Chief Executive also said that they were not bonds at all, but why was the sale of these so-called minibonds permitted? The sixth question is related to the promotional materials of these products, which must be thoroughly investigated. According to the Government, the promotional materials of these products were approved by the SFC. Then the question is: Why did the SFC give approval to these promotional materials? Who should assume responsibility? The seventh question is: How can the sales procedures and practices be thoroughly investigated?

I believe that it is indeed most desirable to invoke the Ordinance to uncover the truth underlying the foregoing seven questions. It is only by finding out the truth that the loopholes in the system and in supervision can be plugged in future. Is it a must for the Subcommittee to invoke the Ordinance in order to find out the truth? Can we dispense with this course of action? This is the second issue on which I wish to add a few words. I think the Government, in trying to identify the causes for this problem and the solutions, is just dragging its feet. Originally, the Government could have established an independent commission with credibility and with the participation of professionals to carry out a thorough and comprehensive inquiry immediately, so that a channel is available for the public to solve the problems and find out the truth. Unfortunately, the Government has procrastinated and has not done so even now. Had the Government summoned its resolve to establish an independent commission of inquiry with credibility to look into this matter, I believe it would not have been necessary for the Legislative Council to establish this Subcommittee and it would not have been necessary for this Subcommittee to invoke the Ordinance either. Unfortunately, the Government missed the opportunities time and again and refused to establish an independent commission of inquiry for this problem. For this reason, I believe that in order to look thoroughly into the seven questions raised by me just now, the Legislative Council must perform its duties.

The third issue on which I wish to add a few words is that now some people have voiced the view or expressed the concern that this Subcommittee of the Legislative Council, in exercising the powers conferred by the Ordinance, will damage Hong Kong's status and reputation as an international centre. It is precisely by handling this matter not in an informed manner and without carrying out a thorough investigation that we will compromise Hong Kong's reputation and status as an international financial centre. If we act decisively, carry out a thorough investigation into the circumstances of this incident, recommend pertinent improvement measures and plug the relevant loopholes, thus refining the financial management regime and the relevant business operation systems in Hong Kong, Hong Kong's reputation and status as an international financial centre will not be compromised. Therefore, I believe this issue should be looked at and understood in this light.

In addition, some commentaries or forums also hold that in invoking the Ordinance, the Legislative Council may cause the resources of the banks concerned to be diverted, thus slowing down the process of mediation and settlement with the victims, as well as the legal actions and buy-back efforts. I

believe these two aspects should not be linked together. If they are linked together and even used as the bargaining chip, I consider this unacceptable. The reason is that at present, there are tens of thousands of cases (about 40 000 cases) and any reasonable person will understand that it is not possible for the Subcommittee of the Legislative Council to solve the problems between the banks concerned and this group of victims because I believe individual cases must be dealt with by the banks concerned and the victims. The work of the Subcommittee is to identify the loopholes in the system and ways of making improvements to them, as well as making recommendations. In view of this, if it is said that this will have implications on the resources used by banks to deal with this problem, I believe such a claim does not hold water.

Another claim is that if the Subcommittee established by the Legislative Council invokes the Ordinance, this will give the victims excessive expectation. As a result, they will irrationally refuse to find solutions. I believe the public are rational, particularly given that this matter has dragged on for such a long time. However, I also believe that the victims should not have too high an expectation because the two does not necessarily have any definite relationship.

Another claim is that the invoking of the Ordinance by the Legislative Council may have implications on the efforts and time expended by the Administration or the financial authorities on coping with the financial tsunami. I believe the Administration should muster its resolve and deal with the two matters separately. It is the Government's responsibility to deal with both this crisis and the financial tsunami and if this matter is not dealt with properly, it will also deal a serious blow to the Government's prestige, so neither of them can be overlooked. Just now, some Members expressed concern about the invoking of the Ordinance by the Subcommittee. I believe this cannot be cited as a condition of exchange or for the withdrawal of the motion. On the contrary, the Administration and the banks concerned should actively co-operate with the Subcommittee in its inquiry, so that ways of dealing with, resolving and plugging the loopholes can be identified at an early date.

In addition, concerns have also been raised about the inquiry leading to the disclosure of commercial secrets or even violations of privacy. However, I believe the Legislative Council will definitely deal with this issue openly, fairly, impartially and rationally. Even the parties being investigated will have their legal rights and they can also raise their problems with the Subcommittee and

seek legal advice, as well as protecting their commercial secrets or avoiding violations of privacy. They can absolutely do so. Therefore, I believe this should not be cited as a ground for opposing the invoking of the Ordinance by the Subcommittee.

In view of my further comments on these three areas, I believe this Subcommittee should invoke the Ordinance to identify the causes of the Lehman Brothers incident. As regards the Lehman Brothers minibonds, in fact, they were put on sale in Hong Kong several years ago and that was sometime in 2004 or 2005. The implications of this matter are very far-reaching. If Hong Kong wants to uphold its reputation and status as an international financial centre, it is all the more necessary to find out the causes of the problems relating to these financial products. It is only in this way that solutions can be identified. This will be conducive to consolidating Hong Kong's position as an international financial centre. Otherwise, this messy state of affairs will only make the Government lose its prestige and make the public lose confidence in the banking system.

For these reasons, I hope the banking sector will deal with this problem calmly and rationally. It is only through the full co-operation of all parties that we can make Hong Kong's status as an international financial centre develop in a stable manner.

Thank you, President.

**MR WONG YUK-MAN** (in Cantonese): President, today's motion has enlightened me and I have learnt many things. In fact, I have observed the political development in Hong Kong for some 20 to 30 years and I have had exchanges with a lot of people in the legislature, including our Honourable President.

I think it is worthwhile to raise the behaviour of the DAB in this incident as an issue for discussion. Even though in a meeting yesterday, you expressed support for invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to establish a select committee to look into the Lehman Brothers incident and although this appears to be a benevolent act taken with the welfare of the public in mind, in fact, you were compelled by circumstances to do so.

In the DAB, there is a President of the Legislative Council and LAU Kong-wah, who has left the Chamber, is a Member of the Executive Council now. It also has a Deputy Secretary and two political assistants. It also has a total of 10 Legislative Council Members, so it is the greatest political force in Hong Kong now. This greatest political force, apart from being "royalist" and pro-establishment, is also founded on popular support, is it not? How could it disregard the exhortations of the public and change tack time and again? Although various signs indicate that these gentlemen seated here may cast their votes in support of this motion today, what does this mean? One can describe this as "being circumscribed by the situation and having no alternative". Because they must learn a lesson from the experience of the mass rally on 1 July 2003. At that time, the DAB was the enemy of the people. As a result, they lost abysmally in the elections in 2003. Friends, if you want elections, the power of public opinion is the greatest, so give yourselves a clap (if you can clap here).

Today, by dint of this motion debate, it is possible to see the true faces of many people. Just now, many Honourable colleagues have also raised this point. Many of the arguments, be they for or against the motion, have been discussed repeatedly. Nevertheless, I only wish to recount an incident and see whether or not this political party will continue to be an enemy of the people at such crucial moments because they are the biggest political party and the greatest force now.

I remember that on 8 October, before we came into this Chamber to take our oaths, there was this kindly gentleman whose name was LAU Kong-wah. He said (*a recording was played*), "Hello, friends, I am LAU Kong-wah of the DAB and the DAB will surely help you to the very end — (victims): 'Yeah' — we will surely help you pursue this matter to the very end ....."

**PRESIDENT** (in Cantonese): Mr WONG, please continue with your speech and please switch off your recording device.

**MR WONG YUK-MAN** (in Cantonese): Although Members may not be able to hear it very clearly .....

**PRESIDENT** (in Cantonese): Please continue with your speech.



**MR WONG YUK-MAN** (in Cantonese): ..... it does not matter. I will try to mimic the way "buck-toothed" talks. He said, "Hello, friends, I am LAU Kong-wah of the DAB and the DAB will surely help you to the very end." And the victims said, "Yeah." — You can give a response. This is fine and on one will expel you — He continued to say, "We will surely help you pursue this matter to the very end. This morning, for a starter, we went to a bank (the Bank of China) to urge it to do something, hoping that it will deal with this matter as soon as possible and give you full compensations."

Well, he was really dreaming too soon. He is the vice-chairman of the DAB and it turns out that he can gall the Bank of China, which is controlled by the Communist Party, into action and demand that it gives you adequate compensations. That day, when you people heard those remarks of his, you all clapped till your hands were sore and you nearly wanted to give him a hug and a kiss. However, it turns out that he was in fact fooling you. Next, he said, "As regards the other banks, we must stand united, mustn't we?" People at the scene all said yeah. "The first thing that we have to do in the Legislative Council is to deal with this matter." People at the scene said yeah again. "Everyone has to lend their support, all right?" People at the scene said yeah again. Next, he said, "Just now, some friends asked us whether we would pursue this matter together with other political parties. I can tell all of you that we will surely pursue this matter together. I ask all of you to put your mind at ease. I hope you will continue to stand united and we hope that we can proceed in an organized and systematic way. The most important thing is to get results. Do you all think so?" — At that time, he looked as though he was possessed by the spirit of Yuk-man. Everyone said yes. He also said, "Results are what matters most and the most important thing is to recover the money, isn't it? I hope you will continue to get in touch with us and we will continue to organize things for you. Now, we have to go inside for a meeting and I hope that after taking the oath, the first thing to be done is to help you all. Rest assured."

Just now, I was mimicking "buck-toothed" but it was a rather poor imitation because he is not as astute and dashing as I am, is he? Just now, the President prohibited me from playing the recording, so I could only mimic him and that was what happened on 8 October.

On seeing the behaviour of the DAB, I almost wanted to change tack and join the DAB to see how glamorous this will be. Moreover, the day before,

CHAN Kam-lam also said that most of the people, that is, the victims who attended the meeting organized by them, did not accept the proposal of a refund amounting to 60% to 70% of their capital, that the Government should underwrite the shortfall. The preliminary estimate is that if the Government forks out about \$4 billion, all the existing problems can be solved.

If they were the ruling party, it would be so great, wouldn't it? If such a course of action was taken, there would not be any problem anymore. The Government will underwrite the shortfall amounting to some \$4 billion and this is what is meant by underwriting, buddy. However, in a volte-face, two days later, in a meeting of the House Committee of the Legislative Council, the DAB, which all along had maintained that it wanted to help the victims in the Lehman Brothers incident and which requested the Government to underwrite the shortfall, voted against the motion moved by Mr KAM Nai-wai, which demanded that a select committee be established to look into the Lehman Brothers incident and of course, in accordance with the Ordinance. The FTU also voted against it. On another occasion, since the motion had been negated on the previous occasion, a come-back in the form of a demand to establish a subcommittee was made and similarly, it also involved invoking the Ordinance. This is the motion on which we have to vote today. The DAB began to change its tack, from voting against it to abstaining from voting. Well, in any event, there has been some progress and this is really gradual and orderly progress.

On 22 October, the vice-chairman of the DAB, IP Kwok-him, said he was concerned that invoking the Ordinance would curtail the scope for banks to deal with this incident. Please do not frame me and say that I am talking nonsense. What I said is all backed by evidence. However, I will not disclose the sources such as from which newspaper, on which date, and so on. I do not want to waste time. I only have seven minutes and there is only several minutes left.

(Someone said that 15 minutes)

**MR WONG YUK-MAN** (in Cantonese): What? 15 minutes? This is still not enough. So many people are listening to me speak and this is also broadcast live on television. This is even being broadcast on YouTube. Do you know that the clip showing "buck-toothed" making these remarks is now a hot clip on the

Internet? Moreover, clips lambasting him have also received a great number of hits. Just watch them on the Internet!

CHAN Kam-lam also said — he said this on 27 October — that if the powers of the Subcommittee looking into the Lehman Brothers incident were too extensive, this would slow down the progress of the inquiry and affect the amount of compensations that victims of the Lehman Brothers incident would get. In fact, I have a lot of information of this kind, but I am not going to talk about them for now. I saw them change tack time and again. To use a jargon of the Communist Party, these people are called opportunists. Concerning this kind of opportunists and speculative opportunism, we will still approve of it as long as they will vote for the motion. Even though they are opportunists, so long as they stand on the side of the people, we do not mind.

President HU Jintao once said, "No matter what some people said or did in the past, so long as they now stand on the side of the people, we will still welcome them." I will not consider them as realizing their former wrong ways. They were only circumscribed by the situation. They have a lot of spare time, so they spent it on targeting me, saying that CHEUNG Kwok-kwan of the Young DAB had conducted a survey and found that 80% of the people opposed my throwing bananas and that all my questions were leading. Just surf the Internet to take a look! Some people have even made a parody. Do you want to see how that parody is like?

"Ever since the President of the Legislative Council refused to give an account of his covert identity, has your approval rating for the President of the Legislative Council increased or decreased?" This question was modelled on the questionnaire of the Young DAB: "Ever since a Legislative Council Member threw bananas, has your approval rating for Members of the Legislative Council increased or decreased?" If we extend such parodies, more can be said and I can even talk about "Little Hak-kan". In fact, they do not have to whip up such issues. The most correct thing to do is to stand on the side of the people, isn't it?

Some people think I have given things too serious a spin. Just now, someone asked me at the entrance, "Yuk-man, is it now time to vote?" I replied, "Not yet. People still engage in empty talks. Maybe there will be a chance to do so at seven this evening." He asked me if the motion would be passed and I replied that it was possible so long as the DAB did not change tack again, because

yesterday, they said they would lend their support. But who knows if they will change tack or not? Prior to this, they had already changed tack twice, so who knows if they will continue to do so or not? Had they stuck to the stance spelt out by LAU Kong-wah on the very first day, it would have been so great. At that time, the appointment of LAU Kong-wah as an Executive Council Member had not yet been announced — or rather, we still had not learnt about it. That was 8 October and in fact, he already knew this.

This is how this political party is like. People often depend on it. Now, it wants to be the hero of the people. Look! Yesterday, some newspapers already tried to garner support for it. Those newspapers are pro-government ones and they reported that the victims had to depend on the DAB. Without the DAB, the victims would not have been able to establish their organization. The DAB is the defender of justice and the people's hero. Is it just like CHEN Shuibian, who regards himself as the people's hero even though he has been arrested and thrown into jail? Is it just the same in their case?

Similarly, it is said that one should not bully a gentleman on account of his uprightness. In speaking in such a manner, I appear to be satirizing them. In any event, if they cast a vote in support of the motion later on, I will not pursue this matter anymore. Now, the situation is very clear. There are all sorts of public opinion in society. I do not want to criticize Dr David LI because he looked so miserable, as though he had lost his parents. Now, he has left and he knows full well that ultimately, he would fail. However, he has done his level best in this last-ditch attempt and after reading out his speech, he left. In addition, concerning those who did not cast opposing votes, I do not want to criticize them and talk about the "demon-revealing mirror" either. These are not the words that I usually use. As long as you are willing to vote, you are like "a water ghost promoted to the position of a city god". On those people who will not cast their votes, including my secondary schoolmate, Paul CHAN, I will appeal to them again: Turn back from your wrong path and your former wrong deeds. They know how to change tack, so why do you not do so? You can also change tack and so can Mrs Regina IP — if she does, I will never talk about Article 23 of the Basic Law from now on. *(Laughter)* I will befriend you immediately. There is no problem at all, as long as you stand on the side of the people.

All Members in this legislature have the hopes of their voters pinned on them. You can see that ultimately, it is that group of people from the functional

constituencies that are a concern to us. All directly-elected Members have said yes. Why are the functional constituencies a concern to us? The DAB only holds three votes among them. However, it is exactly these three votes that we depend on. This is so scary. Without these three votes from them — "Brother Ting-kwong", if you do not vote, we will be done for. The victims outside will just keep wailing. Let me tell you, some people will surely go to the office of the DAB and jump down from the building there. This is what they said and it is not me who said so. Do you want to see them jump down from buildings? They will surely let you see such a scene. I believe some people would surely do so. Look! As a party, you have to bear great responsibilities. Some people are beseeching you by threatening to jump off buildings as well as kneeling down to beg you, but no one has ever knelt before me, begging me. Buddy, they have knelt down and supplicated, saying that they would jump off from buildings. However, you then vote against the motion, so are you not being suicidal?

I do not believe that you would kill yourself, TAM Yiu-chung. Since you would not kill yourself, so we are here to hold a meeting again. I still hope that you will stand on the side of the people. After doing those things, do not come out to cause trouble again. I also hope that the Government will really ..... I tell you, professor, there is nothing you can do to avert the situation now. I am sorry, but this motion will surely be passed, unless my prediction is wrong. If this motion is not passed, I will throw grasshoppers with shit instead of bananas. I will get some grasshoppers with shit and set them free everywhere. Even if you have to arrest and jail me, I tell you, I do not care. Therefore ..... you do not understand what grasshoppers with shit is? Do you know what grasshoppers are, "Brother Ka-Keung"? Have you not seen grasshoppers before? One smears the grasshoppers with shit and then let them fly and hop everywhere. Have you not seen this before? Some people are now shaking their heads. In fact, in that event, the scene will more or less be the same as the state of this legislature now, that is, pestilential and a terrible mess. This time, we can see that the Government ..... you have shown some signs of surrender. Buddy, are you going to surrender? Have you surrendered?

**PRESIDENT** (in Cantonese): Mr WONG, please address the President.

**MR WONG YUK-MAN** (in Cantonese): OK. President, have they surrendered? President, please help me ask them if they have surrendered. If

you surrender, I will only charge you half price! If you surrender, I will only charge you half price! That means in that case, I will make more favourable comments about you because you are amenable to good advice.

The problems before us now are not the financial tsunami or the economic turmoil that follows, as some people maintained just now, who said that we had to keep in view the overall situation. Buddy, do not talk about those things to me anymore. The people outside have not left yet. After I have spoken, I will go outside to tell them to rest assured. If things do not turn out as hoped, I will not just throw bananas. I will also give an account of this to my pals outside. Just now, when I stepped out of the entrance, those people were very anxious and kept asking me questions. For this reason, after I have given my speech, I will go out to tell them again that we will vote very soon ..... what?

(Someone asked if the DAB was the most shameless)

**MR WONG YUK-MAN** (in Cantonese): What? If the DAB is the most shameless? Oh! That is a sound bite and it will be broadcast on the Internet. After the voting this time, maybe this will change (*The buzzer sounded*) .....

I have just used up all my time.

**MS MIRIAM LAU** (in Cantonese): Since the sudden bankruptcy of the Lehman Brothers investment bank in the United States in mid-September, a global financial tsunami has erupted. Overnight, this gave rise to a large group of victims resulting from the Lehman Brothers incident. These victims have bought Lehman Brothers-related minibonds and structured financial products through the financial institutions in Hong Kong. Among them, there are many retirees, people who have low education standards or could only bear minimal risk. They claimed that they had been misled by the marketing practices of certain financial institutions and may lose their lifelong savings this time, and that this has caused them and their family members great stress. This group of victims in the Lehman Brothers incident numbers at tens of thousands and the amount of money involved is over \$20 billion. Nineteen banks, that is, nearly all registered banks, are involved. The scale and scope of this incident are unprecedented.

However, after the occurrence of this incident, the initial follow-up actions taken by the banks concerned or even the financial regulatory authorities in Hong Kong were all very passive and it can even be said that they were indifferent. All along, the Liberal Party has been following up this issue and many victims have also sought assistance from us. They complained that the banks concerned had shunned them and there was no one to answer their queries fully. In the end, it was due to the combined social pressure from the victims, political parties and the mass media that the regulatory authorities began to handle the complaints cases more actively and the top echelon of the Government was willing to do something about this incident by proposing a plan in which banks buy back the minibonds and by urging the banks to respond. As a result, subsequent buy-back proposals were introduced and the banks were willing to propose conciliation proposals in an attempt to defuse this financial scandal and smooth things over.

We believe that the most pressing task now is the Government and the financial institutions concerned taking remedial action speedily and striving to assist the victims in getting a fair deal as far as possible by recovering their assets or getting due compensations. However, I wish to stress that the Liberal Party supports the Legislative Council in establishing a Subcommittee and invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to conduct an inquiry into the Lehman Brothers incident, with a view to uncovering the truth concerning the relevant legal and supervisory regimes in the context of systems, so as to examine clearly why such a major loophole and shortcoming exists in our financial system, thus giving rise to so many victims. Next, the right cure should be administered and the loophole plugged to pre-empt the recurrence of similar incidents and the making of another group of victims.

As regards the problems with the system which I said previously had to be reviewed, there are indeed many. For example, the "two regulatory authorities for one industry" faulted by many members of the sector is one of them. At present, the sale of financial products by local securities firms and banks is supervised by both the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA). However, the standards adopted by them are different. The former only regulates the disclosure of information but not sales practices, whereas the latter does not exercise oversight of any kind. Not only did it allow such complicated financial products as minibonds to be sold to

ordinary small investors in the retail mode, some banks even sold them to elderly people, illiterate people or even mental patients. Why could such complicated products be called bonds, thus misleading people into thinking that they are those conventional safe bonds? In this incident, who should actually assume responsibility for the slack supervision? Should it be the two front-line regulatory authorities, that is, the SFC and the HKMA, or government officials responsible for financial and monetary affairs? Were they aware of the problem-ridden regulatory regime long ago and did they continue to mind only their own business, turn a blind eye to it and stand on the sidelines?

We hope that through this Subcommittee under the Legislative Council and the powers conferred by the Ordinance, the foregoing shortcomings of the system will all be identified and recommendations on refining the financial regulatory regime can be made.

Although some people queried if the exercise of the powers under the Ordinance by the Subcommittee to look into the Lehman Brothers incident would really be helpful to the victims, as I said earlier, this inquiry does not seek to look into individual cases or help the victims seek compensations from the banks concerned. Other channels are available to them in this regard and I also urge the Government to offer them the greatest help and assistance possible. Since our aim is not to look into individual cases or seek compensations from the banks concerned, from this angle, if the victims think that the Subcommittee will be able to help them in this regard, they may be disappointed. However, the Subcommittee may be able to uncover a lot of information to prevent the making of similar victims in the future.

As regards whether the inquiry would cause delays in the banks' buyback of the bonds from the victims and in making compensations to the victims, I believe that since we will not be investigating individual cases but targeting the problems relating to the system, these two issues should be dealt with separately and should not be confused actually. Since the banks concerned have promised to buy back the Lehman Brothers-related minibonds, they should keep their promise and offer compensation speedily in instances considered by them non-compliant with the sales guidelines. They should also respond actively to victims who are willing to find recourse through mediation and arbitration. They cannot adopt a go-slow approach and drag their feet in handling these cases by citing the excuse that an inquiry is underway.



If it is feared that the Legislative Council, in invoking the Ordinance to look into the Lehman Brothers incident, may put the banks in Hong Kong on a public trial and disclose all confidential information, thus setting a bad precedent and even adversely affecting the reputation relating to the business environment in Hong Kong, I am afraid this is also an overstatement.

I have to point out solemnly that the Legislative Council has no intention whatsoever of knowing the commercial secrets of banks and still less does it want to disclose all their confidential information. I reiterate that we only want to find out what loopholes exist in our financial regulatory regime in relation to this Lehman Brothers incident. In fact, it is not true that there is no precedent in which bankers were summoned to the legislature to give evidence. After the "bust" of Lehman Brothers, its chief executive, Richard FULD, was also summoned before a committee of the Congress of the United States to give evidence. They also only wanted to find out clearly what problems had arisen in the financial regulatory regime of the United States to have triggered off a financial tsunami. Moreover, no confidential commercial information was leaked. If it really comes to a stage where the Subcommittee may deal with some commercial secrets that should not be disclosed, I am sure Members will deal with them appropriately and reasonably. In the past, the Legislative Council also established many select committees and bills committees that also handled some commercial information. Usually, they would hear the evidence in camera or in other ways, so as to ensure that the relevant information would not be disclosed inappropriately. I am confident that the members of this Subcommittee will exercise their powers carefully and reasonably.

As regards whether the position of Hong Kong as a financial centre and its business environment would be undermined, I believe the opposite would be the case. The aim of the Legislative Council in invoking the Ordinance to find out the truth in the Lehman Brothers incident is to establish a fair and sound business environment and perfect the financial regulatory regime. This will only enhance the confidence of the outside world in the financial system in Hong Kong, so it is only right that doing so will reinforce Hong Kong's position as an international financial centre.

President, the position of the Liberal Party is very clear. We support today's resolution to empower the Subcommittee to exercise the powers conferred

by the Ordinance for the purpose of conducting the relevant inquiry and study, so as to examine the entire regulatory regime and make recommendations on improvement.

President, I so submit.

**MS STARRY LEE** (in Cantonese): President, concerning Mr WONG Yuk-man's attacks at the DAB, I fully understand the reason for them because this past Sunday, the DAB published the results of a survey in which it was pointed out that many members of the public disapproved of the throwing of bananas by a Member in the Legislative Council, so I can understand the reason for this. However, I believe the victims, and the public for that matter, all hope that we in the legislature — particularly given that many victims are in attendance today — can assist the victims in recovering their capital as soon as possible. I think Members will also understand that in this legislature, one cannot have one's way merely by railing and we will not be intimidated by him. The public are all very discerning.

The DAB and I takes the same stance. We will first assist the victims in recovering their money and then pursue responsibility. I think I have attended no less rallies and meetings organized for the victims than other Members here have. I also fully appreciate the feelings of the victims present here. Frankly speaking, I understand the victims' demand today, that we support the motion on invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance). However, I am also very concerned that this Subcommittee ..... in fact, our aim is to investigate thoroughly the responsibilities that various parties, including the Government, the regulatory authorities, the banks, front-line bank employees and even the victims, have to assume. For this reason, since the Secretary is also present today, I hope that in the course of its work, the Subcommittee must by no means affect the victims in recovering their money.

Today, I wish to use the precious time — because all Members have to wait a long time if they want to speak — I have heard the voices of many victims and many of my friends are also victims in the Lehman Brothers incident. On the one hand, they support an inquiry by the Legislative Council, and on the other, they hope that the process of inquiry will not pose obstacles to the victims in recovering their money.

First, the Government has now fulfilled its promise, or the Hong Kong Association of Banks has promised, that the buyback will proceed in December. However, we must not forget that many victims have not bought minibonds actually. So far, nothing has been done for them and their only hope is an investigation conducted by the regulatory authorities into the improper sales practices of the banks concerned. At present, there are over 10 000 complaints but so far the progress of investigation leaves much to be desired. I believe the expectation of the victims is that even as we conduct an inquiry, the regulatory authorities will also complete their investigations into the improper sales practices as soon as possible. I hope the regulatory authorities can expedite their work.

Another inadequacy is that the Government once said that there would be an arbitration and mediation mechanism to assist the banks and victims in reaching a consensus without going to the Court. However, as far as I know, this mechanism is applicable only to cases in which the regulatory authorities have made referrals, that is, to cases that are found to have involved improper sales practices upon investigation. I believe that in some cases, both parties are insisting on their own positions. If these victims request that arbitration or settlement with the banks concerned be arranged, I hope the Government can request banks to accept an arbitration and settlement. Otherwise, if the victims make such a request unilaterally but the banks concerned do not agree to it, the victims cannot be helped in recovering their money.

Separately, so far, the Government has not formally met with any major group of victims. In the past, Mr WONG Yuk-man often said that there were such and such a number of Legislative Council Members, Secretaries and Political Assistants in the DAB. However, I can tell everyone here that we can by no means be equated with the Government. If the Government had really listened to us ..... I remember that at an early stage, the DAB organized a gathering of the victims and invited the Secretary and the Deputy Secretary to have direct dialogue with the victims. However, so far, they have not had any dialogue with the victims. I do not understand why, as government officials under the accountability system, they cannot attend the gatherings of victims. They have had meetings with bankers frequently, but why can they not meet with the victims face to face? I hope they can also change this attitude and talk directly to the victims to understand the progress in this area.

Furthermore, what the Government can do is: At present, many victims are facing one problem, that is, many banks are unwilling to provide to victims the relevant tapes and even the documents on reassessments because of legal advice. In this regard, how to assist the victims in getting back these documents and further assist them in recovering their money is also a task that the Government has to undertake. I hope the Government can intercede with the banks concerned. At least, it can demand in a high profile that banks return these documents to the victims. Otherwise, even though the Subcommittee carries out an inquiry, it will still be impossible for the victims to get back those documents.

Meanwhile, I wish to point out that apart from victims who have bought those bonds, recently, many front-line bank employees have also complained to us. When they initially sold those Lehman Brothers-related bonds, some of them had to market these bonds probably due to the immense pressure exerted by their superiors. Due to the investigations, some of them are now working from 7am to 11pm, being subjected to immense pressure. In the bank branches, many bank employees are also subjected to verbal and even physical abuse by customers, but they still have to endure quietly.

I hope that this inquiry can do these front-line bank employees justice. Here, I also openly call on banks to assume their corporate responsibilities in earnest. The DBS Bank has already announced its plan for the first round of layoff and many friends in the banking sector have also told me that even the HSBC has made known that there would be layoffs. In fact, it is now precisely the time when banks and their employees are in the same boat. First, the investigation into those cases should be speeded up. Second, as a large corporation in Hong Kong, it is necessary for the HSBC to consider the situation carefully and prudently in times of an economic downturn. Many bank employees also said that they hoped to be transferred to other departments through retraining and when the worst came to the worst, they would rather accept a suspension of pay than another round of layoffs by banks. I believe that when the Government gets in touch with these banks, it can also convey this issue to them in a high profile because this is precisely what will be helpful to friends in the sector.

Finally, today, many Honourable colleagues will speak and I believe the likelihood of the motion on invoking the Ordinance being passed is very great. It is true that the DAB needs time to consider whether or not to lend its support

and everyone understands the reasons. This is the first time that the Legislative Council will invoke the Ordinance to probe a large number of private companies, including the biggest bank in Hong Kong. Of course, the victims in the Lehman Brothers incident have their demands, but there are also other voices in society. As a responsible political party, we have to listen to the views of various sectors and today, we will cast a supporting vote.

On another front, concerning immediate measures to protect small investors, in fact, a subcommittee of the Legislative Council will continue to work on this. We understand that the Government will conduct a review to examine if there is any room for improvement in respect of the existing regulatory authorities, but I am concerned that it will take a long time for the subcommittee to complete its work and it will also take a long time for it to prepare a report. Should the Government not find ways to protect small investors immediately? In fact, apart from ELNs and accumulators, which have all along been the scourge of small investors, we all know that although there is no casino in Hong Kong, the biggest casino here is perhaps our stock market — of course, what I mean is not the stocks themselves. In the past, many investment banks offered a large number of derivatives and basically, they are gambling tools. In this regard, will the Government consider adopting immediate measures to protect small investors? I believe these are the true voices of small investors.

Finally, I wish to tell the victims here that the DAB will surely, as in the past, continue to find ways to help them fight for the greatest legitimate rights and interests possible. We have referred many cases to the banks, and reasonable compensation has also been offered in some of the cases. Just now, a Member said he was concerned that some victims might jump off from buildings. Here, I will make an appeal to all the victims: Do not heed the advice of this Member, who said that their demands would be met only by jumping off from buildings. We have to face the problem and hope that through our joint efforts, this matter can be resolved as soon as possible.

President, I so submit.

**MISS TANYA CHAN** (in Cantonese): President, if it is said that the Lehman Brothers incident is the biggest financial turmoil in Hong Kong in recent years, I believe all those present here, including the Secretary, would agree with it.

Since this incident has developed into such great proportions, so much so that earlier on, people took to the streets and held candle-light vigils practically every day and they almost wanted to take their cause to the Liaison Office to seek the assistance of "Grandpa", it is really blameless for us to say that we want to establish a subcommittee to conduct an inquiry. I really do not understand why, even at this moment, the Government and some Honourable colleagues are still resisting, or have gone so far as to resist, the establishment of the Subcommittee.

Why do we seek to establish this Subcommittee? Just now, many Honourable colleagues have already talked about the reasons for this. In contrast, I wish to point out that most of the people opposed to the establishment of a subcommittee are afraid that it would conduct a public trial of the banks concerned, thus affecting the business environment in Hong Kong. However, I can tell them that their worry is unnecessary.

As a novice in the legislature, I have served as a Member for exactly a month and in fact, I have a lot of work to do every day. If there is no urgent need, why would we deliberately spend time on establishing a subcommittee to look into the Lehman Brothers incident? Is it because we think it would be very interesting? If the aim of establishing a subcommittee is purely to conduct a public trial of the taipans of banks and force them to make compensations to the victims, are Members not even ferocious than "professional" debt collection agencies? If this were really the case, the public would not let Members have their way and any Member capable of thinking definitely will not do so.

Some people also said that the establishment of a subcommittee would scare investors away and affect the business environment. I think such claims are even more ludicrous. The main goal of the Subcommittee has already been stated very clearly. It is to investigate the business practices of banks and the regulatory regime for the sale of financial products. Does anyone mean that by making efforts to root out the improper business practices adopted by banks and refining the existing regulatory regime, we would impinge on Hong Kong's business environment?

Let me make an analogy. If the Federation International de Football Association (FIFA) wants to establish a committee to investigate whether anyone is involved in match-fixing, to refine the regulatory regime and prevent people

from fixing matches, will doing so affect the environment in which the football club owners organize football matches? I believe only the football club owners involved in match-fixing would be afraid of the establishment of such a committee by the FIFA.

If the banks in Hong Kong are conducting themselves in an upright manner and believe they have not done anything wrong to their clients, the investment sentiment will surely not be affected on account of the Subcommittee. A government that is willing to take advice humbly will have nothing to fear from the Subcommittee either. I am sure that those who feel concerned either have a guilty conscience or have other designs. I believe the Secretary certainly does not belong to these two kinds of people. The Secretary definitely will not be afraid of the Subcommittee.

President, I have also heard some people voice the concern that the Subcommittee may disclose some confidential information, thus affecting the day-to-day operation of the banks and the present efforts in arbitration and mediation between the banks and some of the investors. In fact, this is an even lesser cause for concern. The Legislative Council has all along abided by the rules and if certain information has to be kept confidential, it will surely ensure that the greatest confidentiality is maintained.

Frankly speaking, although we have established the Subcommittee in accordance with the Legislative Council (Powers and Privileges) Ordinance, I believe not a single person here will abuse the powers and privileges to disclose any information. It is all the more impossible to exploit the information for advantages. The operation of the Subcommittee is transparent and the eyes of several million people in Hong Kong are watching us. We definitely will not act indiscreetly.

I think this Subcommittee must conduct itself in a way like the zip-lock bag I am holding now, that is, it has to be both transparent and keep things air-tight. By transparency, I mean that each step of the entire investigation must be very clear. No matter what the conclusions and recommendations are, a clear and transparent account of the justifications must be given to the public in order to convince them. In addition, why do I say we have to keep things very air-tight? As I said just now, confidential information will be kept air-tight and it will not be used arbitrarily by anyone. Only in this way will the public be convinced and any impact on the business environment in Hong Kong avoided.

President, the Lehman Brothers-related Minibonds really live up to their name. Even now, there are still many mysteries and puzzles surrounding the whole incident. In the last two months, many people have been unable to eat, sit or sleep in peace on account of these minibonds. These people do not just consist of those exhausted small investors, but also front-line bank employees, colleagues in the HKMA and the SFC, as well as friends in various political parties. All of them have had a hard time, so I hope this kind of incident will not happen again.

Today, we have the opportunity to find a way to ensure that this kind of incident will not happen again in future, that is, to establish a subcommittee to conduct an inquiry into this incident. 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 do not seize this opportunity to find out the loopholes and plug them, thus perfecting the regulation, how much longer can our financial industry, which we call the mainstay of our economy, remain standing? When will all of us wake up?

With these remarks, I support the motion. Thank you, President.

**MR PAUL CHAN** (in Cantonese): President, first of all, I have to make a declaration of interests. I am the independent non-executive directors of a commercial bank and another bank.

According to the replies to my enquiries, these two banks were not involved in selling any Lehman Brothers-related products and I personally have not invested in any Lehman Brothers-related product either.

I must state clearly that in this incident involving Lehman Brothers-related Minibonds, I believe a lot of people were in fact misled by improper marketing practices. I strongly condemn this kind of conduct and believe that banks should assume responsibility for such conduct by making appropriate compensations.

I also believe that we must find out the truth of this matter, the loopholes in supervision, identify the regulators that should be held responsible and ways of improvement.



I am also very dissatisfied with the progress in resolving the whole incident. Although the banks concerned have responded to my repeated suggestion that priority should be given to retirees who were misled, have little investment experience and low education standard, as well as to socially disadvantaged groups, the progress is indeed so slow as to make people feel outraged.

However, about the question of this Council invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to investigate the Lehman Brothers incident, I feel concerned about several areas. For this reason, I wish to spell out my concerns clearly before stating my decision on voting.

First, the aim of invoking the Ordinance to conduct an inquiry is not clear. Some Members said that what we wanted was to identify the causes of the Lehman Brothers incident, loopholes in supervision and find ways of improvement, while others said that by invoking the Ordinance, victims in the Lehman Brothers incident could be assisted in recovering their money at an early date, saying that the inquiry would assist them in seeking compensation from the banks and would even be favourable to their reaching a collective settlement with the banks.

However, can invoking the Ordinance really achieve such an end? First, I will voice my views on identifying the causes of this incident, the loopholes in supervision and ways of improvement. On this exasperating issue involving Lehman Brothers-related Minibonds and related structural products, the developments in the past two months have shown clearly that when the regulatory authorities processed the applications relating to these products, they could not keep abreast of the time and did not fully understand the risks of these products and their potential harm to the general public. In the process of supervising their sale by banks, they did not perform their duty properly, thus making members of the public who should not have bought these products suffer losses.

Indeed, we have to find out what is wrong with the regulatory regime and how improvements can be made. Such a review must be conducted solemnly and the officials and regulators concerned all have to assume relevant responsibilities. However, is there any other better way to achieve this goal? According to past experience and examples, this kind of inquiries and reviews are quite professional in nature and concerning the identification of improvement

proposals, I believe it will be even more efficient and effective if an independent team of experts with great credibility is tasked to undertake this job and the Government and the Legislative Council subsequently take follow-up actions.

As regards helping the victims get compensations successfully at an early date, will invoking the Ordinance be effective? We may as well look at the past seven instances in which the Legislative Council invoked the Ordinance. From these precedents, we can see easily that they shared two common characteristics: First, the process of inquiry was protracted, so distant water cannot put out a fire nearby. Second, invoking the Ordinance was often intended to find out the causes for a past issue in order to ascertain responsibility. To make an analogy, this is like the inquiries of the Coroner's Court.

As present, the minibonds saga is still in a state of dynamic development and many victims are still waiting to see how they can recover the largest amount of money possible and as fast as possible. They are like people requiring emergency treatment in an operation theatre. What we have to do is to save the people, not to do a forensic examination. I am concerned that invoking the Ordinance will slow down their progress in recovering money.

My second concern is that invoking the Ordinance will slow down the progress of conciliation between the victims and the banks concerned. After the occurrence of the Lehman Brothers incident, so far, be it the regulatory authorities or the banking sector, there are indeed many areas in the way the incident was handled and in the speed of response that warrant severe criticisms. I myself have also voiced criticisms a number of times. Last Friday, the representatives of the Hong Kong Association of Banks held a closed-door meeting with Members. In response to the question raised by me, it was pointed out that banks also had to climb the learning curve in dealing with this problem relating to the minibonds. Obviously, their understanding and appreciation of the problem is definitely lagging behind the development of this issue. They also pointed out that banks were only distributors and that many of the trustees of the collaterals of these products were overseas banks. After the Lehman Brothers investment bank had gone bankrupt, if distributor banks wanted to get hold of the information on these collaterals and know what their values were, not only had they to go through complicated legal procedures, it was also necessary to offer the trustees immunity before they could get the information, so the

progress of the work had been very slow. After listening to these explanations, one could not but shake one's head in lament.

That day, bank employees who attended the meeting said that they were working round the clock and at full steam to cope with the work relating to the minibonds, so much so that they were all exhausted. Here, I have been asking myself if invoking the Ordinance to summon those people here will have the adverse effect of affecting the progress of their work. Over the past two weeks, all of us can see that the cases of some victims were resolved and the banks also announced that it would publicize the results of the valuation in December and launch the buy-back process. That night, in response to my question, a bank representative said once again that priority would be given to retirees and socially disadvantaged groups misled by improper marketing practices and it was hoped that such cases could be resolved within 60 days.

In the midst of such unprecedented difficulties, everyone lacks experience. We have been thinking over this matter and apart from feeling dissatisfied and making severe criticisms, I believe it is also necessary to keep our heads cool, identify clearly what the major and minor problems are and what course of action will serve the best interests of the victims in the Lehman Brothers incident and the best overall interests of Hong Kong.

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

Some members of the banking sector said that if the Legislative Council invoked the Ordinance to conduct an inquiry, it would be necessary for the banks concerned to adjust their focus of work and they would be forced to divert their resources, thus making it difficult for them to do their best to deal with the claims made by the complainants and reach settlement. In the face of the financial tsunami and the rapid economic decline, what banks have to handle is not just the Lehman Brothers incident but also the problems encountered by their clients as well as those relating to investment and the credit crunch. If these problems are not handled properly, even bank runs may occur. The battle-front is both challenging and extensive. I am worried that if problems occur in the financial system, it would not be favourable to victims in getting their money back as soon as possible. Besides, what good would this do to Hong Kong as a whole?

In addition, in the face of summonses and hearings, I believe the banks, the Government and the regulatory authorities would all adopt a very cautious and legalistic approach in dealing with them. In response to each question and each request to produce documents, they would ponder the responsibilities and implications of such a move and even raise objections, thus avoiding making responses to certain queries or requests and narrowing down the scope of disclosure. The hearing would often be bogged down by debates on procedure and other details, for example, who should attend the hearings, when should these people attend, what the sequence for these people and organizations should be, whether it is necessary to answer certain questions and how they should be answered, whether certain documents should be provided and how many should be provided, what documents should be omitted, and so on. There may be arguments on all these issues and it is even possible that referrals have to be made to the Court half way to resolve some technical legal issues. This minibond saga involves a total of more than 20 regulatory authorities and banks and some of them are even the Hong Kong branches of overseas banks. I believe this inquiry that invokes the Ordinance will not be plain sailing. Moreover, it will also be quite a protracted one.

Moreover, in the interest of self-protection and caution, would some banks slow down the speed of handling the claims made by victims? Apart from making compensations in cases of obvious mistakes, other cases would be followed up again only after the inquiry has yielded an outcome. Mediations or discussions concerning compensations would be carried out only afterwards to avoid bearing unknown risks and responsibilities. As a result, this would affect the progress of victims recovering their money. This is one of my concerns.

On another front, in the case of some victims that I have met, although improper marketing practices adopted by banks were involved, the fact is that the blame cannot be placed squarely on banks. For example, before buying minibonds, some of them had used their fixed deposits to buy Equity Linked Notes (ELN) from the same bank and it was after they had made some money that they switched to minibonds. There are also individual victims who had traded in shares or made other investments in other banks. Some of them are quite well-educated or have some working experience, so one cannot simply say that they have all been misled.

I believe the cases falling into this grey area accounts for a sizeable proportion of the cases. If these people want to recover their losses, the most effective approach is negotiation and mediation. The two parties involved must make compromises and concessions and it is even possible that business decisions and individual considerations will be involved. To give the victims enough scope to engage in discussions or conciliation with the banks will perhaps be more conducive to determining the rights and wrongs in each case more clearly. The approach of "making compromises and concessions" will be the most effective one for these victims to claim compensation. It is not at all appropriate to try to conduct an inquiry by invoking the Ordinance to ascertain the rights and wrongs of the victims and the banks concerned. It is unrealistic to conduct an inquiry in accordance with the Ordinance with a view to identifying an apparently "just" and across-the-board compensation proposal and using it as the basis for resolving the claims. This should not be the direction of the inquiry, nor should this be where the goal lies.

I believe the principle of "assuming personal responsibility for gains and losses in investment" must be strictly adhered to in Hong Kong and everyone must assume personal responsibility for their own investment decisions. Of course, regarding the improper marketing practices, the sale of such products to people who cannot bear risks and misleading this kind of investors, a different approach should be adopted. No sooner had the incident occurred than I stressed that it is necessary to take care of elderly people and retirees with lower education standard. However, I believe the victims of the minibond saga must be psychologically prepared and, depending on their individual circumstances, accept the possible cruel outcome of not being able to recover their capital in full. I hope everyone will understand that invoking the Ordinance to conduct an inquiry does not mean that one can expect to recover one's capital in full.

My third concern is whether or not the way in which the Ordinance is invoked will affect the business environment in Hong Kong. In the past, the Ordinance was invoked by the Legislative Council to target issues relating to the system or policies. Although representatives of private companies were also summoned, generally speaking, they were not the focus of inquiry.

I am concerned that targeting banks directly on this occasion will compromise the business environment. This is because invoking the Ordinance may force banks to disclose their business strategies and even sensitive

commercial information or information on clients that must be kept confidential in operation. Although Members have stated one after another that they definitely would not request confidential commercial information, my concern is the definition. Despite the comment that hearings may be held in camera and Members may be required to make confidentiality undertakings, I am still worried. For example, in the past, when the Public Accounts Committee of the Legislative Council held closed-door hearings, the disclosure of confidential information that should not have been disclosed had occurred a number of times. Even in the inquiry conducted a number of years ago into the incident relating to the former Director of Immigration, Mr Laurence LEUNG, a Member used the word "shocking" when speaking after a closed-door hearing. All these are instances of intentionally or unintentionally disclosing information that should not have been disclosed. Such instances will impact on the confidence of the business sector in doing business in Hong Kong.

My last concern is that this will affect Hong Kong society as a whole in coping with the major challenge of a rapid economic decline. After the occurrence of the Lehman Brothers incident, it is true that the flaws in the regulatory regime for financial products were exposed and there is a need to tackle them. The response of the Government after the occurrence of the incident was slow, so a serious study and the pursuit of responsibility are in order.

However, it is the crisis of a rapid economic decline that Hong Kong has to take action immediately to address, closely monitor and take counter-measures against. How best this crisis is defused will affect social stability and the life of the people. We need government officials, the Legislative Council, the financial sector, the business sector and other people in society to devote all their energy to this. If we are distracted by and entangled in these hearings or attendance at these hearings at this stage, I am concerned that there will be some implications. Not only will it be impossible to help the victims, this will also make Hong Kong suffer sorely (*The buzzer sounded*) .....

**DEPUTY PRESIDENT** (in Cantonese): Time is up. Please sit down.

**MS CYD HO** (in Cantonese): Deputy President, I will vote in favour of the Legislative Council invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to investigate into the Lehman Brothers minibonds and related issues.

The reason is very simple. This is the responsibility of the Legislative Council. Our responsibility is to identify structural blunders in the system and seek to rectify problems by changing the system itself. To this end, the Legislative Council must have the power to summon those involved and request the relevant papers. This is not only for the purpose of doing justice to the victims of the Lehman Brothers incident but also for fulfilling the greater responsibility of doing a diagnosis of the financial industry of Hong Kong, especially the problems related to the sale of high-risk investment products, and making recommendations for remedy. This can hopefully limit the occurrence of blunders to this present occasion and prevent them from continuing indefinitely to the detriment of small investors. This move by us is also meant to maintain the reputation of Hong Kong as a financial centre.

The Ordinance does more than compelling related persons to attend hearings, for it will protect those who may come under any form of oppression and do not dare to speak the truth so that they can be free from the restrictions of the organizations to which they belong or by which they are employed. Then these people will have the chance to speak words from their conscience for society and its people.

Deputy President, in the marathon meeting of the House Committee which lasted for eight hours, we had asked the representatives of banks whether or not the front-line staff had been under any pressure such as meeting quotas, as a result of which they had to exhaust all sorts of ways and means to make the small investors buy these high-risk products. At that time, no representatives from the banks were willing to give an answer and in the end they only said that incentives would be given and an assessment of the services would be made once a year. The answer is totally not to the point. When the top management does not want to answer, and when the front-line staff who are under pressure do not have the chance to come forth and answer questions, then how can we expect to go anywhere near the truth? Thus we must use the powers vested in us by the Ordinance to find out the truth so that the public officers, the Government and all related organizations cannot cover up the facts and evade their responsibility anymore.

Some media are very worried that this Council will exercise this power. These include the *Hong Kong Economic Journal* which is a quality publication of great repute. I regret that this happened. The worries of these media include an excessively wide scope of inquiry. The scope defined now is not clear

enough. I have not joined this Subcommittee, but I hope that the scope of inquiry of this Subcommittee can focus on the following three points. First, why were high-risk investment products able to obtain approval from the SFC and become products for retail sale in the banks? What were the justifications for granting approval? Was the SFC negligent of its duties? Did it just think about expanding the business of the financial markets in Hong Kong to the neglect of the protection of small investors? Second, has the HKMA discharged its duty of supervising the banks? Or was it afraid that banks could not stay in business just by relying on lending? Hence approval was granted to them to engage in such activities, that is, retail business which just collects commission and reaps gains instantly after the sale of such products. The interests of small investors are thus sacrificed. Third, was any deception involved in the sale of these high-risk products by the banks? Did the bank management exert any pressure to compel the front-line staff to meet the quotas set instead of explaining the risks involved to the investors?

The media were correct in saying that the Legislative Council exercising its powers would not help the victims recover the losses they have incurred. This is because the report of the inquiry conducted by invoking on the Ordinance is not legally binding and we are only passing a moral judgment, not a judgment from a court of law. We are only looking into structural problems in the system and findings cannot be used to deal with the cases. Therefore, if the banks are to settle the disputes with the related parties and handle compensation matters quickly, then there is absolutely no conflict and these actions can proceed in parallel.

In fact, after the formation of the Subcommittee, it would be some time before the scope of our inquiry is delineated and the work commenced. This includes issues like what kinds of witnesses we are going to summon and what kinds of papers we are going to request, which is a great concern for Mr CHAN Mo-po. When this is complete, I would figure it would take a couple of months or so from now, well past Christmas. So if the banks are to settle their disputes with their clients quickly, there is still time. Personally, I hope very much that the banks can complete such work before we begin the hearings.

I believe Members of this Council will know how to exercise with great care the powers conferred on us by the Ordinance. I also believe that in



assessing whether certain pieces of information are sensitive or not, we will consider whether meetings will be held in camera. It is because the media are the best watchdogs around and we will exercise this power under the discerning eyes of the public.

There were occasions in the past where the Legislative Council was more cool-headed than the media and these were the inquiries into SARS. At that time, the Hospital Authority, the executive authorities and the Legislative Council all had undertaken their own inquiries. The report compiled by the Council was the most in-depth, with the greatest credibility. But when we released the report, there was something that made the media felt very disappointed and that is, we did not request that heads be seen rolling. Instead, the media hoped more than us that the Council could exercise its powers to demand resignations of the officials. But we did not do that. In the end, the report gained wide public recognition and that was precisely because the committee in charge of the inquiry exercised this power in a most cool-headed and restrained manner. So I hope the media can rest assured.

Having said that, Members should not feel agitated because of the criticisms from the media. This is because in any democratic society, the media are the best fourth power. They are a good force of monitoring outside the separation of powers. We have to thank the media for the reminders they make and we ask them to continue with their criticisms. We would endeavour to rectify any mistakes that we may have made and we would strive to do better even if no mistakes are found.

I also hope that Members who have joined this Subcommittee can do their best and fulfil the contents of the oath we took when we assumed office. At this time when the people of Hong Kong have lost their confidence in the financial system, when the people feel that there is not a single institution in which they can place their trust, if the Council can conduct this inquiry with impartiality, it would serve to rebuild confidence so that society can have some unwavering standards to go by.

Lastly, Deputy President, I would like to talk about the issue of violence in this Chamber. Recently, the DAB has said that throwing bananas in the Chamber is an act of violence that should be condemned. Admittedly, the throwing of bananas is an act out of the ordinary and this may not necessarily be a

normal practice in this Chamber. It is fortunate that it has only happened once. However, we ought to find out why certain people in society would support such acts like throwing bananas which are out of the ordinary. Is it because injustice abounds in our Chamber such that the voting results cannot reflect public opinion at all?

Deputy President, the real form of violence in this assembly is not throwing bananas, but those seats filled by elects from small circle elections, that parties groomed and pampered by the Government want to carry the Government through every round of voting and their use of these political privileges to trample public opinion. This is to me the most brutal and barbaric form of violence in our Chamber. That is why some people in society favour this kind of out-of-the-ordinary acts. Fortunately, under the sweeping tides of public opinion, parties that want to take part in direct elections will sail in this direction of the wind. This is a merit of democratic elections after all.

Deputy President, I am in favour of the Legislative Council exercising the powers conferred by the Ordinance to inquire into the issues surrounding the Lehman Brothers minibonds.

Thank you, Deputy President.

**PROF PATRICK LAU** (in Cantonese): Deputy President, recently I have met with many members of the public affected by the Lehman Brothers incidents. A few days ago, I got calls, faxes and emails from people from all sectors across society and they included people who were affected and those who were not affected. On the question of emails, many Members of this Council have said to me that they got emails from people who are on a "one-person, one email campaign" and if the storage capacity of our computers is not too large, soon the memory will be full. I think that this form of expressing opinion is not at all responsible, so I hope that the public will not use it from now on. This is because when I have to read these emails, sometimes other emails of greater significance are omitted. I would read out some of these more meaningful emails later. After listening to their views and experience, I think we must handle the Lehman Brothers incident seriously, especially with reference to the adverse impact it has on Hong Kong as an international financial centre.

A few days ago, I met with some members of the public affected by the Constellation retail bills products marketed by the DBS Bank. They said that no one had ever mentioned this event and they hoped that I would talk about it. After listening to their story, I cannot but feel enraged. They said that the Constellation Investment Ltd. is actually a subsidiary of the DBS Bank of Hong Kong, but this relationship has never been disclosed to the clients. The DBS Bank has decided to redeem these bills and of course, their value is nothing. Is this a way of taking away the lifelong savings of the Hong Kong clients for the sake of rescuing the flagging market of Singapore?

Moreover, some bank staff can get hold of the personal details of clients and they can then talk to the clients incessantly over the phone and market some investment products to target clients who have considerable deposits. I really have a feeling that they may have encroached on the privacy of the clients. This is unfair, like the "one-person, one email campaign" I have just talked about. I think the banks should really reflect on this and they should focus on their core business activities like home mortgages, savings, loans, and so on. And the best thing to do now is to help the small and medium enterprises. Deputy President, I know that you are very concerned about this. And the banks should not rely too much on making a profit out of selling complicated financial derivatives.

For those clients who have a great trust in the reputation of the banking institutions and who believe that those products recommended by them have the unconditional and irrevocable guarantee of international top-ranking investment banks and these products are low-risk investment products, to crack down on the sale of derivative products through improper practices and to ensure the soundness of the supervisory mechanism of the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) is the radical method to protect the lower-middle class from the financial tsunami and even to prevent the recurrence of similar incidents in future.

Many people, including professionals and even university professors have said that it is not an easy task to understand complicated financial products like minibonds. Even some experts in certain financial institutions have admitted that they did not have too much understanding of this kind of products and it was only when things had gone wrong that they started to gain a better understanding of these products. What is surprising to me is that even senior officers of the

SFC also said in this Council that as the United States authorities were very cautious about this kind of products, they had forbidden the banks to sell this kind of complicated and high-risk products to members of the public direct.

However, I am aware that different banks have begun to take some positive actions. I agree with those banks which have pledged to help their clients in preparing the documents required and gather their claims together. Replied technical questions on insolvency procedures and lodged claims against Lehman Brothers according to insolvency procedures in law with the liquidators of Lehman Brothers. I hope that more banks would offer professional and impartial services to their clients, thereby rebuilding society's confidence in the banking industry. In this respect, I wish to thank the Secretary for his patience and the trouble he took to explain related questions raised by me. He has really explained a lot of things to me. I also know that he has done much work to make the banks stop being aloof to their clients. He has also mentioned that he would keep in touch with the victims and act responsibly.

I wish to stress that since structured financial products are so complicated that even experts in finance find it very difficult to understand, there should not be any discrimination in terms of age, educational attainment, and so on, in handling those issues. Just imagine, would the investor have to bear all the responsibility himself if he sees that some structured financial products have got such high international rankings (3As) like those of Lehman Brothers and a guarantee is given by well-established international investment banks?

However, we should know that investors have to bear a certain extent of the responsibility after all and I do not think that all the victims of Lehman Brothers products have been misled by the banks. If we were to make an across-the-board decision on compensation rashly, it would be unfair. It is also likely that a vicious trend of acting in contravention of the spirit of contract and refusing to admit responsibility may arise. And this will truly affect the business environment and international reputation of Hong Kong.

Deputy President, I have got an email and the description it makes is really apt. It says roughly to this effect, if we do not conduct our inquiry properly, Hong Kong will become a super ATM for financial pirates from all the seven seas. So I think that the inquiry should be conducted with authority and prudence, and efforts must be made to crack down on improper sales practices

and demand that banks found to have used unscrupulous sales practices to market minibonds to return their commissions. Service quality of the banks must be improved and it must be ensured that the supervisory system of the HKMA and the SFC is sound. This is also a remedy and solution that will protect public interest, enhance the supervisory system, consolidate the financial system of Hong Kong and prevent the repeat of history.

Deputy President, now it is betting close to dinner time. There is an interesting email here which I would like to share with you all. This is a financial tsunami set meal, so it says. The appetizer is a plate of ginger to give a foretaste of the stingy days ahead. The seasonal delicacy is a hairy crab tightly tied and amazingly seasoned. The choice dishes are: saline to quench the thirst for good old days, deep fried squids for those fired, stirfried milk with melamine, stewed mushrooms in malachite green, bottomless bitter gourd, crap minibond pies, junk warrants fried rice noodles and beggar's assorted grains of rice. Desserts are cookies of worthless futures and cakes of total loss. Sweet soup is nothing-out-of-nothing. And the seasonal fruits are to hell with it all. *(Laughter)* Venue of the banquet is at the Tsunami Hall of the Finance Restaurant. But I think this set meal is quite hard to swallow, for it carries a price tag of a hefty US\$700 billion a table.

Deputy President, I so submit.

**MR PAUL TSE** (in Cantonese): Deputy President, I used to think that after many Honourable colleagues have spoken, there would be no more new arguments to put forward. However, thanks to Mr CHAN Mo-po's summing up, that is, he presented the view that if we invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance), the entire inquiry would delay our efforts to assist the victims. This prompted me to say a few words.

First of all, we are not trying to summon all the banks to this Council and make them defendants or parties in a lawsuit. Nor are we making them to come here every day to testify or submit all the papers. This is an entirely different story. The action we are contemplating is not litigation, we are only performing the duty entrusted to us by the Legislative Council to find out something that may not be found in a court of law or regulatory body, in the hope that this will do justice to society, to the parties involved and even to the so-called victims. I fail to see that such a move would make the banks unable to attend to their day-to-day

business or even cause the kind of panic like a bank run which Mr CHAN Mo-po has talked about. Actually, if only the banks are summoned at the right time and requested to describe their practices and the process involved on certain topics, the operations in certain banks, strategies, their practices in staff supervision and sales, I would not think that the banks should be worried that they would not be able to attend to other business. Unless the banks are very worried that in the process, a lot of evidence will be found to prove that they have committed serious blunders or if they wish to conspire and hide and cover things up together, then there is no cause for worry if they will just take part in the process in a normal manner.

Of course, owing to the way things are going these days, the culture in the Legislative Council may have changed quite a bit and it may even be more than just that, and the Legislative Council meeting is no longer a solemn occasion on which all the Members will act according to the book regarding all the related topics and procedures. But it is where some individual Members hope to speak on their own political stand or with their political opponents in mind. This is actually making the banks or officials more and more worried that the proceedings in the Legislative Council will be used in such a way that they will become targets of attack. This is something that we need to think about. If we really hope that the dignity and powers of this Council would not become too much of a concern for the relevant stakeholders, be they the Government or the banks, then we should adopt a more rational and restrained attitude to think about what we are actually doing.

It is fortunate that, generally speaking, from the experience and history of past inquiries and select committees or from the inclination and composition of this Council at present, the work style of most Members is practical and cool-headed. Even if Members may disagree with each other, they can present their arguments in words and will not resort to taking an excessive step or be bent on having their own way like certain Members who have to stage a show or solicit populist support. Such Members are still a minority here. Even if the invoking of this power is endorsed this time, I believe the Council can maintain its usual style of work and will not let down on most members of the public. We hope earnestly and we agree that the Council should fight on behalf of the victims for justice. I wish to stress again that since we have decided to set up a subcommittee specifically tasked with the work and as they are sent to the battlefield, so to speak, they should be given the proper weapon. Currently, the most powerful weapon is the powers we own. If this weapon is not given to them, I am afraid we will not be able to get the job done.

This morning Mr James TO talked about some of the advantages of exercising this power. He listed four points and I agree with them greatly. I would not repeat them here. The main point is that we should have this power before we can have access to certain papers or information that would otherwise be difficult to gain access to. This is the first point. Second, this power is not to be used to target certain witnesses, officers in government agencies or those from the banks, and this power can even be used to protect them. In certain circumstances, if there is no such practice or system of summoning witnesses, I am afraid they will not be able to come here to give evidence and speak the truth. They may also feel uneasy about doing so or they will not be willing. So there is a need for us to do so.

As I have mentioned, the proceedings will not target individual cases or determine the rights and wrongs according to the individual circumstances of the victims. In the words of Mr CHAN Mo-po, it is to determine the rights and wrongs. This is something that we must not do. On the contrary, we should target the incident itself. It all started in 2002 to 2003 when the relevant law was passed. Earlier on, Mr CHIM Pui-chung has outlined the background of the incident. This is very important. Should the banks in Hong Kong be allowed to continue to play the role of a super salesman and all the staff members are compelled to be salesmen and sell certain high-risk products? Or should the banks return to the olden days when they followed the rules and concentrated on banking business and left the sales work to the securities firms? This would be a far better strategy and measure and this occasion may afford a major review.

On the other hand, on the supervisory procedures, although we have initiatives that are based on disclosure, would these initiatives have to be reviewed now? Speaking of the disclosure-based principle, would the reality be deception instead? We should carry out a good review of that. So in general, the focus is not on the individual cases of the victims, and it is definitely not passing any judgment on the question of whether or not they are right or wrong. It is to give us the chance to clear that blind spot of responsibility beyond the Courts and the regulatory bodies. Why are regulatory bodies not suitable for undertaking the review and why should we not just rely on them to do such work? The reason is obvious. It is difficult to pass a judgment on oneself and the question of whether or not there is any conflict of interest can never be defined. Hence the conclusions drawn are always opened to doubt. This is something we will certainly not want to see.

On the view expressed by many Members that the inquiry will have an impact on the business environment or international reputation of Hong Kong, I think this is totally unreasonable. The core values of Hong Kong are always respect for the rule of law and an insistence on transparency. If mistakes are made, it is hoped that there can be a good system so that a lesson can be learned by all. This will serve to enhance our status and reputation as an international financial centre. But if Hong Kong, like certain other places, resorts to covering up or being sloppy about accidents or serious manmade disasters, it is utterly not the cornerstone and reason for our success over the years. On the contrary, it is most imperative that we can set up a sound process so that people will know for sure that mistakes made are always admitted and that the same system of admitting mistakes is found in the Government and manifested in its principles and measures. But if we just wish to rush through the negotiations and put up all kinds of excuses in the name of not causing delay to the negotiations, what we will pay in the end is the loss of our international reputation that we have slowly and painstakingly built up over the years. In this respect, I believe most members of the public and Members will support this Council to invoke the Ordinance and conduct the inquiry.

Lastly, I wish to comment on the situation as reflected by certain Members and banks. They are worried and even say jokingly that when people are questioned, they would be forced to disclose things like why people are fondly known as "Baby Po" or involved in certain insider trading in the United States. To say so would exaggerate the Ordinance or the gravity of the proceedings. In fact, any topic or matter not relevant to the subject of inquiry or where privacy is involved, the person concerned is fully entitled to claiming exemption under section 13 of the Ordinance. Any testimony made or paper produced under coercion may not be admitted as evidence when the person concerned faces criminal charges in future. So we do not have to worry about this at all. Considering the abundant resources of the Government and the financial strength of the banks, doubtless they can hire enough barristers or teams of solicitors to protect them so that they will not come under any unnecessary, unreasonable or unlawful persecution. This should clear us of any worries.

All in all, we must give enough weapons to the Subcommittee — though we may not necessarily have to use them, an inquiry can only proceed if the weapons are there. Our aim is not to kill all the targets we may have in mind,



but we must have the weapons. A policeman keeping public order or making investigations must have weapons for self-defence and these can be used for deterrent purposes when necessary. Hence I am totally in support of the idea. I am actually quite surprised to see that after a debate lasting several hours and when a decision has already been made to form a Subcommittee to undertake the inquiry, we have to spend so much time now discussing whether or not powers should be conferred on the Subcommittee. If the Subcommittee has no powers, it cannot possibly conduct any inquiry. If Members oppose the idea of conducting an inquiry, they should have opposed the setting up of this Subcommittee in the first place and convince the other Members that the relevant organizations and banks will take up the responsibility themselves. They should not try to forestall the proceedings at this stage now when it can almost be said that the water has run past the bridge. It is already too late to do so and as I see it, it is also unnecessary and unreasonable. Thank you, Deputy President.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, while I was listening to Members advancing their arguments, I also watched the Secretary. I think he was very happy. He has been smiling all the time, and he is smiling again now. I do not know why the discussion on this topic has anything that makes him so happy and why he puts on a smiling face. On other occasions when discussing problems or holding a debate, especially when the arguments touched on his policy area, he would be seen more agitated. Whenever the television or the newspapers talk about this topic, his looks are quite unlike those today. Is he happy because the motion is bound to be passed or does he think that while the victims are unhappy, the Secretary is happy and that is why he is smiling?

I recall it was at the beginning of October — I think the Deputy President will recall that as well — that Chief Executive of the HKMA Joseph YAM came here to reply to our questions. He is a smart guy. He said that he knew about this problem a long time ago and he had informed the banks a long time ago, telling them that minibonds were risky. He said that he had foresight. What was my reaction when I heard those remarks? I thought, since he had foresight, he could have of course told the banks not to do that and if they had done it, what were the measures they had to adopt to protect those who had bought the minibonds. Since he had foresight and if he is that awesome, he could have averted the incident before it happened. But why after so many aggrieved and

victims had appeared that he told everyone here joyfully that he, Joseph YAM, Chief Executive of the HKMA, had foresight? Is he that awesome?

Secretary, what is even more beyond my expectation is that last week you could have repeated the same thing. You said that you also had foresight. I do not know if the newspaper report is right or not. Because I remember Mrs IP said earlier to the effect that success was attributed to finance and failure to construction. But it turned out that the newspaper had made a typo of the Chief Executive's remark. I can see that one week ago the Secretary said that he had foresight. The Secretary is now shaking his head. I take that as meaning he did not say that, but that is the remark I read from the newspaper.

I wish to pose two questions to the SAR Government, especially Joseph YAM, Financial Secretary John TSANG and Secretary Prof K C CHAN who is sitting here. First, I have actually asked that before: Do they know that minibonds are prohibited from sale in the banks in the United States? If yes, have they ever asked why? And after learning the reasons, why do they think that they can be sold in the banks in Hong Kong? This is the first question.

Second, Deputy President, Alan GREENSPAN who has always been regarded as the greatest chairman of the Federal Reserve for the last 100 years said of a hearing of the United States Congress on 23 October to this effect: The market-led mindset will not work. He even admitted that there was no supervision in the financial market and he thought he was responsible. My understanding is that he admitted fault with respect to the free market and giving the market a free hand. And he also admitted that he had a responsibility in this problem.

Deputy President, I have these questions for the three gentlemen I mentioned earlier, namely Joseph YAM, John TSANG and K C CHAN. Have they ever admitted any responsibility? Do they still maintain that they are right? If GREENSPAN is wrong, but we in Hong Kong are doing things that other people are not willing to do, then our Joseph YAM must have made a grave mistake. When GREENSPAN is willing to make an apology, may I ask the Secretary and the public officers in finance and economic matters, ranging from

Joseph YAM to John TSANG, if they have to kneel down and beg for forgiveness? GREENSPAN is world-famous and before the incident, he was called the great Federal Reserve chairman. And he knows to search his soul. Deputy President, what on earth are our officials doing? I will try to do some explaining for them in my speech as follows.

At that meeting, Joseph YAM said that they would send people to check the banks every year. I do not know if that can be called an inspection. I guess that is no more than paying a visit. And every visit is notified in advance. This is like the case of someone having found a street in Sham Shui Po is filthy and we make a complaint. The head of department will say to me, "Mr FUNG, why do we not go and inspect that street together?" When we got there, we found that the street is spotless. Deputy President, you have been a District Council member before and I am sure you will know why. The authorities must have informed the Food and Environmental Hygiene Department beforehand and they have swept the street clean. There is of course no problem there. I do not know if they had a meal together and as the saying goes, good food makes the problem go away. Have they ever checked whether or not the policies enforced by the departments are contrary to government policies? How long did that meeting last? What were the papers they had read? We know nothing. Then how can I see ..... From the prohibited sale of minibonds in the United States, to the apology by GREENSPAN, to their inspections, the entire process from policymaking to execution, how can they tell me or have they ever told me about it? I do not think so. Have you really done your part in supervision?

The topic under discussion is that we consider a supervisory policy is necessary. I do not think that there is any policy in the world that is perfect. I want to know what the loopholes are in the supervisory policy now and what the problems are and why these things have happened. Secretary, it is not that they have not yet happened, but they have indeed happened. In theory, this incident should not have happened. In theory, he could have forestalled it, because he had foresight. Then where are the loopholes? If they can be identified, why is it that after such a long time, they are still unable to point them out? If they ask whether they can tell me what these are in the reply later, then that means they know, but why did they not do so at that time? I have now thrown a heap of questions. I do not know how much time he needs to handle things. If these cannot be handled, why is it said that there is no need to form a Subcommittee? Why do members of the Subcommittee not need to have this power? Let him answer me.

As officials in charge of finance and economic affairs, have they, apart from supervisory work, after the formulated policies have been communicated to the banks, tried to know what do the bankers think of these policies and how they will handle these policies, or even how to face these policies and later devise their sales tactics? If he tells me that he knows about it, with foresight, then why did this incident happen? Why could the United States Government stop the banks in the United States in advance from selling these products? Did the Hong Kong Government allow the banks to sell these products even after it had learnt about it? Or did the Hong Kong Government care about nothing even though it knew about it? Or did it simply know nothing? There are only three possibilities here, but any one of them can be wrong.

Moreover, Hong Kong is a free market economy and these policies are really *laissez-faire* policies. The most important thing about the banks is that they are subject to restraints, that they are required to have a certain amount of reserves and the ceiling of these should not be over a certain amount, then the rest is making profits. The main goal in a free market is to make money. It does not matter if there is anything negative about people. In the process of making money, people care only about their own interest. It does not matter if they are greedy. When everyone cares for his own interest, one will protect oneself. So self-protection means the market protects itself.

However, when everyone is making money and when all people make money to such an extent that can be called crazy, no one will see how supervision is being carried out. This includes the bankers. Have they ever stepped beyond the line? The Secretary will certainly say no, for it is only right if no one has stepped beyond the line. Otherwise, the Secretary is in the wrong. If no one has stepped beyond the line, why have people in their sixties and eighties bought minibonds? Why have some psychiatric patients bought minibonds, too? Obviously, something has gone wrong. This means even if he thinks he is right, some mistakes have appeared. If he thinks something is wrong but he does not stop it, then he is wrong, too.

There is another level and, that is, after a banker has devised his policies and sales strategies and after he has considered whether or not he has stepped beyond the line, he then asks his subordinates to enforce these policies. When they are enforcing these, has he looked into every part? In every part of the

process, have the front-line staff followed all the instructions? Has he listened to their recordings? Has he watched the video tapes? If yes, can he tell me, whether all or most of the cases are right and whether all instructions have been dutifully followed? For those individual cases where instructions were not dutifully followed, has he examined them in these few years past? Why are they examined only after something has happened? Has random checks been made? If yes, how many samples are taken every day, month or year?

All these are problems which we think appeared in the process of supervision and in each part of the process of implementation involving people from the banker to the front-line staff. About all these problems, I do not see any one will tell me, no matter it is the Secretary, the bankers or the front-line staff and in the panel, the Subcommittee or even the meeting of this Council.

There is not much time left, but I have a lot of things to say. An example is I have to respond to Mr CHAN Mo-po on a number of points. The speech made by Mr CHAN Mo-po is all wide off the mark. We have to examine what is wrong with the existing supervisory system and we want to set up a new and effective one instead. After knowing what the problems are, we will carry out reforms and make improvements. This is how the problems can be solved. Then we can tell the world that Hong Kong is a financial centre that can change for the better. We will still continue to be a financial centre that can make good progress. We can achieve progress in the external environment and also in the world within us.

There are two obstacles lying in front of us. First is the philosophy of governance found in the policy address. During the Question Time earlier, in answering whether or not the principle of a "big market, small government" should be reviewed, the Financial Secretary was still saying that the Government was being very flexible and the matter will be reviewed at any time. But actually no review is conducted at all times. Because he is still maintaining the "big market, small government" principle. When even GREENSPAN thinks that the big market will not work, we should add in some reasonable — and I stress, reasonable — new variables that will meet market developments before we effect supervision and give play to government influence. The Financial Secretary says that the Government has got flexibility. He did not say that intervention was a sin, nor did he assert that free market is right or wrong. Then would he tell me what I should do? He did not talk about it. How do we know

that the so-called "big market" that he used to talk about and the "big market" we refer to means free market economy, that is, a *laissez-faire* kind of policy? We only feel — or at least I think — that there is no need, it is not enough and there should be change. But he is still telling me he still believes in that, so I do not believe he will ever change.

The second is the face of those in power. Once they allow us to have any power, that is, the power to find out problems and those problems are especially related to the possibilities mentioned by me earlier and which may be related to the officials in charge of finance and economic affairs, then it is the face, the powers and even the personal safety that is at stake. By personal safety I mean resignation, being forced to resign or given the sack. He will then have to defend all these and he will have to keep things as they are, the *status quo*. If things are kept as they are and if the entire philosophy of governance remains unchanged, I will have to tell the Secretary, the Financial Secretary and the Chief Executive, there is no way Hong Kong can be renewed from strength to strength in its position as a financial centre and it can never pass the ordeal of fire and emerge as a phoenix from the ashes.

Deputy President, having said all this, I have never said that I want this Subcommittee to probe into individual cases and apprehend the guilty persons. I have just discussed how reform can be introduced to Hong Kong as a financial centre and how reform can be introduced to the supervisory system and how reform can be introduced in the entire financial centre from first to last and in every person involved. We are to examine if there is anything wrong in the course of work and then make recommendations. When any reform is to be undertaken, the first step to take is likely to be the admission of mistakes, the second is reform and the third is improvement.

Deputy President, I am in favour of the motion.

**MR VINCENT FANG** (in Cantonese): Deputy President, on the position of the Liberal Party in invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to investigate into problems about the Lehman Brothers minibonds, our party chairman, that is, the Deputy President, has talked about it earlier. My speech is mainly on two points, first, the Liberal Party is in favour of invoking the Ordinance not only because of public opinion, we hope that a review can be conducted of the existing law to find out the loopholes so

that improvements can be made later and Hong Kong can surge ahead. Second, we hope that the Subcommittee, when conducting an inquiry under the Ordinance, must protect the information given by the banks on commercial secrets and it must endeavour to uphold Hong Kong's position as an international financial centre.

I have full sympathy for those members of the public who have lost a large part of their fortune because they have bought the Lehman Brothers minibonds. If they have bought this kind of bonds because they were misled by the banks, we will support the idea that the banks must make compensation to these clients. But we are not in favour of using government funds to compensate these clients or to underwrite any shortfall that may appear.

(THE PRESIDENT resumed the Chair)

In the incident, the people who have most of my sympathies are those bank staff who used the proper channels to sell minibonds to their clients. They all believed that this kind of products would get a higher return for their clients and so they marketed them to clients with whom they were better acquainted. In addition, as far as I know, some bank staff have also invested in the minibonds and some even sold them to members of their families. Now with the failed minibonds, all these people are victims, too. But they cannot recover their losses from the banks like other victims. They are even blamed by their family members. At work, they are scolded by the victims and they even stand the risk of facing physical violence. What is worse, they may have to bear some of the responsibility in this inquiry and they may even lose their jobs.

Why do these bank staffs believe that minibonds are a reliable investment tool? Of course, it is because Lehman Brothers is the third largest investment bank in the world with a history of more than 150 years. It is well-known. I think it has never occurred to them that this investment bank could have vanished overnight.

Actually, before Lehman Brothers closed down, this sort of products had been marketed for many years. At that time, the risk ratings for this sort of products is low to medium. And today they are worthless. I do not want to say

that someone is being wise after the event, but I wish to point out that the prevailing conditions in the international financial market are entirely different from those in the past. This accounts for latent problems that slowly come to the surface. This is an indisputable fact.

However, the kind of supervision which the Hong Kong Government is exercising on the investments banks is very lax, and this is also an indisputable fact. As compared to the licensed banks, the supervision of investment banks is much more lax. Hence these investment banks can produce very complicated products which target the retail investors. As the investment banks do not have retail networks like the licensed banks, they have to use the networks of these licensed banks to sell the bonds to non-professional investors, that is, the small investors.

In the final analysis, the Liberal Party considers that the relevant government departments, including the regulatory bodies, do have a responsibility in the extensive harm done to the public in the Lehman Brothers minibonds incident. This is a responsibility they cannot possibly shirk. It is definitely not enough to merely require companies selling these products to attach a warning like "investment products carry risks" to their promotional materials. More so inadequate is the principle of "risk disclosure-based" principle of the Securities and Futures Commission (SFC). In order to protect the lifelong savings of the elderly persons, I suggest that Hong Kong should take reference of the practice in other countries and enact laws to require banks not to sell high-risk investment products to persons or retirees aged 65 or above.

Recently, the banking industry has advanced its view through many channels that if the Legislative Council invokes the Ordinance, it would affect the compensation discussions between the banks and the victims; and if the banks are required to produce confidential documents, it would affect the status of Hong Kong as an international financial centre. I have talked with several banks about this issue, however, I have reservations about the idea that invoking the Ordinance will affect the progress of the compensation talks. I ask the banks to rest assured because there are many other important topics for discussion in this Council, such as how to cope with the financial tsunami, the banks' credit crunch on SMEs, and so on. We will not hold meetings every day and affect the business of the banks.



As to the question of worries about the leakage of confidential documents and putting the banks on a public trial, the Subcommittee has earlier on narrowed down its terms of reference to matters concerning Lehman Brothers minibonds. As for other commercial documents, the Subcommittee will certainly handle them with great care. I wish to point out too that should the resolution on exercising the Ordinance be passed, I hope members of the Subcommittee can observe the confidentiality rule and do not divulge any documents which the banks want to keep confidential.

In the past, the Ordinance was only invoked in conducting an inquiry into government accounts, so this is the first time that suggestion is made to invoke it in commercial matters and in financial matters which are considered most sensitive. I can see why the banks are so worried, however, the Council does not want to do anything to undermine Hong Kong's position as a financial centre. So the banks should rest assured and they must never say that the invoking of the Ordinance to conduct an inquiry will cause legal concerns and use this as a pretext to postpone making compensations to the victims.

I hope that the two regulatory bodies, that is, the HKMA and the SFC, can hand in the reports of the reviews they have conducted and for which they have undertaken to do so within three months. They must do so as soon as possible. It does not matter if they are interim reports. This will enable the Subcommittee to know how the reviews are progressing. I think this is useful to the entire matter.

Lastly, I wish to emphasize that the Liberal Party supports this Council to invoke the Ordinance to conduct an inquiry into the Lehman Brothers minibonds incident. We are not discussing whether the banks should pay compensation to individual parties involved in the cases, but we hope that the incident can lead to a review of the current supervisory legislation to see if there are any loopholes or inadequacies. If it is in the affirmative, then improvements will have to be made. This will on the contrary be conducive to further consolidating the position of Hong Kong as a financial centre and hence our future developments. I so submit. Thank you, President.

**MR ALAN LEONG** (in Cantonese): President, we are happy to see that recently some banks have paid compensation to some of the minibond victims. But does monetary compensation mean that the Lehman Brothers minibond incident that

has caused such a public uproar can be fully and completely settled? The fact that the banks are willing to pay compensation can be said to have offered a remedy to the financial losses incurred by some victims because they have been misled. But this is unable to remedy the damage done to the financial system of Hong Kong because of this incident, nor can it remedy the erosion of investors' confidence in the banks of Hong Kong and people's confidence in the Government.

President, I support the invoking of the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) and the setting up of a Subcommittee to inquire into the Lehman Brothers incident. This is exactly through identifying the source of the problems and applying the right remedies that the position of Hong Kong as an international financial centre can be rebuilt.

Recently, the banks, the Government and even the political parties all said to the media that an inquiry launched by this Council may cause delay in compensation, affect the confidence of the banks in running their business, undermine the position of Hong Kong as an international financial centre and there is even an allegation that the inquiry is a violation of the spirit of the rule of law in Hong Kong. As a Member of this Council, I think that these comments are unfair to this Council. An inquiry by this Council is not merely meant to pursue or ascertain responsibilities. More importantly, it is to examine the system to see if loopholes exist and to make recommendations on remedy.

President, the banks have recently linked the inquiry with compensation. I think this is an irresponsible attitude. For more than one month already, the victims of the Lehman Brothers incident have gone to the banks repeatedly to petition and demand that compensation be made. If the banks are trying to defer compensation by using the pretext that the Legislative Council is conducting an inquiry, this will only aggravate public discontent. In the end, it is the banks' reputation that will suffer.

President, the merit of this Council undertaking an inquiry lies in the transparent process of the inquiry. Now no bank is willing to make public the results of its internal investigations. When some banks have paid compensation to certain clients, does it mean that after the internal investigations, these banks have found out that they have really engaged in mis-selling? Have the front-line

bank staff made any mistakes? Or have the senior management failed in supervision? The public has no way to know the answers to all these questions. The Lehman Brothers incident also shows that there is no tacit understanding between the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) and there are ambiguities between their roles. The best way to find out the truth of the incident and straighten out problems that exist between the banks, the SFC and the HKMA and to perfect the existing system is for these three parties to provide the information and then undertake an inquiry into the incident by a Subcommittee formed in the Legislative Council which enjoys credibility.

President, at present the banks still believe that compensation is the best solution and paying out money to the victims will put a full stop to this incident. This is oversimplifying the problem. The victims of the Lehman Brothers incident have made it clear already that they hope not simply for the recovery of the money lost, but they hope all the more that justice can be done. It is incumbent on this Council to represent the people to investigate into the question of whether the financial institutions have sold financial products through unscrupulous practices. If problems do exist in the operation of the banks, then they will have to shoulder the moral responsibility and do the victims justice.

The Secretary for Financial Services and the Treasury stated sometime ago that the inquiry to be conducted by this Council might erode the banks' confidence in doing business in Hong Kong. I beg to differ. President, a responsible, open and fair inquiry should be able to do the banks justice. People will no longer think that the banks are singularly concerned about making money and care nothing about the interest of the clients. The banks will not be seen as irresponsible predators. The banks' confidence in doing business will not decrease but increase as a result of this. President, in the worst scenario, even if what the Secretary says was correct, I would still think that the banks' confidence in doing business and the investors' confidence in making investments are equally important. And either one cannot do without the other. Even if the Secretary succeeded in making all the banks stay in Hong Kong, but the investors were driven away, it would do no good to the development of the financial market in Hong Kong when the people of Hong Kong have lost confidence in the banks operating in Hong Kong. President, the Lehman Brothers incident has greatly undermined investors' confidence in the banks in Hong Kong. The role that the Government is supposed to play is the referee in a ball game and it should try to enable the game to be played in a smooth and orderly manner. But if the referee

gives people an impression that he is not doing his job well in enforcing the rules and overseeing the players, and when the game cannot proceed in order, it will certainly lead to public discontent. The inquiry to be undertaken by this Council can enable the public to see in an open and transparent way whether or not there are problems in the mechanism used by the Government to supervise the banks. Hence the existing mechanism can be bettered and similar events prevented. If the interests of the businessmen and the investors can be protected under a sound system, it will not only serve to restore the confidence of investors in the banks and the Government, but also do the development of the financial market in Hong Kong a service.

President, the Secretary should know that both the SFC and the HKMA are targets of the inquiry. We must delineate the roles and responsibilities of the banks and the Government respectively in this incident. In fact, the role played by the banks and the way they operate have changed. In the past, the banks maintained their operation and made their profits through deposit-taking, investments and mortgage business. But now many banks rely heavily on the commission they get in the sale of financial products to maintain their profits. In the face of the transformation of banks, are the government regulatory bodies able to keep abreast of the times and oversee the banks effectively? It is thus evident that the inquiry by this Council is not confined to pursuing who is to be held responsible. The inquiry should be seen as a forum through which the Government, the business sector and the public can all learn a lesson. It is also where they can re-examine the current operations of the financial market and lay down new rules of the game for developments in future.

President, the powers of the Legislative Council are conferred by the Basic Law and it is completely in line with the spirit of the rule of law to invoke the Ordinance and form a subcommittee to inquire into the incident. Previously in a speech made in this Council, I already mentioned the importance of procedural justice to Hong Kong. If the Government is to show its strong leadership at a time of public uproar and make a high-profile demand on the banks to buy back the financial products concerned, it will not only bypass the normal procedure in delineating responsibilities but also neglect the background and facts of each and every case. I am afraid the Government, in so doing, will pay the price of throwing the reputation of Hong Kong as always upholding the rule of law and complying with procedural justice down the drain. The Council is right in deciding to hold an inquiry, for it is fair, reasonable and lawful to do so. The

inquiry and the recommendations eventually made will put the operation of the financial market in Hong Kong back onto the right track. The market will continue to function in an orderly manner and all operations will come under the protection of law. This accounts for the development of Hong Kong into an international financial centre.

President, I am disappointed to see the banks and the Government exert pressure on this Council in the last couple of days. They give the people an impression that they have a guilty conscience. The people will ask, if there is nothing wrong with the operations of the banks, and if the Government has done a good job in supervision, they should let the Legislative Council carry out a thorough inquiry. The results so obtained can be very helpful to the banks when they can tell the world that they have nothing to fear. This should have a positive impact on the banks' reputation. Conversely, if the banks are found to have done anything non-compliant and unlawful, they should take the responsibility. The Government should also be bold enough to address the loopholes that may exist under the current supervisory system, then rectify them and hence regain the trust of the people in the regulatory bodies.

President, the Legislative Council is a responsible public opinion agency and we are obliged to base our actions on public interest and go from that to seek the truth.

I so submit. Thank you, President.

**MS EMILY LAU** (in Cantonese): President, this debate has been going on for almost seven hours and it is still going on. So I would like to express my views, too.

Actually, my views are quite similar to those of Members who support the Legislative Council invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to investigate into the incident, so I would try not to make any repetition by all means. However, there is a possibility that many Members are still waiting for their turn to speak. President, maybe after this debate is over, we can call it a day and come back tomorrow.

President, the fact that there are so many Members speaking on this motion shows without doubt that this Council attaches great importance to this incident.

I am sure most of the Members speaking will later vote in support of invoking the Ordinance to confer power on the Subcommittee to investigate into the incident.

Many people in Hong Kong are quite sensible actually. At first when that event happened, President, you may still remember that some people said that these victims were speculative and they were trading and so when things had gone wrong, they should bear the responsibility themselves. This is something that we all agree. However, very soon when facts surrounding these victims surfaced, we can see that the truth is not what we might have thought. President, this is why so many people would like to spend so much time listening to what they say and help them.

However, these victims have all along felt that they can go nowhere to lodge their complaints. President, after this incident has happened, had their complaints been addressed when they went to the banks or the regulatory bodies, then there would be no need for the political parties or groups to come out and help them. There would be no more of this kind of repeated visits to the banks, or people crying or falling fainted and all sorts of scenes we see on the television. I am sure you have seen all these, too.

When an incident happens to the public or when the public thinks that the incident has a great impact on them, they may think that they should seek help from institutions with great credibility. However, when these institutions have done something that they find shocking, where should they go in the end? Who would be prepared to help them? President, it is the political parties. Political parties emerge for the reason that they reflect public opinion and help the people to have their demands met. In this incident, there are many people who think that they are aggrieved. The Hong Kong Monetary Authority (HKMA) has received some 15 000 complaints and it is not known when these complaints can be properly dealt with. Joseph YAM used some \$3 billion to buy flats and he said that the money was allocated to his staff, not staff expenses. That is to say, if there is a shortage of staff and money has to be spent to conduct an investigation, then the money is staff expenses.

Now that so many things have happened, the victims feel that they have nowhere to turn to and so they approached the political parties for help. What then is wrong if the political parties are willing to lend them a helping hand?

Although I have heard Ms Cyd HO say that we should not criticize the media and we might as well listen to what they have to say, the media are pointing an accusing finger at the political parties. They say that latter have ulterior motives. What then are these ulterior motives? President, do we have a prize to win for doing this? If these victims seek help from the political parties and if the latter refuse to help them, then other members of the public who are not victims will have a chill down their spine.

President, last Friday, we got an invitation — President, I am afraid your honour had not got that invitation for the President is not supposed to intervene in such matters — to attend a briefing organized by the Hong Kong Association of Banks (HKAB). This invitation was extended to us by our Honourable colleague Dr David LI. He said that we could talk with the banks on that occasion. To our surprise, the venue was in a club above the Yung Kee Restaurant. President, the place was a favourite hangout for some people. I do not know much about these things. I was shocked when I got in. There was a cocktail reception going on there. The place was dark. Waiters shuttled among the guests, holding drinks and liquors. Every guest had a glass in his hand. There were many people from the banking sector and also many Members of this Council. I asked, "What is going on here? I thought we are coming to hold a meeting and discuss some solemn issues. Why a cocktail reception here?" Then the chairman of the HKAB, Mr HE Guangbei, spoke and someone asked me, "Do you understand what he is saying?" I said, "No." Then I said to chairman HE that I thought we were going to have a meeting and I had no idea that I had to stand there. So I left after a while because I thought there was no point staying, President.

If the HKAB really wanted to give us an account of what had happened, the best way would be sending people to this Council and attend some of those meetings held in camera like we used to. The last occasion that was done was about some matters related to "Hulk", because "Hulk" wanted to know why the banks were shutting down so many branch offices. The Council then met with the banks to demand more services from them in the districts. At that time, we went to the office of the HKAB and it was in Prince Building. We had a meeting there. I thought it would be the same thing this time around, but it turned out to be a cocktail reception. There were so many people there and I could not see clearly who were there. And at times I could not make head or tail of the Putonghua spoken there. President, how could I put myself in a better picture after going there?

Then on the following Monday, the Lehman Brothers incident committee of the HKAB placed in the newspaper an advertisement put up jointly by 19 banks in which it was mentioned that they had done a lot, such as setting up hotlines and on-line platforms to contact the victims and information was handed to them and the banks were handling their complaints in a serious manner. President, if this is really the case, then there would be no more of these victims hopping from one office to another to seek help every day. The advertisement then goes on to say to this effect: The banking industry has always been running its business according to the highest professional code of practice. They know that their clients place their trust in them and the clients are confident that the banks will be fair to them and will protect them. Such is the foundation of the success of the banking industry. At this time of adversity, the banks will maintain their firm commitment to their clients and fulfil their responsibility to the community.

President, do you know what they are talking about? You have listened to the debate for seven hours. So many Members have spoken and most of them said that they lacked trust in the banks. This is some very grave matter. If we are to build Hong Kong into an international financial centre, but there are many people here who got cheated by the banks, how can we rescue our reputation? President, the only thing the people can do is to come here.

The responsibility is incumbent on us. Actually, as many Members have pointed out, now we are drowned to our necks in work. There are two select committees. The select committee on the LEUNG Chin-man case is about to commence work. Not long ago, some wordings in the papers had to be amended and we were asked in haste whether or not we would agree. It was said that we must reply by five o'clock. Many people are busy working with a lot of things. President, I think you are aware of all this. So, there are thousands of tasks to be done, on the SMEs, the financial tsunami, and so on. However, if there are things that this Council should follow up, then it must do it. President, we are not trying to grab work, but work just falls on us.

The media say that what we are doing is entirely useless and there are more harms done than not, and that the Council should stay away from these things. And mind you, these remarks come not from any commonplace media but the more serious newspapers. President, I wish to ask, "Why are they criticizing this Council in this way?" Some people have said that we are giving excessively high expectations to the victims. Actually, it is perfectly clear to them. On the



day we discussed the matter in the House Committee, I pointed out that we would not be looking at each and every case and we would not try to determine the amount of compensation for each case and such like things. But we would certainly ask questions on the progress of these some 15 000 cases and we would demand an explanation from them. Therefore, I am sure no Member had given people any false hope when they came forth to speak. The expectations of the victims are that our investigations can be fair and impartial.

Mr Albert HO was correct when he said that in the past when there were disputes like these, when the authorities were pressed against the wall, some commission of inquiry would be set up. If the authorities have established an independent commission tasked with the inquiry, I am sure the victims or us would say that it is fine, if only the commission appointed is really independent. But now the authorities have done nothing. There is some media opinion which is very interesting and it says that we do not have to do that and instead we should propose a motion debate to demand the Government to make public the findings of the investigations into the banks selling Lehman Brothers products and that the public officers found negligent of their duties should be severely penalized. This approach would be more direct.

First, there is no knowing when the report from the Government can complete. With respect to this, what has a Member said earlier on? The Member says that the authorities are undertaking a probe into themselves. Do you think they would criticize themselves harshly? Will they do that? So at times I just do not know what is in the mind of those people who say those things. I also hope that we can have quality media in Hong Kong, and even media that can exercise critical judgment. I would not take issue with that. But the media must speak the facts before they can have a higher quality. It does not matter if Members are criticized. I agree with Mr HO that we would be glad to take criticisms. Like it or not, we are criticized every day.

There is another point that was mentioned by Members earlier. Why should we not be allowed to do it? It is said that if we are to do that, we would be politicizing the issue and lacking in a pragmatic attitude and a respect for others. It says that this is the impression people get from the select committees formed in the past. I do not know which Members they are talking about. As we have said, be it the fiasco of the opening of the new airport, the substandard

piling works incident, the Laurence LEUNG incident or even the SARS incident, after we had released the report of our inquiries, did anyone use these words to describe the conclusions drawn by our select committees? Some people even resigned after reading the conclusions drawn by our select committees. But were such comments ever made?

Although Members of this Council are not all returned by universal suffrage, very often when they handle such incidents, they would put in the best of their efforts and work in a most professional manner. President, they are fair on all counts. We will give the parties concerned a chance to explain themselves clearly and we will ask questions and make recommendations. Because we hope that the recommendations made by the select committee are all credible and will not invite criticisms like we have no credibility, we are incompetent and our views should not be heeded, and so on. But the fact is no such things have ever happened. I just do not understand why we have been criticized in this way. If there is something that we have not done well, then please pinpoint the occasion on which we did a bad job, entirely lacking in credibility. Therefore, we should not be allowed to handle it. President, if we are really that bad, I do not think the public will want to come to us.

I am really astonished. But that does not really matter, for there are some very influential people trying very hard in lobbying. Fortunately, we have a Legislative Council that is quite independent and it can defend its own dignity and do things that it wants to do. We hope that work can commence soon and this power can be granted.

Also, I agree with the point made by some Honourable colleagues, that members in this Subcommittee are far too many. President, it seems that there are already 25 or 26 members. We can look at our Public Accounts Committee which has this power already, so we do not have to vest that power in it. Another example is the Committee on Members' Interests, it has that power, too. It is so required in law that other panels of this Council do not have this power and if they want to exercise it, then approval of the Council must be obtained. As a matter of fact, the standing committees in this Council should all have this power.

Now the newly formed Subcommittee will have some 20 members, whereas our Public Accounts Committee and the Committee on Members' Interests have seven members each. President, such a membership has got representatives from various parties and groupings already to work on tasks like

how Members declare their interests and expenses, or examining the report of the Commissioner of Audit. These can be done by seven members. But now the Subcommittee has got more than 25 members, because Members did not want to set up a select committee initially. Things are different with the LEUNG Chin-man case. President, Members have agreed to set up such a select committee a long time ago and so the number of members in it is agreed. There would not be such a large number as more than 20 people and likewise, all parties and groupings are represented on it. So I have thought about it, and I have also discussed with other Members the question of whether we can discuss the question of membership of the Subcommittee again. This is because we should look for efficiency in work.

I also agree very much with what some Honourable colleagues have said earlier, that we must be very efficient, for if investigations into this incident should take one or two years, then everyone will become impatient. Moreover, I really do not want to see what the newspapers are saying will come true. They say that the banks will use this as an excuse and say that since the Council is conducting an inquiry, they will not do anything and care about nothing. The result is delays. Actually, there is no clash if both sides are working at the same time. It is two different matters. We are doing our job and if they can do it quickly, then both sides will be happy. As to what has gone wrong in the system and in the entire process, these are the things we must look into.

I hope very much that the Council can send a clear message to society today so that it can know that Members attach great importance to this incident and they will support the exercise of this power. I also hope that Members will think again about how this Subcommittee can exercise this power effectively in order that an outcome can be reached as soon as possible.

I so submit.

**MRS SOPHIE LEUNG** (in Cantonese): President, we have spent seven hours on this debate and a group of victims in the Lehman Brothers incident are sitting up there to listen to our speeches. It is with great care or a heavy heart that I am making these remarks.

President, some Honourable colleagues have heard me say that in the few years I have been waiting, for many years ago I watched a television programme

that said that for some reasons unknown, in every turn of the century, there would be a catastrophe of immense proportions. Looking back at the 19th and 20th centuries, what were the catastrophes? I had only watched half of that programme, for when I turned on the television, it was already very late at night. I have been always thinking, what would be the catastrophe in the 21st century? That programme tried to find out what would be the catastrophe in the 21st century. When we look at the 20th century, it was the Wall Street crash during the 1920s and the 1930s. The programme said that it was seen at that time that they were caused by industrialization. Then it pointed out that when the 21st century came, it would be likely that catastrophe would fall because of the development or over-development of information and an over-reliance on information. When SARS broke out, some people asked whether or not that was the catastrophe of the century. However, SARS only happened in the region where we lived and it is really because of this incredible explosion in information that has led to the financial turmoil on this occasion.

President, in a special meeting of the House Committee on 13 October, we spent one whole day discussing the Lehman Brothers incident. At that time, I heard all the speeches made by Honourable colleagues, and I also spoke. I raised three points on what I thought the Government should discuss with the banks as soon as possible. First, if the sales practices of the banks are problematic, the banks should pay compensations and work on this must be done properly. That is a point I mentioned on that day. I understand, of course, that there must be a detailed study by every bank into each case, and there may even be a need to ask a third party to assist in the study. Still, this must be done. Second, I think in the whole process, apart from sales practices, if the bank staff has checked the personal deposits of the clients, would this constitute any infringement of the privacy of the clients? Then the bank staff lured the clients into buying some products and this could be problematic too. I raised this point. Third, I think this is also very important and that it is a matter of grave importance that this kind of product can be approved and sold in Hong Kong to the so-called retailer, that is, individuals. And it follows that investigations must be conducted at once. The parties concerned should admit their faults and see how they can be rectified. The minutes of that meeting also recorded these three points raised by me.

Two days ago, the Hong Kong Association of Banks told us that they had accepted an arrangement — and that is my fourth point — it was to ask the

accounting firm Ernst and Young to audit their accounts and see what price should be offered to buy back those products. This is the fourth point and as opposed to sales practice, this is another matter. I believe all the Lehman Brothers victims would see the point.

My worry is ..... I will abstain from voting today. But do not worry, this motion will certainly be passed. However, President, I wish to explain why I have such a worry. This is because speaking about judicial matters, once we have invoked this Legislative Council (Powers and Privileges) Ordinance, the entire legal process would be affected. Once the legal process has commenced, the issue on sales practice will also continue, but as for the buyback, I am worried that more careful considerations should be made. This point was mentioned by Mr Alan LEONG earlier on. And this is my worry.

President, there is another concern to me and may be I should make an appeal here so that we should not be too worried, and that is, all those victims in the Lehman Brothers incident should not hold too much expectation. Even if we may resort to exercising some special powers to conduct investigations, it is not known if compensation for cases with problematic sales practice would be speeded up. After Members have engaged in discussions, to such lengths they may think that the process will certainly get smoother and quicker, but I do not think so and this is related to the buy-back question that I have just been talking about.

President, there is another thing that makes me feel concerned and, that is, our banking system has to face not only the Lehman Brothers victims. During the financial tsunami, all sectors across society need to rely on the proper functioning of banking institutions, so as to prevent any domino effect or any problems in operation. I wish to look at the matter from this angle, for example, on the issue that loans to the SMEs should not be affected, and so on. I do not mean to be threatening, and I will never speak that way, but I hope that this incident will not render the banks unable to do well all other jobs that they should do because of the problems caused by the financial tsunami.

My view is similar to that of Ms Emily LAU and a few other Members. I think that the number of members in the relevant Subcommittee is far too large. I was the vice-chairman of the select committee on SARS. The number of members in that select committee was not more than 10. But we had a few hundred hours of meeting time and we even had discussions very late on

Saturdays and Sundays. We had to examine in detail every part and every view. In my opinion, a subcommittee with 27 members cannot possibly function fast and efficiently. I hope that the Council can consider the question wisely and reconsider whether there is any need to have 27 members — I have been given to understand that there would be 27 members.

In addition, of course, there are many people, especially those from the media, who talk about what kind of impact this move would have on the banking system. However, given the development of events, what needs to be addressed must be addressed. This is the advent of a great era and why do we not face up to it positively? Never mind. Let us take this as the challenge posed by the financial tsunami of the 21st century. If we can face up to it positively, it might end up better for the general public and for all matters. I hope that the banks can have a solid foundation in Hong Kong and engage themselves globally, and that they can be strong and will never fall back, and that they can face the investigations with frankness and transparency. President, with respect to Lehman Brothers and other ..... I think there are bound to be more victims or people affected by all sorts of financial derivatives or multi-tier derivatives. They should look carefully at their own situation and ponder how they should face it with a positive frame of mind.

President, as I have said, I will abstain from voting today. This is because I have worries and they are about the buybacks. If all those sitting here are targeting the sales practice, then I think this will not affect you at all. But I am worried that the part on buyback will be delayed and this will affect another group of people. It would be the best if this is not the case.

This is what I wish to say and I have said it from my conscience and in the hope that we can examine each issue with greater wisdom. I do not agree with the media who say that we are doing this for our gain and votes. I think everyone who works here is doing things from their conscience and they will put themselves in the position of the people, not just for a handful of them but for society as a whole. I hope we can all face it with an open mind, for more will come and there will be wave after wave of the financial turmoil. In this advent of a great era, let all those affected be able to face it and since there is no way we can escape from it, let us take on it boldly. Thank you, President.

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

**MR ALBERT CHAN** (in Cantonese): President, this Council has debated this motion for more than seven hours. Originally I did not plan to speak, but after listening to the speeches made by a number of Members, I feel compelled to speak.

First of all, I wish to commend highly on the perseverance and staunch resistance in the efforts put up by victims of the Lehman Brothers products. This can be called a new Long March and a movement to fight for legitimate rights. I am sure the movement cannot possibly end within a short time.

About 10 years ago, I took part in the fight for the rights of the negative equity property owners and soon 11 years have passed. Some of the lawsuits may have ended and some problems may have been solved. But the proceedings for some cases will only commence next year. It is incredible that after 11 years, the proceedings of some cases will only commence next year. The moves made by the big consortia in suppressing, oppressing, exploiting, bullying and cheating members of the public coming in all sorts of manner have beggared and belittled our imagination.

It is unfortunate that when we were helping these negative equity property owners, we were never welcomed and we were scorned and scolded by people. Not only were the media saying that we had no respect for the spirit of contract but even political parties — though some change had taken place over these years — but back in 1997 and 1998, no political party was willing to lend a helping hand to the negative equity property owners. So in this regard, victims of the Lehman Brothers incident are much more fortunate than the negative equity property owners 11 years ago. This could be the result of progress in the democratic development of Hong Kong and also the team spirit of victims of the Lehman Brothers incident. As the number of people involved is plenty, so they have become a political force. Had it not been for the vast number of victims, I do not think the DAB would have made the volte-face yesterday and gave its support finally. Therefore, I must praise highly of the solidarity and perseverance of these victims.

The work to follow now can be said to be the first step in the Long March. There is still yet to be the first high mountain to climb and so I hope we can all work hard. We will certainly give our support and lend our assistance to them all.

President, I have not bought any of these products and I do not know much about them. That is why I have tried very hard to study the information on these products. However, there are times that I cannot really make head or tail of these things no matter how hard I try. I therefore admire some banks which made a public statement recently that they have not sold these products because they do not understand them. These banks merit our high commendation. I suggest we should put our money in these banks, for this is a sign of their having a conscience. They have not followed the herd. They have not considered the fact that certain investment tools can bring them much higher profits and they have not asked their staff to sell these products when they know very little about them. These staff have not done anything to encourage, incite, mislead or even cheat ordinary members of the public to change their established mode of investment just because they need to get some security for their jobs.

Earlier on, some people from the media and certain members of the public contacted me. And some of them are people working in the banks. They told me, "Mr CHAN, please do not snap at us so harshly. We are victims too. As wage earners, we have to do what our boss tells us. We are not brave enough to come forth and talk but if an inquiry is to commence, and if there is protection under the Legislative Council (Powers and Privileges) Ordinance, then we can be exempted from prosecution." Some of the bank staff have said that they are willing to come forward to give evidence. The fact that the banks are so afraid of a public inquiry and so are many professionals is precisely because they are afraid that the facts will be exposed.

So if we are to do justice to the bank staff, especially those at the front line, then the Council should forge ahead and do what it is rightfully obliged to do. As the Alliance of Social Democrats said when campaigning for the Legislative Council elections this year, we are to do our duty in coming to the rescue and assistance of the poor and the disadvantaged. In order that justice be done to the front-line bank staff and in order that they will not be smeared, oppressed and trampled, this Council must do them justice by holding a public inquiry.

Dr David LI is one of the few bankers I know. In the past, he has done a lot for ordinary members of the public and he is more than willing to come to their help. In Tin Shui Wai, for example, despite the fact that other banks are closing their branches there, after I have told him that this has caused much inconvenience to the residents there, in fact Ms Emily LAU has talked about the miseries of the people there earlier, so he arranged to have other banks to talk



with us. The Bank of East Asia is the first bank to open a branch in Tin Shui Wai. So with respect to helping ordinary members of the public, his past performance in fact deserves our praises. At times, as compared to other heartless banks, the moves made by his bank are more reasonable.

Of course, now he is the representative of the banking sector and I appreciate fully his position and performance now. However, I wish Dr David LI would know clearly that if he really wants to help the banking sector, then he should support the setting up of this Subcommittee. If the banks have never done anything wrong and if there is nothing unethical or in contravention of the rules and the law, then it is exactly through a public inquiry that justice can be done to the banks, for there are really far too many rumours circulating.

The United States Senate has held a public hearing on this and people from Lehman Brothers have appeared before the Senate. Alan GREENSPAN also testified before the Senate and admitted his fault. But why can we not see the Hong Kong media criticize the Senate, and yet they have criticized the Legislative Council in such a high profile? The reason for this double standard is some people are doing something behind the scene and they are influencing the heads of these media organizations.

So what we see on this occasion is a concerted action by four groups of people: those from the media, the banks, government officials and some so-called representatives of professions. They are making vociferous calls opposing the setting up of a subcommittee. And the reason for this? Apparently, had it not been certain things that cannot be brought to light or improper and hence there is that terrible fear of being exposed and so causing damage to the reputation or interest of some people, then what is there to be afraid of? Therefore, obviously, there must be a sleazy side to it and big blunders or even acts exploiting or cheating the public that accounts for this overwhelming dread of a subcommittee which will expose their scandalous acts to the ridicule of the world. Hence I hope Members would know clearly that opposing the setting up of a subcommittee is in fact aiding and abetting injustice and as Long Hair puts it, going in the opposite direction of righteousness.

President, I hope Members will understand that we are not seeking to pass a ruling on whether a certain transaction is in breach of the contract, nor are we trying to rule that a certain event or case has any element of fraud and deception in it. Over the past many years, the subcommittees of this Council have

investigated policies, administrative measures and laws as well as the causes and responsibility of an entire event. Then recommendations were made such as amending the law, revising the administrative measures or giving a reprimand or a reprimand in the highest degree to a certain person. All these are clear enough. So it can be said that setting up a subcommittee is basically probing into the causes of public events or cases where public interest is at stake.

President, I would like to make another point and that is, there is a discrepancy in the remarks made by top officials in the Government and the HKMA with those made by the Chief Executive. Sometime ago in this Chamber, the Chief Executive were repeatedly asked questions and he thought that those are not bonds. This is a pivotal remark. For even the topmost leader in Hong Kong thinks that there is something wrong with these bonds. He is of the view that these bonds do not look like bonds. But the financial officials in the Government are making defensive remarks all the time, pretending that nothing has happened. So with respect to the entire financial framework, especially with the Director of Bureau, I am very disappointed. And my disappointment applies not only to the question of setting up a subcommittee but also in his overall performance in coping with the financial tsunami and monitoring the financial institutions.

The authors of some articles point out that this could be due to the fact that a family member of the Director of Bureau is working in a certain financial institution. It is hard for me to prove this point, but as the topmost official in charge of financial affairs .....

**PRESIDENT** (in Cantonese): Mr CHAN, the Rules of Procedure prohibits Members .....

**MR ALBERT CHAN** (in Cantonese): No, President. I have said that I will not.

**PRESIDENT** (in Cantonese): ..... from imputing the motive of any Member or public officer.

**MR ALBERT CHAN** (in Cantonese): President, I have said that I will not make any accusations, I only say that some writers are saying that. I have said that I

will not make any accusations. President, I have said so. President, please do not read my point wrongly. Maybe I will make a clarification again. The Hulk points out clearly in this Chamber, "I will not make any accusation on the question of his interest because of the fact that a family member of the Director of Bureau is a top officer in a certain financial institution." Is this clear enough? This can be put on record. As for the truthfulness of accusations made by other people, it is not for me to comment.

President, the Chief Executive has said clearly that those bonds do not look like bonds. This is like telling the officials that there is something wrong and they are asked to find out. But I do not know what they have done. The big boss has said that there is something wrong and demanded that an investigation into these God-knows-what stuff be conducted. But they are acting as if nothing has happened and they are just sitting there with their arms folded.

It has been more than two months since the incident, right? I often quote the example of the Bank of East Asia. Baby Po is really awesome. The Bank of East Asia has been a victim of malicious rumours and the Government is doing this and that as if something disastrous is going to happen. Two men are arrested and charges are pressed against them and they have been locked up. All things that can be done have been done. It really baffles me. Why can the authorities arrest the people who spreaded the rumours so quickly? But now so many banks are implicated in this incident and there are so many witnesses for the HKMA to investigate, but after almost two months have passed, the investigation into not even one single case is complete and no arrest has been made according to the law.

What is even more formidable is that some people in the top echelons said a long time ago that they had sensed something wrong and it may be because of their foreknowledge that they had transferred their own investments to other places. They may even have reaped some gains in the process. That I have no idea. If in future there is a chance to conduct an inquiry, the changes in the investments made over the past year or so by individual staff members or their families due to their access to certain information should be investigated. If there is no way this Council can commence investigations into that, the media can take its place.

I do not know what is going on in the media here. Two weeks ago, I returned from Canada and when I was in Canada, I read the newspapers every

day. The media there were very critical of the financial problems. On Sunday I just came back from Sichuan, and found that the way the mainland media criticized the investment tools and the financial institutions in a much stronger tone than the media in Hong Kong. This could be due to the central policy, because the policy of the Central Government is to change the nature of the problem to one of the problem of the American financial system or even the entire financial system. For the Hong Kong media, first, they have not followed the instructions of the Central Authorities or their line. Second, they have not upheld the interest of the small investors in Hong Kong. Third, they have not followed the inclination of the Chief Executive. The black hand of the banking sector has extended to these media organizations and it can be said to be all-pervasive.

I can see the whole thing is very pathetic actually. This is especially the case when I read media reports this couple of days. I was shaking my head all the time when I read them. I used to have a great respect for certain newspapers, especially the *Hong Kong Economic Journal*. But after this incident, my view of the *Hong Kong Economic Journal* has completely changed. I am very disappointed with it. As a newspaper which is well-versed in financial policies, a top-rated newspaper here, it must hold a balanced stand and pass its judgment on the issue of the protection given by the system to small investors and the impact on them. The financial institutions are no *zaibatzus* and big financial institutions must never adopt a supremacist attitude. The interests of the small investors and the views they express are also important.

I do not know if it is true to say that whenever interests are at stake, the rich and the powerful will always have many misgivings. This is the view held by the Taiwanese author BO Yang when he unleashed a critique of the Chinese culture. BO Yang's idea of an urn is like the great melting pot of the financial institutions and after gold and money are poured into it, once the temperature is not high enough, things inside it will clot and cake. So in order to shatter this urn, we must work hard and support the setting up of this Subcommittee. (*The buzzer sounded*)

Thank you, President.

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

**MR LEE WING-TAT** (in Cantonese): President, Members from my party have talked about our position with regard to the setting up of a subcommittee to investigate into the Lehman Brothers incident. I am not going to repeat that, but I wish to comment on certain practices of the Government. As we all know, in all of Asia, there are only two places with most people who have bought the Lehman Brothers minibonds. One is Hong Kong and the other is Singapore. Please correct me if I am wrong, so if my memory is correct, the Singaporean Government made a suggestion in which all those who have reached a certain age — it seems to 62 — and who has primary school education or below, can be offered a mediation and compensation option quicker than all other people.

It has been almost two months since the incident broke out at the end of September. I have listened to all of the speeches made by the Secretary and he said that a lot of work had been done speedily. But there is a great disparity between his view and what the public thinks. No public opinion is in agreement with this conclusion that he has taken swift action and his work could put the mind of the victims at rest, that there was no need to seek any solution to the problem by bargaining with the banks or beginning any settlement attempt. Many Honourable colleagues have mentioned that the Subcommittee may not be able to recover money for individual victims, but the purpose is to investigate into the truth of the matter and seek justice. We should know that, objectively speaking, the banks have been making various moves during these past couple of weeks. When the Democratic Party filed a case to the Court, the banks suggested a settlement at once. To put it bluntly, the banks have been conducting themselves badly, for they do not want to make any settlement unless the case is brought to the Court. I remember there was one occasion when KAM Nai-wai had almost reached the entrance of a court building that the bank concerned is willing to make a settlement. Why do banks have to act like that?

Dr David LI said that the banks had done a lot of work, but sorry, I must tell him that his sector have been conducting themselves most disappointing. If what the banks are doing is not disappointing, so many people would not have taken to the streets to demonstrate and lodge complaints. There are old people in their seventies and eighties who used to place fixed deposits all the time and these people were either lured or cheated into buying these products. This is clear-cut and obvious enough. But have the banks handled these cases quickly? No. For all of these cases, it is only when the Democratic Party had filed them with the Court that the banks said a settlement would be made. But we cannot

file all these 1 000 cases with the Court because this will make people think that the banks are adopting a delaying tactic and they have no sincerity at all to solve the problem. This will also make people think that if the Legislative Council does not probe into the matter and if the political parties do not step in and exert pressure, the banks will never handle the cases quickly.

President, the way in which the Government is handling this matter is in my opinion, letting a chance of showing its ability of governance slip through its fingers. I said in the motion debate on the policy address that after the election in 2008, this government is no different from the former government and it is becoming more and more like the TUNG Chee-hwa administration in being indecisive. Today I asked a question on environmental protection in which I pointed out that there could be less use of diesel buses in certain districts. But the Government said that it had to study the issue. The proposal to ban idling engines takes five years' time to study. Making studies have become an excuse for the Government to defend its indecisiveness. And consultation and discussion have become the pretext for delaying any solution to a problem. I fail to see the public will think that the Secretary or the Secretary of Departments can demonstrate their authority and prestige in governing this community, and that they really have a solution to the problem. Honestly, I fail to see that. If it can be seen, then please show it to us.

President, I just wish to make one more point and that is, on the various voting stands adopted by Honourable colleagues on this issue. Earlier on I heard Mrs Sophie LEUNG say that she would abstain from voting. I am sure Mrs LEUNG will know that according to the rules, abstaining from voting is tantamount to voting against a question put. If she wishes to maintain her neutrality, I would suggest that she withdraw from the Chamber when the vote is taken. Of course, I cannot influence any move she may take, but if she really wants to remain neutral, then would she please withdraw from the Chamber and do not take part in the voting. If she is present and if she abstains from voting, then it is like she is voting against the question.

Second, it is about Dr Raymond HO. He is the Chairman of the Subcommittee and he made a weird remark in the newspaper last week that he would attend the meeting, take part in the debate, but he would not vote. I must remind Dr HO that when someone is present but does not cast any vote, objectively, he is also voting against the question. Members should therefore

not put up an appearance of neutrality to disguise their opposition to the setting up of the Subcommittee. If Dr HO is neutral, although I do not know if he would vote or not, I would still suggest to him that he should withdraw when the vote is taken. Only by doing so is he truly neutral.

Third, I wish to ask Dr David LI to consider one point. He knew this morning that the Chairman of the Democratic Party, Albert HO, had declared an interest — not that he has made any money but he is hired by some victims of Lehman Brothers products to represent them in the proceedings. President, I think you are aware of this, and I hope that you would make a ruling. Although Dr LI is a friend of mine who commands my respect, after all, friends are friends and business is business. Since we have made the Rules of Procedure, no one should invoke any father and son relationship, or say that someone is a relative or friend. So even as Dr LI is a good friend of mine, the making of the Rules of Procedure is meant to maintain the neutrality and prestige of the Council in conducting its business. I therefore hope the President can make a ruling on the question as to whether Dr David LI, as the Chairman of the Bank of East Asia and since his bank is involved in the sale of Lehman Brothers minibonds, has any direct pecuniary interest in that matter? Of course, I respect your ruling. But why have I made this point? Because I do not think this Council should have any ambiguity or confusion when the vote is taken simply because we are acquaintances.

Thank you, President.

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

**MR CHEUNG HOK-MING** (in Cantonese): President, I am not about to make a speech. I just want to declare an interest and that is, my wife and I jointly hold some Lehman Brothers-related products under our name. As we are going to vote, I wish to make this declaration of interest. Thank you, President.

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): To start with, President, I would like to thank Honourable Members for the valuable opinions expressed by them over the past seven and a half hours, during which, except for a three-minute absence, I have basically been sitting here listening to the views expressed by Honourable Members. Many of the speeches delivered by Members were brilliant. That was why Mr Frederick FUNG asked me earlier why I was smiling. Some of the speeches were really excellent. I really appreciate the colours of some of the speeches delivered in this Council as well as Members' brilliant debating skills.

In this debate today, whether we support or oppose the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee) being authorized to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance), I have listened to the views expressed by both parties, including Members expressing support, Members holding all sorts of arguments, and those raising concerns and worries. This has been an excellent debate, through which Members can gain a better understanding of the developments of the event and what the Subcommittee intends to do, as well as ways to help investors and improve our financial system. While I greatly appreciate the remarks made by Honourable Members, I am greatly disappointed by some of the remarks made by individual Members against me personally by way of innuendo.

Anyhow, I believe the debate today has adopted a serious and solemn approach in studying whether the powers conferred on the Subcommittee under the Ordinance can help us and investors find out the truth.

I understand that affected investors share the hope that Members of the Legislative Council be conferred the investigation powers through this motion, or by this means, to help them seek compensation.

The Government fully appreciates the feelings of affected investors and greatly sympathizes with their plight. We have all along striven to help investors in five different aspects:

- (a) A timetable is already available for banks to buy back the minibonds expeditiously. As it is expected that banks can start the work in relation to buying back the Lehman Brothers minibonds in early



December, I believe investors can start getting back the present value of their investment in January next year. Regarding the query that the progress has been too slow, I can say that my colleagues and I are currently exploring with banks from various aspects how the matter should be dealt with and we are in the process of negotiation and co-ordination with trustees on various fronts. The procedures involved are extremely complex. The relevant financial and legal procedures are also very complicated, too. This was also raised by a Member just now.

As far as I know, in addition to Singapore, the Lehman Brothers-related products were also sold in other places of the world. Up till now, a comprehensive buy-back proposal similar to ours is not yet available. In this respect, I believe our proposal can help investors deal with the complicated liquidation procedures in the quickest manner and offer them the greatest protection by stabilizing the value of their investment at this time when the financial market is extremely volatile. We very much hope to see the proposal implemented expeditiously.

- (b) The relevant statutory regulators, namely the HKMA and the SFC, will conduct full investigations and sanction banks and brokerages involved in mis-selling practices. It must be emphasized that the SFC is vested with extensive investigation powers under the Securities and Futures Ordinance, including the power to summon relevant persons to assist in investigations and requiring persons and institutions being investigated to submit relevant documents and other exhibits.
- (c) Banks are encouraged to conduct self-reviews to ascertain if mis-selling is involved and, if it is found to be the case, expeditiously negotiate settlement with their clients and offer compensation. The SFC has clearly indicated that this is its major consideration in imposing punishment on non-compliant institutions. Regarding the question raised earlier by Mr LEE Wing-tat about whether banks in Singapore are acting on the instructions of the Singaporean Government to take the initiative to help elderly investors, and whether the Singaporean Government has proposed that the cases be accorded priority, I have contacted the banks in

Singapore for a better understanding of the matter. As far as I know, the situations in Singapore and Hong Kong are similar, which means that banks are required to work out their own solutions and accord high priority to dealing with cases involving elderly and inexperienced investors. The situation in Singapore should be similar to ours in the sense that banks take the initiative to reach settlement with some clients. In this regard, I believe efforts will be made by our banks under the concerted efforts of Honourable Members and the internal reviews carried out by the banks.

- (d) We have proposed establishing a mediation and arbitration mechanism to enable the banks and their clients to reach agreements on compensation within the shortest possible time.
- (e) We will provide channels for cases requiring litigations to allow the relevant clients to make use of the Consumer Legal Action Fund to seek compensation from banks.

There is no doubt that a subcommittee set up under the Legislative Council to exercise powers and privileges can summon relevant persons, including the management of distributor banks, front-line staff, regulators and government officials. However, our past experience tells us that the investigation would take time, and the attention of the regulators and distributors would unavoidably be diverted to dealing with the related matters as a result of the investigation. Some banks might also have reservations about other solutions (including buybacks and settlement) and, as a result, investors would not know when they could get back the present value of their investment and other compensation.

When discussing the objectives of setting up the Subcommittee, a Member already pointed out that the Subcommittee could not possibly make rulings on cases. Furthermore, under the existing legislation, both the HKMA and SFC possess investigation powers and have launched full investigations into complaint cases received by them. Just now, Mr Ronny TONG asked me if it was the case that the SFC had not yet commenced its investigation. That is not true. Actually, the SFC has already commenced its investigation into banks.

Honourable Members mentioned in the debate that they would exercise the relevant powers and privileges cautiously and exercise special care, particularly when sensitive commercial information was involved. Although I have absolute

trust in Members, I still wish to reflect some of the concerns of the banking sector:

- (a) Banks might feel that summons by the Subcommittee and public hearings would jeopardize their reputation.
- (b) As distributor banks would be required to deploy substantial manpower and resources to meet the requests of the Subcommittee, their progress of handling complaints and implementing the buy-back proposal raised by the Government or processing the cases of affected investors would inevitably be affected, thereby delaying their efforts to resolve the incident which has been troubling us for nearly two months. Furthermore, they cannot concentrate their attention on coping with the volatile financial environment before them and the unfavourable economic prospects.
- (c) As the Subcommittee will be given powers to order any persons to produce any instruments in their possession or control, banks and other business organizations are concerned that, since they will be unable to protect their commercial secrets, the business environment of the territory might be prejudiced, and our rivals might then be benefited.

I agree that a comprehensive review must be conducted of the problems arising from the Lehman Brothers incident, including the existing regulatory mechanism and investor protection. Actually, the Financial Secretary has requested the HKMA and the SFC to submit a report by the end of this year. The Government has also undertaken to conduct a review of the relevant system, improve the regulatory framework, and strengthen protection and education for investors. During the previous Legislative Council meeting, I was given an opportunity to raise six points on ways to improve the system in this regard. Of course, we will fully consult the Legislative Council during the review. We also undertake to complement the work of the Subcommittee on all fronts.

As members of the public certainly hope to see the incident resolved expeditiously, we will continue to urge distributors and clients to reach buy-back and compensation agreements. At the same time, the regulators will continue to do their utmost to find out the truth in response to the public's hope of uncovering the whole truth expeditiously. We have also indicated clearly that a

comprehensive and detailed review will be conducted as the public certainly do not hope to see a repeat of such incidents.

I hope Honourable Members can bear in mind the interests of affected investors to enable the relevant parties to pool resources to help investors. Amid the grim crisis confronting the global financial market and the intensifying impact on the territory, I all the more hope that Honourable colleagues can make concerted efforts to maintain the stability of our financial markets and the interests of the public at large. I hope Honourable Members can, before deciding whether or not to support the resolution, give full consideration to all relevant factors.

Thank you, President.

**PRESIDENT** (in Cantonese): I now call upon Dr Raymond HO to reply. This debate will come to a close after Dr Raymond HO has replied.

**DR RAYMOND HO** (in Cantonese): President, 37 Honourable colleagues have debated for seven and a half hours on this resolution. This shows their concern for the matter. Summing up the arguments presented by colleagues, it can be seen that they all hope that through the inquiry to be conducted by the Subcommittee, these following aspects of retail banking can be examined. These include, for example, whether any mis-selling is involved, whether or not the supervisory bodies have any omissions or have been negligent of their duties and whether or not the existing supervisory system has any loopholes. Then recommendations will be made to improve the supervisory mechanism, protect the rights of investors and consolidate once again the position of Hong Kong as an international financial centre. It is also hoped that by obtaining enough relevant information, the truth of the matter can be found and an appropriate judgment will be made. Then constructive recommendations will be made to facilitate the victims in their claims for compensation.

Although the objectives are largely unanimous, on the question of whether the Subcommittee should invoke the Legislative Council (Powers and Privileges) Ordinance, Members have shown a substantial divergence in their views. Some

Honourable colleagues hold that the invoking of the Ordinance by the Subcommittee would help find out the truth of the matter and the loopholes that may exist in the supervisory system and justice can thus be done for the victims. The inquiry will not lead to delays by the banks in handling the complaints. On the contrary, it is helpful to the speed in handling the cases.

Some other Honourable colleagues are of the view that invoking the Ordinance will result in the banks allocating some of their resources to addressing demands from the Legislative Council, hence slowing down the progress of their negotiations with the victims about buyback. Some other colleagues are worried that the power under the Ordinance of ordering the submission of relevant information by private organizations including papers classified as commercial secrets will set a very bad precedent. This will damage the confidence of investors in Hong Kong.

Although Honourable colleagues have different inclinations with respect to this resolution, I trust the Subcommittee will execute its tasks in a responsible manner and it will be fair and impartial, basing its work on the interest of all the people of Hong Kong.

Lastly, I hope the victims can understand that a certain period of time is required before the Subcommittee can finish its tasks and it is definitely not possible for the Subcommittee to offer instant solutions to the victims. In this respect, I hope they can look at the work of the Subcommittee in a pragmatic manner. In the meantime, I hope the SAR Government and the relevant regulatory bodies can continue to exert pressure on the banks concerned so that a settlement which is acceptable to both parties can be forged soon to solve the problems. For the banks, they should consider their corporate social responsibility and their own reputation and regardless of whether this resolution is passed or not, they should strive to reach a settlement with the victims soon. The banks should feel obliged to strive to solve the problems as the problems are caused by them in the first place.

President, I wish to respond to the queries made by Mr KAM Nai-wai and Mr LEE Wing-tat, that is, whether I should be present and press the button to vote. Actually, I have made a very clear explanation on the radio earlier, that in order to remain neutral, that is, in my capacity as Chairman of the Subcommittee — although actually no meeting has been held yet to commence the inquiry or study the incident — in order that my work in the Subcommittee can proceed

smoothly in future, I must place myself in a very neutral position. Therefore, I have written a note to the President stating that I will remain in the Chamber, for the reason that this is a resolution proposed by me and watch the voting results. I do not think I can ever be absent, but I will not press the button to vote. President, I now leave the question to the vote by Members.

President, I so submit.

**PRESIDENT** (in Cantonese): Before I put the question to you, Mr LEUNG Kwok-hung .....

**MR LEUNG KWOK-HUNG** (in Cantonese): President, a point of order. This motion is proposed by him, can he not support it?

**PRESIDENT** (in Cantonese): What is your question?

**MR LEUNG KWOK-HUNG** (in Cantonese): Dr HO has proposed the motion on behalf of the Subcommittee. Why should he not support it? He asks us to support him. But if he does not support it himself, then why should he propose this motion?

**PRESIDENT** (in Cantonese): Well, Mr LEUNG Kwok-hung, your question is very clear .....

**MR LEUNG KWOK-HUNG** (in Cantonese): I really do not understand it. I wish to ask him that question.

**PRESIDENT** (in Cantonese): You may sit down. The Rules of Procedure does not specify that when the chairman of a subcommittee proposes a motion on behalf of the subcommittee, he must vote in favour of it. Before I put this question .....

**MR ALBERT CHAN** (in Cantonese): Would Dr Raymond HO please clarify  
.....

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down. I already said that after Dr Raymond HO has spoken, this motion debate would come to a close. Before I put the question to you, I wish to explain to you the point raised by Mr LEE Wing-tat earlier, on whether a Member shall not vote upon any questions in which he has a direct pecuniary interest and he shall withdraw from the Council when the vote is taken.

According to Rule 84 of the Rules of Procedure, on the question of whether a Member shall not vote upon any questions in which he has a direct pecuniary interest and he shall withdraw from the Council when the vote is taken, this should not be decided by a ruling from the President of the Legislative Council but by a motion for the withdrawal of a Member on the ground of his direct pecuniary interest. If it is in the view of any Member that a Member of this Council shall withdraw from the Council on the ground of his direct pecuniary interest and he shall not take part in the voting, then the Member shall move a motion after I have put the question, stating the grounds which in his view, the Member concerned has a direct pecuniary interest and for which he shall withdraw from the Council. Then I will give an opportunity for the Member concerned to explain his case and allow other Members to speak before the matter is finally put to the vote. We will then act according to the voting result.

**DR MARGARET NG** (in Cantonese): President, a point of order. If we are to propose any motion, we shall need the approval of the President. If we are to act according to Rule 84 and propose a motion, do we have to get the approval from the President or otherwise, and that is not to be done after the debate?

**PRESIDENT** (in Cantonese): Thank you for your reminder. Members may propose this motion. Under Rule 84, an advanced notice is not necessary for this kind of motion. So as I have just said, after I have put the question, Members may propose a motion. As to whether or not the motion is to be treated as a motion to be proposed to Members, that will be decided by me. When I make a decision, I shall do so in accordance with the provision in Rule 84(5). In other words, I will need to consider the nature of the matter to be

voted upon, whether the interest of the Member concerned in that matter is a direct pecuniary interest, instead of the interest of all or some of the people of Hong Kong. I shall also consider whether the matter to be put to the vote is a government policy. After considering these factors, I will decide whether or not to treat the motion proposed by the Member as a motion to be proposed.

I would also like to say that if the Member concerned does not withdraw from this Council and he takes part in the voting, but there is any Member who thinks that the Member concerned has direct pecuniary interest and so his voting shall be declared null and void, then the Member shall propose a motion to the effect that the voting shall be declared null and void after the screen has displayed the voting results of the number of Members in favour, against and abstaining from voting. And that is to be done before I declare whether or not the motion is carried or negatived. We will have to vote on that motion. Is that clear to everyone?

I now put the question to you and that is: That the motion moved by Dr Raymond HO be passed.

**MR LEE WING-TAT** (in Cantonese): According to Rule 84(3A) of the Rules of Procedure, a Member may without notice ask the President to make a ruling on the question of whether Dr David LI has any direct pecuniary interest in the motion that the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products be authorized. Personally I would think that he is suspicious, for his company sold Lehman Brothers minibonds and his interest is not in common with the rest of the population of Hong Kong or that of all the enterprises or individuals. Therefore, I hope that the President will rule on the suitability of Dr David LI taking part in the vote under such circumstances.

**PRESIDENT** (in Cantonese): The motion proposed by Mr LEE Wing-tat is that as Dr David LI has a direct pecuniary interest, so he shall withdraw from this Council when the vote is taken. Members, this morning I had heard the information disclosed by Dr David LI in his speech and I had also listened to views from other Members on the possible interest which Dr David LI has, I consider that this motion should be moved for Members to vote on. In



accordance with Rule 84(5) of the Rules of Procedure, I now decide that the motion proposed by Mr LEE Wing-tat is a question to be proposed to Members.

I now propose the question to you and that is: That the motion moved by Mr LEE Wing-tat be passed.

**PRESIDENT** (in Cantonese): Dr David LI, do you wish to speak in explanation?

**DR DAVID LI:** Mr President, as I have already stated, I have no Lehman Brothers-related financial products. The Bank of East Asia (The Bank) is committed to investigating any and all cases of mis-selling.

If cases are uncovered, The Bank will first seek to reach a settlement. If unsuccessful, The Bank will agree to submit the case to independent mediation or arbitration.

At all times, an aggrieved party has the option to pursue a complaint in the Courts of Law. The Government has stated that it will assist those who have a valid complaint and wish to pursue legal action.

Clear guidelines and procedures are in place, and The Bank is working proactively to resolve all claims.

I therefore can see no circumstances under which adoption of the Legislative Council (Powers and Privileges) Ordinance (the Powers and Privileges Ordinance) will have any financial implication for The Bank, unless the Subcommittee takes it upon itself to interfere in the orderly resolution of mis-selling claims.

If this is the course to be followed after invoking the Powers and Privileges Ordinance, it would indeed be a black day for Hong Kong.

I must also point out that I have an obligation to represent my Constituency in this Council. Even if I had a direct pecuniary interest, Sub-rule 1A, Rule 84 of the Rules of Procedure contains an express provision allowing Members to exercise their right to vote, where their interest is in common with a sector of the Hong Kong population.

To accept that I have a direct pecuniary interest and to deprive me of my right to vote would be to accept that the Subcommittee may use the Powers and Privileges Ordinance to disrupt due legal process.

It would be to usurp the power of the Courts and to trample upon the rule of law.

I ask that all Members reflect and consider the far-reaching implications of any effort to strip me of my right to have my vote counted.

Thank you, Mr President.

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

**DR MARGARET NG** (in Cantonese): President, in this debate I give my unequivocal support to the proposal that the Subcommittee exercise the powers under the Legislative Council (Powers and Privileges) Ordinance and I totally disagree with the reasons given by Dr David LI just now in the debate, that we should not exercise such powers. However, I give my unreserved support to Dr David LI enjoying his right to vote.

President, we can see that Rule 84 clearly spells out that if a Member has a direct pecuniary interest in the question to be voted, what then is our question? Our question is that this Subcommittee should exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance in conducting investigations. Had this question been on whether or not banks should compensate the victims of the Lehman Brothers products, then I would agree that based on the relationship between Dr David LI and the Bank of East Asia, he does have a direct pecuniary interest. But if we are talking about investigations, I do not think that the question has anything to do with pecuniary interest.

As a Member who has taken part in many subcommittees, I think that the investigations are open and if this is the case, then we should not have any presumption, saying that the result of the investigation is by all necessity the banks or the Bank of East Asia be asked to pay compensation. So with respect to this question, I do not think Dr David LI has any direct pecuniary interest. In fact, it would be difficult for me to see that many Members in this Council —

even those who have bought Lehman Brothers products — to have any direct pecuniary interest.

President, I am very confident that the inquiry will do justice to the victims of the Lehman Brothers incident and I am also very confident that the question will be passed. Although Dr David LI will vote against it, I do not think he has any direct pecuniary interest. This is the premise on which I defend the Rules of Procedure. Moreover, Rule 84 goes on to say that "except where his interest is in common with the rest of the population of Hong Kong or a sector thereof". An example is that the Legislative Council today ..... Sorry, I think I should read on, "or his vote is given on a matter of Government policy", then he can vote. For example, if the question before us today is on whether rent control should be relaxed and those who live in flats within a particular range of rents will be subject to rent control, then if there is a Member who lives in a flat within that particular range of rents, does he have any direct pecuniary interest? It is very likely that he has such direct pecuniary interest, but that does not mean that the Member cannot vote on such questions related to the public.

So, President, on the right of a Member to vote, I think this is a very solemn matter. These are my remarks. I will oppose Mr LEE Wing-tat's motion.

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

**MR ALBERT CHAN** (in Cantonese): President, I speak in defence of the political rights of Dr David LI.

President, after hearing the comments made by Mr LEE Wing-tat just now, I could not help but shake my head in lament. This inquiry is not intended to look just into the Bank of East Asia but the entire Lehman Brothers incident. The subject of this inquiry is not just banks; the Government, various policies and the legislation are also involved.

If we talk about interests, are not the interests of people holding Lehman Brothers-related minibonds even greater? This is because the whole matter is about looking into the interests of the victims of the Lehman Brothers incident.

Mr Albert HO, Chairman of the Democratic Party, is helping the victims of the Lehman Brothers incident take legal actions. Are the pecuniary interests that he will get from these proceedings greater than those gained by the Bank of East Asia in this incident? If that is the case, how should we judge pecuniary interest? Is he helping the victims of the Lehman Brothers incident take legal actions for free? Therefore, the spirit of the whole provision is "a direct pecuniary interest" because this motion, passed or not, has a direct bearing on personal pecuniary interests, has it not?

For years, we have been opposed to collusion between the Government and businesses as well as any privileged class. However, at the same time, we cannot deprive some people of their political rights. This is the most important element of the entire democratic system and the spirit of democracy. I cannot see how, in allowing the Subcommittee to investigate the Lehman Brothers incident today, regarding Dr David LI's capacity as a shareholder of the Bank of East Asia ..... in that case, is it necessary for Members to make a declaration of interests on the bank stocks they hold? Is it necessary for people holding bank stocks to make a declaration of interest? If they have interests in them, since we will investigate so many banks, is it necessary for all shareholders of banks to declare their interests and to bar them from voting?

Therefore, President, I believe that even though we got to have targets, we should target the incident itself. In passing this motion today, the Legislative Council must not give people the impression that we are targeting a certain sector or a certain person. Even though sometimes, I also display such behaviour, that happens only when I am really exasperated.*(Laughter)* However, regarding this incident, I believe we have to let the public see that the Legislative Council, in particular, the three Members of the League of Social Democrats, all support giving the representative of the banking sector the right to vote, so as to uphold fairness.

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

**MR CHIM PUI-CHUNG** (in Cantonese): President, I request that Mr LEE Wing-tat withdraw his motion and end this matter. You never know. Maybe one will certainly win no matter what, so there is no point in wasting time.*(Laughter)*

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

**MR TAM YIU-CHUNG** (in Cantonese): President, as Chairman of the Committee on Rules of Procedure, I also wish to say something about this. In fact, I have rarely agreed with Mr Albert CHAN's views .....

**MR WONG YUK-MAN** (in Cantonese): You will agree with us very often in future.

**MR TAM YIU-CHUNG** (in Cantonese): You have violated the Rules of Procedure because you cannot speak before the President has called upon you to do so. *(Laughter)*

**PRESIDENT** (in Cantonese): Please continue.

**MR TAM YIU-CHUNG** (in Cantonese): I think that since Dr David LI is the representative of the Finance Constituency, he has the duty to voice the views of his sector in this regard. Concerning "a direct pecuniary interest" prescribed in Rule 84(1) of the Rules of Procedure, I think that has to be very direct in nature, that is, tenuous relationships cannot be considered as such. I think we should not look at it this way. My understanding is that only a very direct relationship can be considered as such. Therefore, given this interpretation, I think Dr David LI should be allowed to take part in voting because he has already stated clearly what his interests are. If Dr David LI is disallowed from voting, I think that similarly, Mr Albert HO also has "a direct pecuniary interest" and I think that in comparison, Mr Albert HO's pecuniary interests are even more direct because he charges the victims legal fees. For this reason, we believe that Dr David LI should have the right to take part in voting.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, in fact, this issue is the cancer of this legislature. Dr David LI was returned by a functional constituency and he will surely defend the interests of his functional constituency.

Objective reality does not change with his subjective will. In fact, functional constituency elections have obligated some Members to defend the interests of some small groups instead of the overall interests of Hong Kong. Therefore, there is no need for Members to ..... this is what is pathetic about Hong Kong. That a Member would state explicitly that he would work only for a certain sector is really unheard of. Such a situation has caused a great deal of confusion. It is all too natural for Members of functional constituencies to do so because they were elected by voters of their sectors, whereas we were not. I myself have also been frequently deprived of my political rights because Mrs Rita FAN would often tell me not to vote on a certain day because of some minor or major reasons. I have also experienced the pain of being deprived of my rights. Therefore, unless absolutely necessary, please do not do so and I hope that the President will not do so in the future either. *(Laughter)*

Although I have openly criticized Dr David LI before, and the words I used were very harsh and I think he would be very displeased to hear them, to give the matter its fair deal, we should respect the equal right of all Members to vote. In fact, in order to solve this problem, universal suffrage is the most desirable but of course, this is not the issue that we are discussing today. Universal suffrage can ensure that all Members are entitled to equal political rights as they are all returned through universal suffrage. I humbly submit that Dr LI should have the right to vote. *(Laughter)*

**MR LEE CHEUK-YAN** (in Cantonese): President, a point of order. Why did you pass the buck to the entire legislature by making it vote on this matter? Why do you not make a ruling? I would like to know what the basis of your discretion is.

**PRESIDENT** (in Cantonese): My basis is Rule 84. Rule 84 gives me the discretion to .....

**MR LEE CHEUK-YAN** (in Cantonese): President, but I wish to know why you have decided to exercise this discretion. In fact, instead of exercising the discretion, you can make a ruling on your own and in this way, you do not have to exercise the discretion. Why did you exercise this discretion?

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, my interpretation of Rule 84 is that unless I believe all Members agree that the issue of a direct pecuniary interest does not exist, as long as there is some doubt, we should still let Members conduct a debate before voting.

In fact, I have listened to the comments made by my Members. They have all stated their views on this issue very clearly and Dr David LI has also clearly disclosed his relationship to this incident, so I believe this move is beneficial to the legislature and the public.

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

**MS MIRIAM LAU** (in Cantonese): President, to deprive a Member of his voting right is a very serious matter, so we must deal with it very solemnly.

I may not see eye to eye with Dr Margaret NG on many issues, but today, I totally agree with the comments made by her just now. This is probably because we are both members of the legal profession. In view of this, I am not going to recap Dr Margaret NG's comments.

On the question of whether or not voting should be allowed, I believe that in fact, the Member concerned cares even more about this than other Members do because according to Rule 85 of the Rules of Procedure, if a Member has a direct pecuniary interest as stated in Rule 84 but proceeds to vote nonetheless, he may be admonished, reprimanded or suspended by the Council and this may lead to many serious consequences. For this reason, I believe no Member will take such a risk without any specific reason.

Of course, Members returned by functional constituencies are duty-bound to speak on behalf of their sectors. Often, we would deal with the charges or pecuniary matters relating to certain sectors in this legislature. For example, if a piece of legislation prescribes that certain fees shall be paid by lawyers, does anyone mean that apart from making a declaration of interests that one is a lawyer, one has also to withdraw whenever a vote is taken? Does anyone mean that Dr Margaret NG, as a representative of her sector, has to withdraw? I believe that in the past, we have never taken such a view in dealing with Members of functional constituencies.

A lot of matters involve the fees and charges levied in certain sectors represented by functional constituencies. Does anyone mean that in these circumstances, all the Members returned by functional constituencies have to be "disarmed" and deprived of their right to vote? President, I believe this legislature should not take such an unreasonable attitude in dealing with this matter before us. We must deal with it solemnly. Moreover, we should not find fault so unreasonably.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak? Dr Margaret NG .....

**DR MARGARET NG** (in Cantonese): President, a point of .....

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

**DR MARGARET NG** (in Cantonese): I am not sure if it is a point of order. Perhaps the President can decide. The President said just now that concerning "a direct pecuniary interest", your understanding was that if there was any doubt, Members should be allowed to have a discussion. Could the President clarify what doubt you were referring to? Because as far as I know, "a direct pecuniary interest" is not a new concept and there is a very clear definition of it in law. If a legal definition is involved, does the President have the responsibility to make a ruling? Is your doubt a factual one or a legal one?

**PRESIDENT** (in Cantonese): Thank you, Dr Margaret NG. That is a factual issue. What we have to debate now is not the definition of "a direct pecuniary interest", rather, I want to let Members know that since Mr LEE Wing-tat has proposed a motion, does Dr David LI really has any direct pecuniary interest in this issue on which we will vote later, that is, in the question relating to the Legislative Council (Powers and Privileges) Ordinance?

If, after listening to the debate today, I decide to disallow Mr LEE Wing-tat to propose the motion, I believe at least some Members will have a query, that is,



does Dr David LI actually has any direct pecuniary interest in relation to his own bank? For this reason, I believe it is desirable for Members to debate this issue. For this reason, I ruled that I allow Mr LEE Wing-tat to propose his motion.

Does any other Member wish to speak?

**MR LEE WING-TAT** (in Cantonese): President, Rule 84 is rather special. As mentioned by Mr LEE Cheuk-yan, we at first thought that the President would make a ruling. But since the President has referred the matter to the whole Legislative Council for discussion, the judgment reached by Members during their discussions must naturally be regarded as a collective decision on whether a certain Member has any direct pecuniary interest.

I have proposed this motion basically because of this query. Since all Members who have spoken do not think that Dr David LI has any direct pecuniary interest, I am prepared to withdraw this motion.

**PRESIDENT** (in Cantonese): The Clerk has brought my attention to the procedures of withdrawing a motion. But, first, I must admit that this is the first time we handle such a motion. Second, I wish to point out that this motion is different from other motions, in the sense that it does not require any notice. But I have still listened to the Clerk's advice. Does any Member oppose Mr LEE Wing-tat's withdrawal of his motion?

(No Member indicated any opposition)

Since no Member has indicated any opposition, Mr LEE Wing-tat shall now withdraw his motion. In other words, we do not need to vote on his motion.

**MR ALBERT HO** (in Cantonese): When I spoke earlier on, I already declared that I am the legal representative of the victims. In this connection, I suppose it may be necessary for the President to make a ruling. Members may, of course, put forward a motion. Some Members have even compared my case with that of Dr David LI, saying that my pecuniary interest in this matter may even be more direct. Does the President have any views on this matter?

**PRESIDENT** (in Cantonese): Mr Albert HO, what is involved here is a point of order. Unless a Member puts forward a motion on urging you to withdraw due to the pecuniary interest, I shall not request you to do so.

(No Member indicated that he had any views)

**PRESIDENT** (in Cantonese): There are no more queries, right? I now put the question to you and that is: That Dr Raymond HO's motion 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 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): Dr Raymond HO, please press the "Present" button. Since you are present, you must press the "Present" button.

**DR RAYMOND HO** (in Cantonese): President, if I press the "Present" button but do not press the voting buttons, that still means I am against it. Since I do not want to state my stance in this way, President, I choose to leave the Chamber. May I?

**PRESIDENT** (in Cantonese): Yes.

(Someone in the public gallery clapped)

**PRESIDENT** (in Cantonese): Please keep quiet.

(Dr Raymond HO left the Chamber)

**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, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU, Dr LAM Tai-fai, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the motion.

Dr David LI, Dr Philip WONG and Mr Abraham SHEK voted against the motion.

Mrs Sophie LEUNG, Mr Jeffrey LAM, Mr Paul CHAN and Mr CHAN Kin-por abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Miss Tanya CHAN, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mr WONG Yuk-man voted for the motion.

Mrs Regina IP voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, 20 were in favour of the motion, three against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 29 were present, 27 were in favour of the motion and one against it. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was carried.

(Some people in the public gallery clapped and cheered)

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

Members, it is obvious that we will not be able to finish all the business on the Agenda before midnight. According to our usual practice, the meeting today will be adjourned at 10 pm and will resume tomorrow morning. There are still 42 minutes to go before 10 pm, so let us not waste time. *(Laughter)*

### **ALLEVIATING THE BURDEN OF FUEL COSTS ON THE PUBLIC AND RELEVANT TRADES**

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

**PRESIDENT** (in Cantonese): First motion: Alleviating the burden of fuel costs on the public and relevant trades.

Members who wish to speak in a debate on a motion will please indicate their wish by pressing the "Request to speak" button.

I now call upon Ms Miriam LAU to speak and move her motion.

**MS MIRIAM LAU** (in Cantonese): President, international oil prices have continuously dropped since July, and the financial tsunami has further caused oil prices to dwindle to around US\$65 a barrel in recent months and today, oil prices have even dropped to below US\$60 a barrel, representing a cumulative drop of nearly 60%. Despite repeated price reductions by oil companies in response to appeals jointly made by us in the trades and the community and after verbal coercion by government officials, the prices have nevertheless been reduced for less than 20% only, which falls far short of the drop in international oil prices.

Since the beginning of 2008, the public and the relevant trades have had a strong impression that whenever international oil prices reached a new high, oil companies would hasten to increase their prices but when oil prices repeatedly dropped to low levels, oil companies would slowly reduce their prices bit by bit, as if "squeezing a tube of toothpaste to get some toothpaste out of it". There is apparently a case of oil companies being quick in raising prices but slow in reducing them and pocketing extra profit by way of price cheating. This is a long-standing problem and there has not been much improvement to it.

Strangely enough, while we used to see only oil companies defending themselves against allegations of being quick in raising prices but slow in reducing them, we have nevertheless seen recently the Secretary and even the Chief Executive coming forth to speak for the oil companies. I, therefore, will explain in the first half of my speech today how oil companies have been quick in raising prices but slow in reducing them and how they have juggled with discounts and respond to the Secretary's remarks that there is no question of oil companies being quick in raising prices but slow in reducing them. Then in the next half of my speech, I will focus on putting forward proposals on how we can introduce more competition to the market and how we can help alleviate the

burden of fuel costs on the public. Mr Tommy CHEUNG will later on add a few points on the use of liquefied petroleum gas (LPG).

In reply to a question on oil prices last month, Secretary Edward YAU pointed out that we should not compare the crude oil price with local retail prices in monitoring oil prices and that it would only be fair to compare the Singapore free-on-board (FOB) prices with the import prices. Coupled with the existence of a time lag of about one month in respect of the changes in import prices and retail prices, retail prices may not be adjusted in keeping with international oil prices. On the surface, this explanation given by the authorities appears to hold water but if we study the figures in detail, we would find many problems with it.

In my following discussion I will make my points based on the statistics provided by Secretary Edward YAU to the Legislative Council earlier. In the beginning of the year oil prices had kept on rising and in the first six months of the year, oil companies had increased the pump prices fully in tandem with the import prices and an extra increase was even recorded in four months. Take February as an example. While import prices increased by \$0.02/litre in January, retail prices in February, which is a month later, increased by \$0.28/litre, representing a 14-fold increase. In May, retail prices even doubled import prices in the previous month as the prices increased by \$0.48/litre.

If we look at the first six months of the year as a whole — let me do the computation on a half-yearly basis, in case a calculation based on monthly figures is said to be not accurate — the import prices increased by \$1.37/litre but how much had retail prices increased? They had increased by \$1.82/litre. The oil companies did not only increase their prices following an increase in import prices, they even increased the prices by an extra of \$0.45/litre and this is obviously a case of pocketing excessive profit. But in recent months (from July to September), while import prices dropped from \$7.5/litre to \$6.67/litre, which means a drop of \$0.83/litre, or 11.1%, retail prices dropped only \$0.76/litre, or 7%, which again shows a shortfall of \$0.07/litre. There is also such "price cheating" in the case of diesel prices.

Apart from reducing their prices only slightly, the oil companies have also been particularly slow in reducing prices. International oil prices have fallen since early July after reaching a record high. The oil companies in Singapore started to adjust downward the pump prices on 8 July, and there had been five

reductions in the month of July. However, the oil companies in Hong Kong reduced their prices only once in July, while diesel prices were adjusted downward only 10 days after fuel prices had been adjusted.

The oil companies have been quick in raising prices but slow in reducing them and the increases are always greater than the reductions. In the first nine months of this year alone, the oil companies had pocketed a cumulative price difference of \$0.13/litre from petrol and \$0.06/litre from diesel. Do not think that the price difference is only trivial, for small sums can add up to a significant amount. If we calculate on the basis of a total consumption of 340 million litres of unleaded petrol in the first nine months in Hong Kong, pocketing a price difference of \$0.14/litre means that the oil companies can make an additional profit of \$44 million. Diesel consumption is even greater as it reaches \$2.3 billion litres a year. Pocketing a price difference of \$0.06/litre may mean an extra profit of \$138 million for the oil companies. By just being quick in raising prices but slow in reducing them, adding and subtracting numbers, and juggling with figures, the oil companies may have reaped an excessive profit of \$200 million in nine months' time.

President, I am not an actuary, and I do not have as much information as that of Secretary Edward YAU, but we can observe simply from the papers provided by the Secretary how oil companies have been quick in raising prices but slow in reducing them and how they have pocketed the price difference. If the Under Secretary disagrees with me, could she please explain to the public what this is all about?

The Secretary always said that the import prices constituted the cost of oil companies. Then why is it that the pump prices would increase by \$1.36/litre when the import prices only increased by \$1.23/litre? Why is there an ever increasing difference between import and retail prices year after year? The difference between the import prices and retail prices of petrol was only \$3 in 2003, but in the first nine months of 2008 the figure increased to an average of \$3.36/litre, representing an increase of over 10%. The price difference pocketed by oil companies has been growing bigger and bigger. Why has the Government turned a blind eye to all this and worse still, spoken in favour of the oil traders?

In fact, Prof Francis LUI of The Hong Kong University of Science and Technology has also queried the point about a time lag. He opined that the

statistics on import prices were released by the Government on a monthly basis but the oil companies usually made several adjustments to their fuel prices in a month. If the trend of price movement is analysed based on the monthly figures, a lot of figures may not be taken into account and so, they may not be able to fully reflect whether or not there is a case of oil companies being quick in raising prices but slow in reducing them. How reliable is it for the Secretary to monitor oil prices based on monthly statistics on import prices?

Indeed, the oil companies will invariably increase their prices in the first instance once there is an increase in crude oil price, in order to safeguard their own interests. But when the crude oil price drops, they will defer actions and by taking advantage of the so-called "buffer period" mentioned by the Secretary, so they will be quick in raising prices but slow in reducing them, fleecing consumers and the relevant trades. The Secretary has not monitored oil prices effectively and the Government's attitude towards the oil traders has not been determined enough. But in the face of public pressure, the Government outrageously changed its stance and produced loads of statistics on import prices to argue for the oil traders in order to ease its own pressure, and this is indeed disappointing.

President, faced with strong public criticisms on fuel prices, not only has the Secretary attempted to conceal his fault of ineffective monitoring, even the oil companies have changed their strategy by offering discounts and concessions, in a bid to shift public attention and evade the pressure of price reductions.

It is true that the oil companies have indeed offered many discounts in recent months, but the discounts offered come in a great variety, as their benefits for customers are actually very limited. Unless a consumer has various types of credit cards and memberships with various petrol filling stations and carefully arranges for the refueling of his vehicle on a particular date, he can only benefit from some ordinary discounts, and like the pump prices, collusion as that in price setting is suspected of these ordinary discounts given that the discounts offered by three major oil companies are identical, that is, a 6% discount is offered six days a week and a 10% discount on just one day a week.

But Members must note the fact that the validity of these so-called discounts is always subject to change and the rate of discount also varies from time to time, and the oil companies may even withdraw these offers anytime. They can cancel the discount anytime when facing slightly less public pressure,



or give away paper tissue or bottles of distilled water in lieu of cash rebate without having to give prior notification at all, and the public will know such changes only when they arrive at the filling station for a refill and so, consumers entirely do not enjoy any protection. Furthermore, the transparency of these concessions is extremely low, and it is difficult for consumers to know how the concessions are worked out.

The oil companies have refused to reduce their prices and they offer discounts only after pushing up the prices. This is a strategy of downright profiteering with the objective of creating room for price manipulation, in order to obscure attempts of price setting among oil companies and create an illusion of competition. The Liberal Party, therefore, considers that since there is room to offer concessions up to over 10% of the pump prices, all the oil companies should immediately reduce their prices to the benefit of all members of the public and the relevant trades.

President, as competition in prices in the local fuel market has long been lacking, oligopoly has developed in the industry. This, coupled with the lack of government monitoring, has ultimately resulted in today's scenario where the oil companies have become so powerful that they can bully their customers. I have proposed this motion today to urge the Government to take decisive and effective measures to tackle the problem, so as to ensure that fuel prices will be adjusted downward according to the movement of international oil prices.

In the short term, since Secretary Edward YAU has stated categorically that there is still room for the oil companies to reduce their prices, I very much hope that the Secretary will translate his words into actions by performing the monitoring role effectively and expeditiously urging oil companies to reduce the fuel prices.

I think in order to thoroughly solve the problem in the long term, the only solution is to introduce a fair competition law targeting oil companies, whereby the relevant authorities are empowered to obtain information from or examine the accounts of oil companies or other relevant companies suspected of having breached the fair competition law, in order to ensure that there is no lack of competition in the fuel market which would otherwise enable the oil companies to do whatever they like.

Apart from introducing a fair competition law to enhance monitoring, the Government should further promote competition in the market by, among other

things, lowering the threshold for entrants to the market through the tendering of petrol filling station sites and seeking to reach agreements with the Mainland on fuel supply, with a view to increasing the source of supply and hence enhancing competition.

On the choices of fuel products, Hong Kong is one of the few places in Asia supplying only petrol of 98 octane rating. All vehicles, disregarding their types, are forced to use the "prestigious" type of petrol used only by Porsches and Ferraris. In fact, petrol of other octane ratings is also supplied in the neighbouring cities of Hong Kong. Take petrol of 97 octane rating in the Mainland as an example. Its price is \$1.4 less per litre than the price of petrol in Hong Kong. While the price difference with other places may be smaller, there is still a difference of tens of cents. In other words, when we compare the price of petrol of 98 octane rating with that of petrol products of lower octane ratings, there is still a price difference of tens of cents per litre. In this connection, the Liberal Party hopes that the Government will urge oil companies to reintroduce petrol of 95 octane rating which costs less, so that consumers can reduce their unnecessary expenses.

President, fuel prices in Hong Kong are the most expensive in the world. Apart from oil companies reaping excessive profit, high land prices and high duty rate have also caused retail prices to rise. In fact, every time a car owner refuels his vehicle, he has to pay about \$1/litre for the land price plus \$6.06/litre for the fuel duty, accounting for half of the pump price. This shows that the fuel duty has constituted a very heavy burden.

It has been a decade since October 1998 that drivers are made to pay this heavy duty, which has generated a cumulative revenue of as much as \$27 billion to the Treasury. The Liberal Party considers that as an overwhelming majority of the 300 000-odd owners of petrol vehicles are not very rich people and most of them rely on their vehicles for travelling to make a living and to work, rather than for sightseeing and enjoyment, the general car owners are already suffering great hardships because of high fuel prices. Under the current economic conditions, should the Government not help ease the pressure on them? In this connection, the Liberal Party calls on the Government to reduce the fuel duty by 50% — certainly, the Liberal Party would very much welcome a reduction of over 50%. We hope that the Government can ride out the hard times together with the general car owners.

The Liberal Party believes that only when a multi-pronged approach is adopted will competition truly exist and only in this way will the right to choose of consumers and the trades as well as their interests be protected.

With these remarks, President, I beg to move.

**Ms Miriam LAU moved the following motion: (Translation)**

"That, as the drop in international oil prices has accelerated recently, yet the local fuel retail prices have only been reduced to a limited extent, resulting in fuel prices remaining persistently high, which causes people to query whether oil companies are "quick in raising prices but slow in reducing them" and engaging in "price cheating"; in order to safeguard the interests of the public and relevant trades, and to alleviate their burden of fuel costs, this Council urges the Government to:

- (a) press oil companies to immediately reduce the local fuel prices according to the level of reductions in international oil prices;
- (b) introduce a fair competition law to enhance the monitoring and effective regulation of the auto-fuel market, so as to prevent market monopoly and ensure that fuel retail prices are fair and reasonable;
- (c) request oil companies to re-introduce petrol of 95 octane rating, so as to provide more choices for consumers and reduce their unnecessary burden;
- (d) strive to explore more supply sources of processed oil to enable real competition in the market;
- (e) publish more detailed data on the prices of international oil products and the import prices of local oil products, so that the public can more effectively monitor the changes in oil prices;
- (f) actively consider implementing the introduction of price regulation in the tendering of petrol filling station sites; and
- (g) reduce the duty on unleaded petrol to alleviate the burden on car owners."

**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): Three Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the three amendments.

I now call upon Mr CHAN Hak-kan to speak first, to be followed by Mr WONG Kwok-hing and Mr Fred LI; but no amendments are to be moved at this stage.

**MR CHAN HAK-KAN** (in Cantonese): President, on the question of fuel prices, we have seen two very interesting phenomena in society.

The first interesting phenomenon is that when members of the public are asked to describe fuel prices, they would usually say this: Price increase is quick but reduction is slow. The second is that however strongly members of the public have complained and protested against fuel prices, or however strongly the relevant trades have protested, nothing is as effective as one remark by Secretary Edward YAU. Because I have noticed that whenever Secretary Edward YAU commented that fuel prices were expensive, the oil companies would reduce their prices the next day. A case in point is that after Secretary Edward YAU had said that the price of liquefied petroleum gas (LPG) is on the high side, the LPG companies reduced their prices by as much as 20% to 40% the following day. President, do you think that Secretary Edward YAU's words worth ingots of gold?

I very much hope that Secretary Edward YAU can speak for us more often, so that fuel prices can be adjusted further downward. But much to our regret, the Secretary's comments are largely consistent with the arguments put up by the oil companies, as the Secretary always said that the public has three misconceptions about the fuel market. First, he said that insofar as the price trends of oil products is concerned, there is no question of the oil companies being quick in raising prices but slow in reducing them; second, he always said that there is no widening of the difference between the import and retail prices of refined oil products, which means that there is no question of "price cheating";

and third, as the oil companies have always said, they have often provided concessions to car owners and so, they have not been profiteering.

Having listened to these explanations, I would like to draw the attention of the Under Secretary to some figures. First, we have seen that international oil prices have so far fallen by over 50% compared to their peak in July and yet, local fuel prices have only fallen by less than 20% from the record high.

If we further look at a more detailed breakdown of the figures, we can see that there is actually not a big difference between the current international oil prices and those in 2007. In 2007, the pump price was \$12.98 to \$13.6/litre but while the international oil prices have remained the same, the current pump price is \$14.59/litre, showing a price difference of \$1. I do not need an answer from the Under Secretary to know that this \$1 has been pocketed by the oil companies. But I really would like the Under Secretary to tell us when Secretary Edward YAU would return from Australia and make some remarks of gold again, so that members of the public can further enjoy reductions in fuel prices.

President, I have on hand an advertisement by an oil company. The person in the advertisement looks very happy but in fact, we cannot really tell whether or not he is truly smiling. I cannot tell. I have no intention to point an accusing finger at this oil company and on the contrary, I must declare an interest, that I am a loyal patron of this company as I always go to its filling stations for refuelling. Why do I show Members this advertisement? What I would like to say is that at present, many oil companies would offer a diversity of discounts and concessions to the public and sometimes at a rate of nearly 20%. An ordinary member of the public who has a membership card can enjoy a discount of \$0.5 to \$1 when refuelling at a petrol filling station.

The public may question: What use is there in offering so many discounts? Is it not better to simply reduce the fuel prices, which would be more practical? Why should oil companies offer so many discounts and give away so many free gifts? With regard to the discounts offered, as Ms Miriam LAU said in her speech earlier, the discounts vary from time to time with different rates of discount from Monday to Friday. The discount rate is higher on Saturdays and even higher on Sundays. Does it show that the oil companies have in fact raised their prices before offering discounts to customers? This, to a certain extent, is cheating.

As we can see from some figures, even though the oil companies have offered a discount of over 10% to customers, they can still reap a net profit of 5%. In other words, if members of the public refuel their vehicles at the pump price without enjoying any discount, the oil companies can reap a net profit of nearly 20%. President, under the current economic conditions, I think a profit margin of 20% is excessive. The voices of the people cannot be clearer. We call on the oil companies to truly reduce their prices, rather than just providing bogus concessions.

President, there is certainly an oligopoly in the fuel market of Hong Kong. Choices of products are few and it is very difficult for new operators to enter the market. As a Member mentioned earlier, the choice of fuel products is extremely limited in Hong Kong as only one type of petrol is supplied, thus forcing all vehicles to use petrol of 98 octane rating. We have also learnt from some scientific reports that petrol of 95 octane rating would suffice for the general types of automobiles and using petrol of too high an octane rating is pointless and a sheer wastage. Why do all the oil companies supply only one type of petrol, namely, petrol of 98 octane rating? There is only one reason for it and that is, in doing so they can increase the pump prices to reap higher profits.

To truly introduce competition into the local fuel market, I think apart from importing refined oil products from different sources, it is very important to develop new types of alternative fuels. The development of biofuel technology has, in fact, reached a very high level of maturity in Hong Kong and biofuel is now available for use by vehicles. But why is there not any biofuel-driven vehicle in Hong Kong? I think the problem is that the Government has not provided matching support in its policy.

As the Government requires that biofuel be used in combination with ordinary fuel, even if biofuel manufacturers are interested in the production of biofuel, they are still required to purchase refined oil products and for this purpose, they must also provide certain support facilities, such as unloading fuel at the pier, the provision of fuel tanks and sales outlets, and so on. But the question is: Can they provide these facilities in the existing conditions in Hong Kong? The answer is no.

In this connection, I think the Government can provide assistance in this regard and support the development of the local biofuel industry in terms of

infrastructure and policy, while making use of new products to create a new environment for competition. Only in this way will there be a chance to eliminate monopolization by oil companies.

Lastly, President, I would like to briefly explain why I propose to include in my amendment the concern about the gaseous fuel market. The original motion entirely focuses on auto-fuels but we can see that the setting of domestic fuel prices is actually even less transparent than the pricing of auto-fuels. Let me cite LPG as an example, as it accounts for 30% of the gaseous fuel market in Hong Kong. Some large-scale LPG companies will take the initiative to review their prices on a quarterly basis, but prices are reviewed and set in accordance with the projected trend of import prices, rather than adjusted according to the actual import prices. How could this in any way be convincing to the public? While large companies have this mechanism for conducting reviews, companies of a smaller scale may not even have this mechanism and they can, therefore, adjust their prices arbitrarily.

On the operation front, we have seen that LPG companies engage in wholesale business and outsource their retail services to contractors. What the LPG companies have told us are wholesale prices but consumers purchase LPG at retail prices, and there is a big difference between the two set of prices. How does this difference come about? How is the profit determined? We have no idea at all.

Even in the case of centralized LPG supply, the charges in Southern District and those in Tai Po are different, while those in Tai Po are also different from those in Tseung Kwan O. Why do the charges vary in different districts where the LPG is the same?

President, the Government said that in respect of the policy on the regulation of fuel, the market should be allowed to make its own decision. But the Government seems to contradict itself, for it has, on the other hand, required Towngas to ensure transparency in its mechanism for setting and adjusting the level of charges and to set out clearly the procedures for reviewing charges as well as the structure of charges. Towngas is also required to negotiate with and consult the Government on any of its plan to acquire new facilities and systems, and they are required to disclose the company's information to the public annually to assure consumers' interests. Why is this mechanism not applied to the LPG

market? I find this very strange. I hope that the Under Secretary will answer this question later. Is it that the Government has no plan to do so, or is it reluctant to do so?

President, as fuels are a kind of daily necessity to the public, we consider it necessary to bring them under an appropriate degree of regulation.

Thank you, President.

**MR WONG KWOK-HING** (in Cantonese): President, the issue of fuel prices has indeed been discussed repeatedly in this Council. In recent months, the issue of oil prices has even aroused strong dissatisfaction among the transport trade and public concern, despite the Chief Executive's call in this year's policy address for enhanced transparency in the retail prices of fuel and his hope for fuel retailers to reflect, in a timely manner, oil price movements to meet public aspirations. However, both the transport trade and public in general share the view that the Government has failed to effectively monitor the sale practices of oil companies, which have been accused of being "quick in raising prices but slow in reducing them" and "seeking generous increases but offering small reductions". Despite the announcement since the second half of October by the Environment Bureau on its website the ex-duty retail prices of unleaded petrol and diesel, the average of the Mean of Platts Singapore, and the monthly average import prices, it is not very helpful to reflecting the petrol and diesel prices at retail petrol filling stations. Therefore, I feel that the Chief Executive's call is actually not effective at all.

President, in the past year or so, international oil prices had continued to surge. It was only until recently that international oil prices have tumbled due to the impact of the financial tsunami. However, the rate of reductions in the pump prices of local auto fuel lags far behind that of international oil prices, which have fallen more than half from its peak of US\$147 per barrel to US\$60 per barrel recently. However, the adjustment in the local retail fuel prices has not been very substantial. Despite the recent proposals by local oil companies to reduce prices, the prices have often been reduced by a mere one to three cents per litre. Even if the prices are further reduced several times, the cumulated reduction would add up to only \$1, which is a far cry from the rate of reductions in international oil prices. Compared with the situation overseas, we will find a marked reduction in retail oil prices since their peak in July this year. As



regards petrol, its pump price in the Netherlands, which stood at US\$10.16 per gallon in July, fell nearly 40% to US\$6.51 per gallon on 3 November this year. As for diesel, its pump price in Britain, stood at US\$10.03 per gallon in July, has recently fallen to US\$6.6 per gallon; and the price of diesel has also recently fallen from US\$9.02 per gallon to US\$5.86 per gallon in Germany. Hong Kong is the only place in the world where oil prices can be set at such an exceptionally "high" level.

Does the Administration truly believe the fuel retailers in Hong Kong are not "quick in raising prices but slow in reducing them" and "seeking generous increases but offering small reductions"? I hope the Government can respond to this question. Does the Administration have justifications to convince people that oil traders are not "quick in raising prices but slow in reducing them"? Perhaps the Government will tell us that the level of retail fuel prices hinges on the operating costs of retailers. We understand that doing business incurs costs. How can profits be made without incurring costs? Is there a marked difference between Hong Kong and other places in terms of operating costs? We know that petrol filling stations in Hong Kong are acquired through bidding. If the operation of oil companies is stifled due to exceedingly high land premium, the Government should begin with lowering land premium instead of making drivers at large to bear the consequences of high bidding prices.

Recently, there have been media reports that a wide range of concessions, such as maps, toys, discounts for payments made by specified credit cards, and even weekend concessions, are provided by local fuel retailers because of reductions in oil prices. These concessions have now become the "operating costs of oil companies" mentioned by the Government. People just cannot help feel that the oil companies are seeking to lure customers with these petty favours, and yet the Government considers these petty favours as their operating costs. This is really surprising. I think it is absolutely unfair to professional drivers at large for the oil companies to employ these tactics to avoid actual price reductions. The Government must monitor such situation because, in the light of the drops in oil prices, the oil companies should truly transfer to drivers the actual rate of reductions in oil prices, instead of employing various means of force or trickery. This will not only aggravate the burden on vehicle owners, but also affect the livelihood of front-line professional drivers. In my opinion, the publication of ex-duty retail prices on the Internet by the Environment Bureau in a bid to combat the "oil demon" is totally meaningless because there are no punitive measures. In other words, the Government is merely paying

lip-service. Such being the case, it will only continue to allow the "oil demon" to suck the blood and sweat of Hong Kong people.

President, the problem of LPG raised in my amendment has actually existed for years. Although I have made a number of personal visits jointly with organizations of the trade to different LPG filling stations and held numerous meetings and conduct inspections jointly with the Environmental Protection Department and the Electrical and Mechanical Services Department (EMSD), the problem remains unsolved. In response to the Government's appeal for taxis and public light buses to switch to LPG on environmental protection grounds, all taxis and some public light buses in the territory have already made the switch. But over the years, the Government has still failed to come up with comprehensive planning in relation to the supportive measures taken in connection with the relevant policies. As a result, professional drivers of LPG vehicles are now crying out for help because of the inadequate number of dedicated LPG filling stations provided by the Government. In a site visit conducted by me and some of the front-line drivers of the Motor Transport Workers General Union a couple of days ago, it was found that long queues were often formed at a number of LPG filling stations in the territory. At the LPG filling station on Marsh Road in Wan Chai, for instance, such situation can be found every afternoon. Despite drivers' call for improvements, the Government is still reluctant to provide more LPG filling stations. Not only has the burden on professional drivers been aggravated, they are also required to spend a lot of time waiting for refilling. People might be driven into rebellion by officials if the situation is not improved. At present, there are only 12 dedicated stations and 40-odd non-dedicated stations throughout the territory. Although LPG is provided at a relatively low price by the Government at dedicated stations, the problem of long queues of vehicles has remained unresolved due to inadequate dedicated stations and improper planning. I would like to bring up this issue again here — major problems will occur sooner or later should the Bureau fail to provide one more station on Hong Kong Island. I hope the Secretary can stop dragging his feet in addressing this issue.

A couple of days ago, I joined the Taxi and Public Light Bus Divisions of the Motor Transport Workers General Union to petition the EMSD for monitoring of LPG prices because the EMSD is responsible for approving adjustments to LPG prices at dedicated stations. From the fact that LPG prices have not been reduced following the substantial drop in international oil prices, it is evident that the EMSD is helping the oil companies which are monopolizing oil

supply. The EMSD's failure to exercise strict monitoring to bring down LPG prices has greatly aggravated the burden on professional drivers. I have been told by some people in the trade that each driver has to pay an additional \$1,000 a month in LPG expenses. If their monthly income is around \$7,000, the expenses would account for some 15% of their monthly income.

Hence, I hope the Government can listen to their voices. Furthermore, the Government must strictly monitor the tactic adopted by dedicated stations which choose to act "quickly in raising prices but slowly in reducing them" and "seek generous increases but offer small reductions". Should the EMSD continue to help the evildoer to do evil, the taxi or public light bus trade will definitely take more drastic steps to put up resistance sooner or later in protest of the Government's way of handling the matter. President, the amendment proposed by me seeks mainly to complement the issues raised in the original motion concerning the monitoring of, and adjustment to, LPG prices.

**MR FRED LI** (in Cantonese): President, whenever oil prices were mentioned in questions or motions raised in this Council, the oil companies would take complementary measures skilfully, as if they were matching Secretary Edward YAU perfectly. Last month, prices were lowered after an oral question on oil prices was raised by me in a Council meeting on Wednesday. Last week, LPG prices were substantially adjusted downward by 20% to 40% after Mr CHEUNG Hok-ming had raised another question about domestic LPG. It seems that this Council can achieve nearly the same effect as Secretary Edward YAU does whenever it resorts to "verbal coercion".

In the original motion, Ms Miriam LAU requests the Government to press oil companies to immediately reduce the local fuel prices according to the level of reductions in international oil prices. I believe Honourable Members will agree with her. The Democratic Party will also support all the amendments to enable the motion to be passed. However, I do not hope to see the Government, after the passage of the motion, continue to rely on "verbal coercion". According to the Government, it has no power to determine prices of fuel products. However, according to section 6 of the Oil (Conversation and Control) Ordinance (Cap. 264), a law enacted a long time ago, the Government may regulate the price at which oil may be supplied or sold, unless I have got it wrong. Actually, the

Ordinance gives the Government the power to require oil companies to submit accounts and records relating to their business to investigate whether or not the companies have made exorbitant profits, and whether they are "quick in raising prices but slow in reducing them". It is not the case that, as pointed out by the Government, it can only resort to "verbal coercion" because the market is free. Would the Secretary please respond to this point?

I am not asking the Government to control prices. Only that there have always been doubts about the existence of fair competition in the local oil product market. The remarks made by Ms Miriam LAU earlier were absolutely right. Our colleagues have also mentioned petrol of 95 octane rating and petrol of 98 octane rating. I also have the same doubt because most of our vehicles do not need to use petrol of 98 octane rating. However, insofar as the oil companies are concerned, they can make a higher profit from petrol of 98 octane rating. This is the only explanation.

According to a study conducted by the Consumer Council in 2000 on local auto-fuel and the LPG market, the Consumer Council is simply incapable of evaluating whether or not major players in the market are making abnormal profits as it is not authorized to obtain sensitive commercial information. In a consultancy study commissioned by the Government in 2004, it is also pointed out that, given the structure of the local oil product market and the mode of sales of the products, there is risk of collusive price fixing practices. However, like the Consumer Council, the consultancy has no power to request the oil companies to provide all information. This is also a handicap.

Everyone (including the Government, oil companies and Honourable Members) sticks to their own argument because the information lacks transparency. While both the public and this Council feel that the oil companies are "quick in raising prices but slow in reducing them", the oil companies insist that they are simply following global oil prices and would make adjustments according to Singapore's export prices. Today, oil is still being sold at the price set a month ago. We were told by the oil companies we should take it easy since retail prices would be reflected should global oil prices drop to \$50 to \$60. But when? We have no idea. How long will the delay last? We also have no idea. However, I recall oil companies were very quick in raising prices by pointing out that global oil prices had been raised. These new releases have often come to my mind. Therefore, the oil companies should publish more information.

As regards Shell, Caltex or Esso ..... ExxonMobil — I have always got its Chinese name wrong. I had better say its name in English — We were told by ExxonMobil that the answer could not be revealed when we asked the company how much it earned a year, whether the profit was a single- or double-digit figure, and how many litres of unleaded petrol had been sold. I do not know how far I can understand. Is its profit rising or falling? Anyhow, we were only told that business was difficult, but there was no way for me to tell how difficult it could be.

We support both the original motion and the amendments proposed by the two Members. In the remaining time, I would like to talk about the part added to Ms Miriam LAU's motion. It is related to LPG, which has actually been mentioned by two Members as well. Why would we mention LPG? The transport industry is actually very powerful. Let me cite the recently launched campaign to "starve the oil demon to death" as an example. First of all, the industry would choose not to patronize a certain oil company to refill their vehicles and starve it to death, and then move on to another one. At least, the industry can demonstrate to us its collective power. The bigger these professional fleets get, the higher discounts they will obtain. In comparison, however, the scope for negotiation is very limited insofar as prices of centralized LPG and domestic cylinder LPG are concerned.

If colleagues do not like a certain oil company, they can switch to another one. However, if they live in the South Horizons, they can only utilize centralized LPG, unless they prefer electricity. Is using LPG or electricity more economical? In my opinion, neither one of them is economical. It is very troublesome and expensive to make soup by way of electric cooking. This is particular so on Hong Kong Island since electricity here is supplied by the Hongkong Electric Company Limited, and electricity tariff is more expensive on Hong Kong Island than in Kowloon. Therefore, members of the public are left with no choice. If they opt for flame cooking, they must switch to centralized LPG, but then the prices of LPG are not transparent. We are aware that the Shell Company conducts price evaluations once every three months. However, other suppliers of centralized LPG make no disclosure of such information. Therefore, we have no idea how their prices are adjusted. Even if evaluations are made, they are not conducted at a regular interval.

As for cylinder LPG, we are even more unclear about its pricing criteria. While the Government merely publishes the average import prices of LPG, the oil

companies publish the wholesale prices. In the end, the retail prices fluctuate like the prices of seafood. According to a newspaper report, the retail prices for cylinder LPG in the same district can differ by \$40. I believe even the Government is not provided with comprehensive figures. How are the prices of cylinder LPG determined? We can only doubt that retailers or oil companies are reaping just too much profit. Furthermore, it must be borne in mind that most of the users of cylinder LPG live in remote village houses in the New Territories or old buildings, such as those in To Kwa Wan. These houses or buildings are not supplied with town gas. We should give them better care because they are grass-roots people. As users of cylinder LPG, they are open to exploitation. This is why I have specially added this part to Ms LAU's motion.

Mr WONG Kwok-hing is not present at the moment. As far as I can remember, unlike what he pointed out just now, land premiums were not taken into consideration during the tendering of the 12 dedicated LPG stations. This is the greatest difference. Furthermore, current oil companies would be excluded from the tender exercise, thus leading to more competition. The lower the bidding price, the higher the opportunity of using the filling stations and winning the tender. Furthermore, LPG prices will not be regulated. I recall the price adjustment was made once every two months initially. Later, thanks to our campaign, it was changed to once a month. If Members still remember it, many taxis had to wait for a long time to refill their vehicles at that time because it took a long time for LPG prices to be adjusted, while global oil prices kept going up. Before adjustments were made to LPG prices, drivers preferred queuing up at LPG stations rather than going to ordinary Shell or Caltex petrol filling stations because, first, the cost at ordinary petrol filling stations was relatively high, since land premiums were taken into account. This explains why the prices for each cubic metre of LPG here are higher than those in dedicated LPG stations. They are different. The Government hopes to promote competition through these 12 dedicated LPG stations by encouraging more vehicles to switch to LPG. I hope the Government can keep up its work and study the promotion of the use of LPG or natural gas by buses — though natural gas is not the subject of discussion today. But still, I hope the Government can open up the market to encourage natural gas suppliers, like telecommunications suppliers, to examine the feasibility of joint use and opening up of pipelines, introducing competition and lowering LPG prices. I so submit.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): To start with, President, I would like to thank Ms Miriam LAU for proposing the motion on "Alleviating the burden of fuel costs on the public and relevant trades" and three other Members, namely Mr CHAN Hak-kan, Mr WONG Kwok-hing and Mr Fred LI for their amendments. Let me begin with a brief reply to the motion and the amendments and, after listening to Members' views, I will give a detailed reply.

In recent months, fuel prices have raised considerable concern. Even the Chief Executive has specially proposed in his policy address some measures for regulating oil prices. In addition to fuel, Members have also expressed concern about the regulation of the prices of gaseous fuel. In our reply to an oral question raised by a Member at the Council meeting on 22 October and at the meeting of the Panel on Economic Services on 24 October, we also discussed relevant subjects with Honourable Members. As explained by us earlier, although the prices of fuel products and LPG in Hong Kong are determined according to commercial principles, the Government greatly appreciates and is concerned about the impact of the relevant prices on all trades and industries in Hong Kong. Therefore, apart from closely monitoring whether there are any changes in local retail fuel prices in the light of global oil prices fluctuations and movements, we also proposed in October measures to enhance the transparency of fuel product prices.

Furthermore, the Consumer Council will also introduce new measures to collect information on the concessionary schemes launched by oil companies in order to enhance transparency. Later, I will also introduce our work in detail. During this debate on the motion and the amendments, Honourable Members have made suggestions on many fronts. I would make a joint response after listening to Honourable Members' views. Thank you, President.

## **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend the meeting until nine o'clock tomorrow morning.

*Suspended accordingly at five minutes past Ten o'clock.*





## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary for Transport and Housing to Mrs Regina IP's supplementary question to Question 1**

As regards the construction methods for tunnels and bridges in relation to the South Island Line (SIL) (East), under the MTRCL's proposal for the SIL (East), the section between the toll plaza of the Aberdeen Tunnel and Ap Lei Chau will be built on a viaduct which will go across the Aberdeen Channel.

The method of construction for the tunnel and bridge options and its associated impact on the Aberdeen Channel are described as follows:

*Tunnel Option*

In order to construct a railway tunnel across the Aberdeen Channel, the full width of the Channel will be required to be closed in stages to facilitate the construction of the tunnel section by section. For each section, cofferdams (that is, deposition of earthy materials in the sea to form a waterproof dam) will first be constructed in the Channel to circumscribe a work site. Seawater within the enclosed area will then be pumped out to form a dry working area, thus enabling excavation and removal of marine deposit down to the foundation level of the tunnel unit at about -20 mPD. Foundation materials will be placed before subsequent construction of the tunnel units. Finally, filling materials will be placed around the tunnel unit for protection and reinstatement of the seabed profile. For each stage of construction, about two thirds of the Aberdeen Channel is required to be closed. The sequence of works will be repeated for the subsequent tunnel sections to be constructed across the Channel.

*Viaduct Option*

The proposed railway bridge (viaduct) will run next to and parallel with the existing Ap Lei Chau Bridges. Its foundations and piers will first be constructed on both sides of the Aberdeen Channel. The main bridge deck will then be launched section by section from the piers towards the centre of the Channel. The existing navigation channel will need to be maintained at all times for marine traffic.

**WRITTEN ANSWER** — *Continued*

It is noted that at the time of constructing the first Ap Lei Chau Highway Bridge from 1979 to 1980, its foundations and piers were constructed in the water, and the Channel was not required to be closed. Subsequently, reclamation work commenced in 1988 on the northern coast of Ap Lei Chau and the area around the southern abutment of the first bridge was reclaimed to become dry land. At the time of constructing the second Ap Lei Chau Highway Bridge in 1994, its foundation and pier on the Ap Lei Chau side were constructed on land, while the bridge foundation works on the Wong Chuk Hang side were carried out in the water. The bridge decks were constructed segment by segment by adopting the balanced-cantilever method. At all times, the navigation channel was maintained for the vessels during the course of the past bridge construction works.

*Impact on Aberdeen Channel*

The tunnel option will have serious impact on the marine traffic in the Aberdeen Channel, in addition to the requirement of resumption of some shipyards. Throughout the three-year construction period, about two thirds of the Channel width along the tunnel alignment will be blocked by the temporary cofferdams, leaving only a 35-m fairway for marine traffic. The mooring spaces in the nearby Aberdeen Typhoon Shelter will correspondingly be reduced. This is particular relevant in times of fishing moratorium period whereby the returned fishing vessels will need shelter. The dispersal of the marine sediment caused by dredging of the seabed for constructing the foundation for the tunnel units will also impact on the water quality in the typhoon shelter.

The bridge option will have minimal impact on the navigation fairway of the Aberdeen Channel. Assuming the proposed bridge form will be identical to that of the existing bridge, the southern pier on Ap Lei Chau will be constructed on land. The northern pier, on Wong Chuk Hang, will be constructed in the water. Works within the Channel will be limited to a small cofferdam which is required to facilitate the construction of the foundation for the bridge pier.

As seen from the above, the impact to be generated by the tunnel option will be much greater. We are now planning to adopt the viaduct option for the section between the toll plaza of the Aberdeen Tunnel and Ap Lei Chau for the

**WRITTEN ANSWER** — *Continued*

SIL (East). The project, including the viaduct section, will have to comply with the Environmental Impact Assessment Ordinance. The MTRCL will improve the design for the viaduct and will put in place measures to mitigate its environmental impact. We shall continue to engage the Southern District Council and the local community on the progress.