

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Three motions with no legislative effect.

First motion: Supporting the conclusions and recommendations of the Public Accounts Committee on the development of a site at Sai Wan Ho.

SUPPORTING THE CONCLUSIONS AND RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE ON THE DEVELOPMENT OF A SITE AT SAI WAN HO

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

The Public Accounts Committee (the PAC) is a standing committee of the Legislative Council. One of the major duties of the PAC is to examine the value-for-money audit reports of the Director of Audit laid before the Council on the Government's accounts and make its report upon the report of the Director of Audit, so as to monitor public expenditure. According to established procedures, after considering the report of the PAC, the Administration will lay the Government Minute within three months of the laying of the report of the PAC on the table of the Council and comment on the PAC's conclusions and recommendations. In addition, the Administration will also submit an annual progress report to the PAC on matters outstanding in the Government Minute in October each year. The PAC has always adopted a persevering attitude in following up the items in the Government Minute and the progress report, until the Director of Audit confirms that the authorities have taken all necessary actions.

The above mechanism has been proven over the years and has enabled the PAC to play the role of monitoring public expenditure effectively, so as to ensure that public funds are used appropriately. Here, I wish to thank this Council for

its continuous support for the work of the PAC and for the reports tabled before this Council for its perusal.

I believe Members are all clear about the background of this motion moved by me today. The PAC tabled its Report No. 45 before this Council on 15 February this year, in which it drew its conclusions and made recommendations on the development of a site in Sai Wan Ho. Meanwhile, the community is widely concerned that the conclusions made by the Government-appointed Independent Committee of Inquiry (ICI) on the Sai Wan Ho Development on Inland Lot No. 8955 in the report released on 9 May this year by the Government are not in total accord with those of the PAC and members of the public also find this situation confusing. Therefore, after deliberations, the PAC decided that a motion should be moved by me on the issue, so as to enable all Members of the Legislative Council to express their views on the issue and reaffirm this Council's support for the conclusions and recommendations of the PAC, as well as urging the Government to fully implement the PAC's recommendations. I am grateful to the President for waiving the requisite notice, thus allowing me to move the motion today.

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

First, I wish to point out that the PAC held six public hearings on the development of the site at Sai Wan Ho and listened to the evidence given by 17 witnesses. Among them, the former Building Authority (BA), Mr LEUNG Chin-man, was summonsed to the PAC to give evidence under oath. The PAC held 19 internal discussions to establish the relevant facts and made its judgements according to these facts before drafting the conclusions and recommendations of the PAC.

In the following, I will summarize the conclusions of the PAC concerning Mr LEUNG Chin-man's decision to exclude the public transport terminus (PTT) from the gross floor area (GFA) calculation of the site at Sai Wan Ho.

Regarding Mr LEUNG's decision to exercise his discretionary power, the PAC is alarmed, strongly resents, and finds it unacceptable that, in deciding to exercise his discretionary power, he had not attached due weight to the factors for consideration in exercising discretionary approval. Although one view

holds that exercising discretion in public interest is necessarily uncertain and difficult, these factors are in fact listed in the Practice Note on "Discretionary Approval — Factors for Consideration" issued by the Buildings Department (BD), including lease restrictions, views of other government departments, effect of the development on the adjoining sites and the district, and fairness.

When considering public interest, Mr LEUNG had adopted a very restrictive view and confined himself to the question of whether the provision of the PTT was in public interest, without due regard to other factors that might be relevant. Such factors included the fact that the lease had already required the developer to provide the PTT, the difficulty likely to be faced by the Lands Department (LandsD) in charging additional premium, as well as the visual impact, increased development intensity and obstruction to air flow resulting from increased building bulk and building height.

Because Mr LEUNG had viewed his role as distinct from that of a civil servant holding the post of Director of Buildings, he had not adequately taken into consideration such public interest and government policies that might be relevant.

In addition, Mr LEUNG had not attached due weight to the views of other government departments which had raised objection to the exclusion of the PTT from the GFA calculation.

The PAC is gravely dismayed at the Mr LEUNG's decision and finds it unacceptable for its negative impact in terms of finance. The PAC's reasons are: firstly, the value of the site would be affected by whether any of the Government Accommodation would be included in or excluded from the GFA calculation. The tender price offered might have been higher if the PTT had been excluded from the GFA calculation at the outset. Secondly, the LandsD's assessment of the tender reserve price of the site was on the basis that the Government Accommodation would be included in the GFA calculation. The reserve price could have been higher if it had been decided before the land sale that the PTT would be excluded from the GFA calculation. Thirdly, the PAC notes that the prospective tenderer who received written confirmation from the LandsD that the Government Accommodation shall be included in the GFA calculation subsequently offered the second highest bid, which is only \$19 million less than the successful bid of \$2.43 billion and represents less than 1% of the bid. Therefore, the PAC has reasons to believe that the tenderer might

have put forward an even more competitive bid if he had been informed that the PTT would be excluded from the GFA calculation.

The PAC also considers that as Mr LEUNG's decision increased the value of the site at Sai Wan Ho after the land sale, the decision might be unfair to other tenderers bidding for the site because it was contrary to the advice, given to some tenderers before the close of the land sale, that the Government Accommodation would be included in the GFA calculation, which did not turn out to be the case.

On the aforementioned grounds, the PAC criticized Mr LEUNG in its report. The conclusion of the ICI on Mr LEUNG's decision is that it had no financial implication and that his decisions were reasonable, therefore, he should not be subjected to severe criticism. This is obviously at variance with the conclusions of the PAC. I believe that under the present social climate, a decision made by a senior government official may be subjected to criticism no matter if it is correct or not. I really cannot see why the ICI said that Mr LEUNG should not be criticized. I believe the ICI has no intention of interfering with the freedom of thoughts and speech.

I notice that in the Legislative Council meeting held last Wednesday, when the Chief Secretary for Administration tabled the Government Minute and answered Members' questions, he said he very much agreed with the conclusion that I had presented when laying the report on the table of this Council on 15 February. I would like to thank the Chief Secretary here.

Here, I also urge the Government to fully implement the recommendations made by the PAC on this matter, that is, the Secretary for Housing, Planning and Lands has to improve communication and co-ordination among the BD, the LandsD and the Planning Department to ensure that planning intentions are achieved when a site is developed; the BA must ensure that, when exercising his discretionary power, he will include in his consideration of an application the factors listed in any applicable Practice Note issued by the BD; and the Administration has to review the criteria for deciding whether or not the maximum GFA of a site should be specified, with a view to removing any ambiguities about the development potential of the site.

Finally, I wish to point out that the PAC is concerned about one of the conclusions made by the ICI, that is, the PTT is outside the scope of regulation 23(3)(b) of the Building (Planning) Regulations. This conclusion of the ICI

may have far-reaching implications, since this means that the discretions exercised by Mr LEUNG and his predecessors to exclude the PTT from the GFA calculation may lack any legal basis. Misconduct due to an illegal action is far more serious than one that is due to the unreasonable exercise of power of discretion.

With these remarks, I beg to move.

Dr Philip WONG moved the following motion: (Translation)

"That, as recently the community is widely concerned that the conclusions made by the Government-appointed Independent Committee of Inquiry on the Sai Wan Ho Development on Inland Lot No. 8955 in its report published on 9 May this year are not in total accord with those made by the Public Accounts Committee (PAC) in its report laid on the table of the Legislative Council on 15 February this year regarding the development of a site at Sai Wan Ho, this Council reaffirms its support for the conclusions and recommendations of PAC and urges the Government to fully implement the recommendations of PAC."

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Deputy President, I have to thank Dr Philip WONG for proposing this motion today. Since the release of the report of the Independent Committee of Inquiry on the Sai Wan Ho Development (ICI) last week, there has been much discussion in the community on a comparison of the conclusions and recommendations made by the Audit Commission, the Public Accounts Committee (PAC) of the Legislative Council and the ICI. Members of the Legislative Council have also raised a lot of opinions.

First of all, I have to give my serious response to the request made to the Government in Dr Philip WONG's motion. The motion "urges the Government to fully implement the recommendations of PAC". Again, today, I have to reiterate here that the Government "fully accepts and proactively implements" the recommendations of the PAC. In fact, as the Director of Audit

states in its report on value-for-money audits on this subject, the government departments concerned agree with all the recommendations of the Audit Commission. Last Wednesday, when I gave my response to Report No. 45 of the PAC, I also stated clearly that the Government accepted all the 21 recommendations made by the Audit Commission and the PAC.

Also, I have to reiterate here that the Government has all along co-operated proactively with the Audit Commission and the PAC, and has been supportive of their work. It has been a long-standing arrangement for the Audit Commission to conduct value-for-money audits on government services. The PAC, which was established in 1978, plays an important role in urging the Government to provide quality public service in an efficient and cost-effective manner. To ensure the proper use of public expenditures for purposes specified in the funding allocation, the spending of the funds in an appropriate manner, and the proper handling of financial matters by the Government, the PAC has spent a lot of time and efforts over the years in studying the value-for-money audit reports submitted by the Director of Audit and putting recommendations and views to the Government. We have to express our greatest gratitude to the PAC for its valuable views and constructive comments, and will proactively implement follow-up measures, monitor the relevant progress and give regular reports to the PAC.

Looking back, all the recommendations made by the PAC in the past were useful in enhancing the operation and efficiency of the departments or organizations subject to audit. The Government highly respects the role of the PAC, and attaches great importance to its views and recommendations. It will also follow up the relevant recommendations seriously and actively. We will, as always, strictly adhere to our agreement with the Legislative Council on audit reports and work arrangements of the PAC. We will submit the Government Minute to the Legislative Council within the three-month period after the report of the PAC is submitted to the Legislative Council, and respond proactively to the recommendations of the PAC and give an account on the actions the Government plans to implement. The Secretaries and controlling officers concerned will continue to co-operate closely with the PAC and give detailed explanations on the relevant government policies as well as the handling and arrangement of the relevant cases.

On the incident of the Sai Wan Ho site development, the Government noted that the public was concerned about the possible uncertainties in the

exercise of discretionary power by the Building Authority (BA) on land development projects. The Government considered it necessary to conduct a detailed examination on the exercise of discretionary power by the former BA to be accountable to the public. The Government thus set up the ICI to conduct an in-depth inquiry. The terms of reference of the ICI is to examine the procedures in approving the site classification, GFA exemption for the PTT and bonus GFA for dedication of the reserved area of public passage in respect of the Sai Wan Ho building plans application, including how and under what circumstances the BA's discretionary power is exercised, and to review whether the discretionary power in question has been exercised properly.

At that time, the PAC was aware of this move of the Government, and members of the PAC generally considered that the work of the ICI set up by the Government and that of the PAC was of a different nature and not contradictory to each other. Later, the PAC started holding hearings on the Sai Wan Ho development project, while the ICI started its investigation into the exercise of discretionary power by the BA. On 19 April this year, the ICI submitted its inquiry report to the Chief Executive. The inquiry report was then released on 9 May and laid before the Legislative Council.

Last Wednesday, in this Chamber, I explained it clearly at the outset that in the examination of the Sai Wan Ho development project, the role and functions of the PAC of the Legislative Council and the ICI appointed by the Government were different. The focuses and areas of responsibilities of the two were also different. There was no subordinate relationship, no conflict between them, and no question that the Government must choose between the two.

Despite the different focuses of the two reports, the recommendations proposed to the Government are just different means for achieving the same goal. As to how the existing approval mechanism of land development projects can be improved, the PAC and the ICI have made several similar recommendations in their reports. The Secretary for Housing, Planning and Lands will shortly give a detailed account on the progress the Government has made in implementing various improvement measures.

Actually, there were precedents in the past where the Government and the Legislative Council conducted separate inquiries into matters of concern to the

Legislative Council and the Government as well as the public. I know some Members of the Legislative Council are concerned about the setting up of the ICI by the Government to study the case before the PAC has studied the report of the Director of Audit. The Chairman of the House Committee has also reflected to me this concern of Members. The Financial Services and the Treasury Bureau will follow up the issue with the PAC.

Today, the other part of Dr Philip WONG's motion states that the conclusions made by the ICI are not in total accord with those made by the PAC. I also notice that in a declaration made by the PAC last Thursday, the issues on the exercise of discretionary power by the former BA in approving the GFA exemption for the PTT and the likely fiscal impact caused by the exercise of the discretionary power were mentioned. I would like to take this opportunity to make a response.

The ICI considers the former BA is wrong in the decision to exclude the transport terminus from the calculation under regulation 23(3)(b) of the Building (Planning) Regulations. However, as the former BA had sought legal advice, examined past cases and considered arguments for and against the exemption put forth by relevant parties, the ICI thus considers the decision made by the former BA reasonable.

Why a decision can be regarded as wrong but reasonable at the same time? In this connection, the report of the ICI has indeed given a clear explanation. The reason is that the ICI considers that the transport terminus does not fall within the scope of exemption under regulation 23(3)(b) of the Building (Planning) Regulations, so the decision made by the former BA to exempt the transport terminus is wrong. The ICI is of the view that facilities not constructed for the benefit of the parent building or its occupants are outside the scope of exemption of the Regulation. However, since this so-called "wrong" decision was not made rashly, but was made after all possible procedures had been fulfilled, which included seeking legal advice, considering professional opinions and referring to past cases, of which exemption were granted in some cases, the ICI thus considers the decision made by the former BA reasonable.

The Government is deeply concerned about the ICI's interpretation of regulation 23(3)(b) of the Building (Planning) Regulations. It also notices that despite giving such an interpretation of the regulation, the ICI states in its report that any interpretation of legislation may differ widely and with good reason.

The ICI also states that no statements or arguments on the proper meaning of the Regulation in respect of this case have been presented to the Inquiry Committee.

On this question, the Government has specifically sought legal advice from the Department of Justice (D of J), while the D of J has also sought the independent advice from external counsels. After considering the legal advice, the D of J is of the view that the interpretation of regulation 23(3)(b) of the Building (Planning) Regulations by the ICI in a narrow sense is not consistent with the spirit of that regulation. The D of J considers that the regulation is applicable to transport terminus. In other words, the decision made by the former BA to exercise his discretionary power under the regulation to exempt the transport terminus cannot be regarded as without legal basis.

I have just spent several minutes trying to explain whether transport terminus can be exempted from the GFA calculation, and I hope Members will understand that it is not a question as simple as one plus one equals to two. Owing to the complexity of the question, the concerns of the public, and the need to avoid the recurrence of similar problems in the future, the Government has made improvement on this important issue related to the approval criteria for the exemption of transport terminus from GFA calculation. Last Wednesday, I explained to Members that the Buildings Department had already amended the relevant Practice Notes, stating that all public transport termini should be included in the calculation of GFA unless it was stipulated otherwise in the relevant outline zoning plan or that a planning approval had been obtained. Therefore, there should be no ambiguity in the handling of cases of this type in future. Moreover, the BA has issued to the trade the Practice Notes on various aspects, stating clearly the criteria for the BA to exercise his discretionary power. The BA has also drawn up internal guidelines, listing the factors to be considered in the exercise of discretionary power, serving as a general guide to the colleagues concerned.

Regarding financial implication, since the GFA is not capped under the lease conditions of the Sai Wan Ho development, the successful tenderer may plan the relevant development project as the legislation permitted and on the principle of full utilization. In an open market and with a mature property sector in Hong Kong, bidders should have taken all relevant factors into account, which should have been reflected in the prices they offered. However, we also appreciate that the public may not necessarily understand clearly that the price

proposed by the developer is indeed a reflection of the development potential of the lot of land, and doubt has thus aroused.

In view of this, we will actively consider whether the total GFA should be capped for cases where the outline zoning plan carries no such provision, so as to enhance the certainty of the lease provisions. In this connection, the departments concerned have already commenced the relevant studies. This proposal certainly has its pros and cons, and a decision has to be made between obtaining higher land revenue by full utilization and enhancing certainty of provisions. A proper balance must be struck. In deciding the way forward, the Government will surely hold adequate consultation with the Legislative Council, the trade, professionals and other relevant parties.

The PAC may not agree with the view of the ICI, that the decision made by the former BA in exercising his discretionary power is reasonable. But Hong Kong is governed by the rule of law, the PAC does not consider the former BA has acted *ultra vires* or abused his power in its report, and the ICI is also of the view that he should bear no blame. From the legal perspective, we cannot say that the former BA has extended beyond the power vested in him by law or not acted in accordance with the law in handling the Sai Wan Ho development. He has acted in accordance with the relevant legislation and the established procedures, and has made reference to previous cases in discharging his duties as the BA. The Civil Service Bureau is also of the view that there is no evidence to support taking disciplinary action against the former BA who is a civil servant. However, we admit that in the handling of land development projects and approval procedures of plans, there are surely areas where improvement is necessary and worthwhile. Therefore, the Government has fully accepted and will proactively implement the recommendations of the PAC. I earnestly hope that Members can take a forward-looking attitude in handling the matter. The Government will surely work closely with the Legislative Council to improve the transparency and fairness of the approval procedures of land development projects. Thank you, Deputy President.

MR ANDREW CHENG (in Cantonese): Deputy President, the Government published the report prepared by the three-member Independent Committee of Inquiry (ICI) concerning the Grand Promenade last Tuesday. Some of the contents in this report are in stark contrast with those in the investigation reports

of the PAC and the Audit Commission, consequently, this matter has evolved into a "Roshomon"-style affair. This made the public call into question the operation of the entire government audit system, so this matter has now exceeded the domain of the discretionary power of the Government in granting land. As a member of the PAC, I will focus on discussing the various problems in the audit system highlighted by this incident.

Yesterday, the Director of Audit also issued a statement pointing out that the angles of study and the powers of the ICI and the PAC are different. The PAC's investigation is related to the additional floor area in Grand Promenade granted by the BA and focused mainly on the problems and recommendations set out in the audit report, whereas the ICI's investigation was focused mainly on the procedural issues in the exercise of discretionary power, that is, whether any official had acted *ultra vires* or in dereliction of duty in the incident relating to Grand Promenade. The natures and angles of the two are different, so it is only natural that the conclusions in the report of the ICI are different from those found in the PAC's investigation report on the Audit Commission's report concerning the Grand Promenade incident.

However, Deputy President, can this Roshomon-style affair be glossed over and resolved by simply saying that this is a matter of "different angles"? The problem now does not lie in their different conclusions but in the considerable number of contradictions between the two reports. Now, on the one hand, the Government is saying that it accepts all the recommendations of the PAC, and on the other, it also accepts the report of the ICI, which is so starkly different. Not only is the Government's actions illogical, it will also undermine the authority and credibility of the PAC report. The Government must give a clear account to the public on how these contradictions can be reconciled. This issue also arouses in us the concern that the Government is trying to play down the conclusion reached from a value-for-money audit angle that there are negative financial implications for the Government.

The focus of the public is on the different evaluations of Mr LEUNG Chin-man in these two reports. The PAC report points out that when Mr LEUNG exercised his discretionary power to grant the additional floor area, he did not seriously consider the different understanding of other government departments of public interest, consequently, this led to negative implications for the Government. The PAC is alarmed by and strongly resents Mr LEUNG's decision. However, the report of the ICI maintains that it is appropriate and

reasonable for Mr LEUNG to exercise his discretionary power in granting the bonus plot ratio, only that he had invoked the wrong regulation in excluding the PTT from the site of Grand Promenade, so the blame should not be placed on him.

Deputy President, a wrong decision made by an official was at odds with public interest and even had financial implications, but it was described as reasonable. This is really incomprehensible and mystifying to the public.

In the 12th paragraph of the speech given by the Chief Secretary for Administration today — I have now obtained a copy of the speech — he explains, or attempts to explain, why the decision is wrong but reasonable. However, I must stress to Chief Secretary Rafael HUI here that in the course of gathering evidence, we found that many government departments had voiced views opposing that of Mr LEUNG. In the most important meetings, their views were not respected and they were not even invited to the meetings, so the impression of the PAC was that Mr LEUNG had only listened selectively to views favourable to his decision. Most importantly, the decision was at odds with public interest and may also have negative financial implications to the coffers. Since this decision was wrong and at odds with public interest, such a mistake should be wrong as well as unreasonable, so the ridiculous judgement of being "wrong but reasonable" should not be reached.

Deputy President, of course, the Audit Commission, the PAC and even the ICI all agreed that there is a great deal of room for improvement insofar as the system for exercising discretionary power is concerned. This incident reflects that at present, there are gaping loopholes in the system of processing building plans. However, we must know that no matter how we improve the processing system, it is still necessary to have some flexibility in the actual processing of building designs, so it is not possible to dispense with all discretionary powers.

Deputy President, the purpose of conferring discretionary power is to allow officials to take action in the light of the special circumstances in individual cases. If the exercise of power by an official departs from the usual practice, then he has to assume responsibility. Even if the official has complied with all procedures but his action is unreasonable or is even at odds with public interest, the official concerned still has to assume responsibility for the decision and the blame can by no means be shifted to the system. This incident shows that in

exercising his discretionary power to grant bonus areas, Mr LEUNG Chin-man adopted a very restrictive view of public interest, as a result, the negative financial implication on the Government is as much as \$125 million. Moreover, this may be unfair to other tenderers. In paragraph 9.49 of the report of the ICI, it is pointed out that "others in Mr Leung's position may have reached a different conclusion". Although the report believes that this adds nothing to the point, it once again shows that the decision made by Mr LEUNG Chin-man to exercise his discretionary power is to a large extent the result of his personal judgement and not purely a matter of the system or rules. Therefore, we believe that the evaluation of him in the PAC report is reasonable.

In the past, the Government would appoint independent committees of inquiry to investigate incidents such as the SARS, the Hong Kong Harbour Fest and the serious congestion in East Kowloon, and then submit reports to the Government. Some of these ICIs made quite a number of constructive proposals which won public approval. However, these ICIs were all appointed by the Chief Executive, who was not popularly elected. If the incidents under investigation only involve maladministration, there will not be any serious problem. However, in matters such as the Grand Promenade incident, not only is significant financial interest involved, the prestige of the Government is also at stake, so the impartiality of an ICI appointed by the Chief Executive will be called into question.

Furthermore, most of these ICIs investigated the issues from the angle of administrative law, so officials are deemed to have acted inappropriately only when they have made mistakes or acted *ultra vires* in very obvious ways, therefore, the benefit of doubt often goes to the officials concerned. Consequently, most of the reports published by these ICIs failed to meet the expectations of society for pursuing responsibility with the officials concerned.

Deputy President, we support the motion moved by Dr Philip WONG and hope that the composition, power, duties and roles of these ICIs can be clearly defined to avoid such Roshomon-style incidents.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR WONG KWOK-HING (in Cantonese): Deputy President, the *Da Vinci Code* will premiere this evening and the Grand Promenade incident is Hong Kong's "Da Vinci Code". There are two Da Vinci codes that I hope the Government will decipher for me.

The first code is that in the Grand Promenade incident, are there any collusion between the Government and business and transfer of benefits? The grant of bonus floor area involved an additional 280 units. If land premium were to be paid for it and on the basis of \$2,000 per sq ft, the sum will amount to more than \$400 million. Because of the improper exercise of discretionary power, the property developer does not have to pay a single cent in additional land premium. On this score, what is the judgement of the Government and how can it clarify and respond that this is not collusion between the Government and business and a transfer of benefits?

The Audit Commission made the criticism that the then BA, Mr LEUNG Chin-man, erred in exercising his discretionary power to exclude the PTT from the calculation of the GFA, thus resulting in losses to the public, and the PAC of the Legislative Council also levelled a similar criticism. The Director of Audit also issued a statement yesterday expressing his agreement. However, the three-member ICI is of the view that the procedure is correct, only that the decision made was wrong and the authorities did not suffer any actual financial loss as a result of the wrong decision made then, nor should Mr LEUNG Chin-man be criticized because of this decision.

However, on the one hand, the Administration gave the report of the Audit Commission its approval, saying that it totally accepts the recommendations of the PAC; yet on the other, it also accepts the illogical and contradictory conclusions of the ICI report. In view of this, may I ask which is right and which is wrong? I think this is really mind-boggling. The Government must not be equivocal and try to muddle through by saying such things as different emphases, different angles, different directions, different goals and hence the different conclusions. Otherwise, the prestige of the Government will be in tatters.

The second code in this Grand Promenade incident is that the Government has to decipher this code in the minds of the public: At present, the public thinks that officials can make different claims as they please and they are shielding one

another. In passing judgement on what is right and wrong in the Grand Promenade incident, is the rank of an official the basis for deciding what is right and wrong? Initially, the Audit Commission conducted an independent investigation, the PAC of the Legislative Council then followed up on it and on top of this, the ICI also prepared a report. In the end, the Government said that it accepts all three reports, however, the problem is that the conclusions in the three reports are not in total accord with one another and there are glaring contradictions. Moreover, they give each other a slap in the face. However, this does not matter because in the end, the Government set the tone by saying that it accepts all of them. In view of this, is the rank of the officials concerned the criteria adopted in judging what is right and wrong? If this is the case, little wonder that a lot of members of the public have said to me that "the character for official (官) has two 'mouths' (口) in it, the characters for senior official (高官) have four 'mouths' in them" and the phrase "senior officials of the SAR" (特區的高官) has "seven mouths" in it — that is what they told me — and if you write out the phrase in Chinese, you will find that there are indeed seven "mouths". Moreover, it is all about "one mouth defending another, one mouth supporting another, people with more say protect those with less say, those at the upper level rebut what those below them say." The final say rests with the person at the very top. This code has now actually taken root in the minds of the public, so the Government has to answer this question clearly.

Finally, I wish to cite a well-known passage from "The difficulty of being muddle-headed" by ZHENG Ban-qiao and share it with the Government. What did ZHENG Ban-qiao say? He said, "It is hard to be a man who is wise, it is even harder to play the fool and it is even more difficult to change from being wise to looking like a fool." How should we interpret his words? I think being intelligent is difficult because it was thought to be a smart move to establish an ICI, so that the Government could evade some embarrassment and accusations of maladministration. However, the more one tries to cover things up with this sort of petty wit, the more evident they become to people, so the controversy snowballs. How do I interpret "it is difficult to play the fool"? Due to the establishment of the ICI, even greater controversies were generated. The Government then pretends to be a fool, saying that all three reports are correct and it accepts them all, thinking that the public would also be fooled. In fact, the public is not foolish at all and they can see the muddy bureaucratic culture more and more clearly. Therefore, "it is even more difficult to change from being wise to appearing like a fool".

Today, Chief Secretary Rafael HUI asked us to accept his conclusion that the "decision was wrong but reasonable", however, how can we play the fool and accept it? Therefore, I hope the Government will clarify whether there are collusion between the Government and business and transfer of benefits in this Grand Promenade incident. This Da Vinci code relating to the Grand Promenade incident must be cracked. Secondly, the Government must answer whether, by creating so much trouble, officials are trying to defend one another. This Da Vinci code in the public's mind must also be cracked. I hope that the Government can use its wisdom to decipher these Da Vinci codes in the public's minds resulting from the Grand Promenade incident.

Thank you, Deputy President.

DR KWOK KA-KI (in Cantonese): Deputy President, I speak in support of Dr Philip WONG's motion.

First, I am grateful to Dr WONG for moving this motion at an opportune moment. As the President said earlier, this is an unusual incident and in a rare move, she waived the notice requirement stipulated by the rules in view of the unusual circumstances, so that we can discuss this issue today. The Legislative Council is also uncharacteristically united in agreeing to discuss this issue.

In fact, Dr Philip WONG is a nice guy, so the Chief Secretary for Administration said at the beginning of his speech that he supports this motion and will implement all recommendations. However, I remember that the Chairman of the PAC, Dr Philip WONG, once said that the Government should either accept the report of the PAC or the report of the three-member ICI and it could not be equivocal. I know that this is the point Dr WONG wanted to make. However, unfortunately, the Government thinks that it is clever, albeit in small ways — in his speech just now, the Chief Secretary also showed that he deserves the sobriquet of a resourceful man. He tried to manipulate his turns of phrases to substitute concepts and make us think that he has already done some work. Since when has the Government become reliant on the judicial system in judging whether an official has made mistakes? In fact, what the PAC and the Audit Commission want is to look at this incident from the angles of value for money and whether public interests have been jeopardized. However, the

Government has adopted another concept (I can say that this is a substitution of concepts) and a legal standard in determining whether any action has breached the law. Since when has determining whether mistakes are made been judged by whether the law has been breached? Why can the Government do such a thing?

Today, in a rare move, the Legislative Council stands united because it knows that on this incident, if we do not seek to do ourselves justice, the duties and scope of the Legislative Council in monitoring the Government and public expenditure will be at stake. If this issue is not dealt with properly, it is not just the Legislative Council that will be affected, even the governance by the SAR Government and the relationship between the executive and the legislature will be seriously harmed. I wonder if this incident will become an example of putting into practice the strong governance advocated by the Chief Executive, in other words, an important job he has to do in order to run in the election next year. Of course, the Chief Executive does not wish to see this incident become a heavy burden or a bomb when he runs in the election, so he appointed this ICI in an attempt to defuse this bomb. However, as several Members have put it, in handling this incident, it has become the victim of its wit, petty thus.

The investigations by the Audit Commission, the PAC and the ICI into the Grand Promenade incident have drawn completely contradictory conclusions. The PAC reached the conclusions of "alarmed", "unacceptable" and "grave dismay" after conducting cautious hearings in accordance with the procedures. This conclusion is approved of and accepted by the PAC and Members of this Council. However, not only did the Government fail to handle this incident with humbleness and impartiality, quite the contrary, it took the opposite move of establishing an ICI to set the tone on this incident and give the Government a way out, thus giving the Audit Commission a slap in the face. Then, the Government went one step further by writing to the Director of Audit, saying that he had not been slapped and he had done a good job, so on, and so forth. This is precisely what the Chinese call "making an admission unwittingly without solicitation".

If the work of the ICI had really served to enhance the credibility of the Audit Commission and even that of the PAC of this Council, this letter would not have been necessary. However, we all know that what the Government tasked

the ICI with has precisely violated the inherent rights of the Legislative Council and injured the relationship between the executive and the legislature. This is why the Chief Executive hastily issued this letter as a remedy. However, his destructive actions have caused irreparable damage to the PAC of this Council and the relationship between the executive and the legislature. This letter did not serve any purpose. Both the Audit Commission and the PAC have credibility, but what credibility does the ICI established on this occasion have? What has it done to make us think that it can handle this incident impartially? I do not wish to touch on the backgrounds of the members of the ICI, however, Members all know that someone therein has numerous intricate relationships with property developers.

I agree that in handling the whole incident, we have to look at the issue *per se* and refrain from making it personal. In fact, the Legislative Council and the PAC did not target any official in their work, nor did they say that in order to settle this matter, heads would have to roll. We only wish to be forward-looking and do not wish to see public assets and public interest being jeopardized again. In fact, the simplest and most essential response that the Government has to make is to plug the loopholes by improving the existing legislation. In this way, the problem would have been solved and it needed not behave like a mean guy by appointing, as it did, an ICI without the least bit of credibility, with the result that its own prestige is undermined, in order to give the Government a way out for the wrong decisions that it made.

This incident will have even more serious repercussions. If any official makes a similar mistake in the future, I have several suggestions for him: firstly, in no circumstances co-operate with the Audit Commission and he should just refuse to talk; secondly, he should not co-operate with the PAC either and he should also refuse to talk; thirdly, apply for a judicial review and fourthly, request the Chief Executive to establish an ICI and lastly, seek the support of relevant colleagues or members of his trade. In fact, the action that has now been taken cannot help the official concerned, nor can it serve to defuse the bomb for the Government. It will only leave a deadly time bomb that seriously impinge on the single most important and socially respected power of the PAC of this Council, thus damaging the most important imperial sword that we use to defend public interest. I do not wish to see the Government destroy the credibility of the Legislative Council in this way, I hope the Government can.....(*the buzzer sounded*)

MS EMILY LAU (in Cantonese): Deputy President, I rise to speak in support of Dr Philip WONG's motion.

I joined the Legislative Council in 1991, and thanks to Members' support, I had since been a member of the PAC. During the last term, I even served as its Deputy Chairman. But then, two years ago, Deputy President, I was unexpectedly elected Chairman of the Finance Committee, so I did not take part in the competition for membership in the PAC.

The PAC is an extremely important committee under the Legislative Council. Its prestige and significance should even transcend the Legislative Council. I hope that both the authorities and society at large can recognize its importance. Deputy President, there are, of course, two other equally important institutions, namely, the Audit Commission and the Independent Commission Against Corruption, often referred to as the two "gems" of the Government. I suppose some Members may also talk about them later in this meeting. But one of the "gems" may not be quite so alright recently. Why do I say so, Deputy President? The reason is that the Director of Audit — because he is unable to attend this debate today — issued a statement yesterday. What did he say in the statement, Deputy President? It is pointed out in the statement that both the public and the Administration attach great importance and value to the work of the Audit Commission. The Director went on to say that the credibility of the Audit Commission will not be affected by the report of the Independent Committee of Inquiry (ICI), and that the Audit Commission will continue to uphold professionalism and impartiality in carrying out its mission of providing quality public sector auditing services to Hong Kong.

Deputy President, frankly speaking, I have rarely heard anyone sing his own praises, saying that others attach great importance and value to his work. I have listened to the Chief Secretary for Administration's speech today, and I also listened to his speech at the meeting on Wednesday last week when he did not make such an evaluation. The statement issued by Dr Philip WONG on behalf of the PAC at the last press conference did not make any such evaluation either. I naturally hope that the Audit Commission can be really so assessed by others later, and I also hope that it can continue to be so assessed. But it will not be too good if the credibility of the Audit Commission is compromised, or if it even comes to be regarded by the public as a tool of attacking those government departments in disfavour.

Deputy President, what I am referring to is the report on Radio Television Hong Kong (RTHK), because before the publication of this report (I mean the report of the Director of Audit), I already heard something from the very top management of RTHK. They (that is, the Audit Commission) were told, "Go ahead and do all you can to dig out as much information as possible." This might be all hearsay and wrong, but the staff of RTHK still had such an impression. And, I do not know what gave them this impression. Besides, on the very day when the Audit Commission released its report on RTHK, Secretary Joseph WONG immediately hastened to come out and demand RTHK to submit a report within three months. Three months from now will also be the deadline for the PAC to submit its report. So, how are they going to look at the work of Dr Philip WONG and the other six Members on the PAC? The authorities may argue that no independent committee of inquiry has been set up this time around, and they are simply requested to conduct an internal investigation. But the fact is that the PAC is already conducting an investigation.

Therefore, Deputy President, why did I write you a letter last Friday? The letter was addressed to the House Committee, requesting the Chief Secretary for Administration not to lightly conduct any investigation in the future. I do note that when the Chief Secretary for Administration came to this Council on the last occasion, he promised that the establishment of independent committees of inquiry would not become a habitual practice of the Government. I hope he really meant what he said, and that he will stop taking any such actions in future. Actually, such actions will not only affect the PAC of the Legislative Council but will also compromise the prestige of the Audit Commission. If there had been no effect on credibility, the Director of Audit would not have issued a statement the night before this debate, singing its own praises that others attach great importance and value to its work. I believe that we are all equally good. But I hope the Director of Audit — even at this meeting, I will still say so — can really capitalize on his independence, do his job without any fear and show us that he is truly independent and will not yield to any pressure.

Deputy President, there is another point I wish to raise. Who were the members of this so-called ICI? Knowing that the public held Judges in high esteem, the authorities appointed a Non-permanent Judge of the Court of Final Appeal, Mr Barry MORTIMER, to the ICI and another member was a former Chairman of the Housing Authority (HA), Dr CHENG Hon-kwan. As far as I know, he used to work in the Buildings Department for more than a decade. And, who was the target of investigation? The previous Director of Buildings.

But then a person who had worked in the Buildings Department for more than a decade and who was once the Chairman of the HA was appointed to investigate the previous Director of Buildings (who is now the Director of Housing). Do people know how close their relationship was? And, they also had very close connections with the Buildings Department. The report even stated that since the ICI was not a statutory body, no public hearings were held. In that case, can the ICI command any credibility at all?

In contrast, the statement issued by the Audit Commission yesterday disclosed all the relevant information concerning the investigation of the PAC, including the holding of seven or so public hearings and the involvement of 17 witnesses. But the ICI did not even disclose the number of hearings it had held, giving us just the names of its members. I hope that the Chief Secretary for Administration can stop playing such a trick again. According to him, investigations of this nature have never been launched lightly. But do people know how many such investigations were conducted in the past? Independent Committees of Inquiry were set up to investigate the penny stock incident, the Tuen Mun Road traffic accident and the traffic chaos and standstill in East Kowloon resulting heavy rain. All these committees worked behind closed doors. As for those organizations commanding credibility, the authorities have been dealing blows to them, trying to strip them of their prestige.

Therefore, Chief Secretary for Administration, I hope that the debate today can make the authorities realize that they must stop dealing any more blows to the prestige of the Audit Commission and hindering the operation of the PAC. I am very pleased to learn that Secretary Frederick MA will soon conduct discussions with the PAC. I very much hope that such unfortunate incidents will never occur again.

With these remarks, I support the motion.

MR RONNY TONG (in Cantonese): Deputy President, the greatest difference in the conclusion reached by the ICI lies in its evaluation of the exercise of discretionary power by Mr LEUNG Chin-man.

The conclusion in the ICI report is that the decision "was reasonable and not open to sound adverse criticism". The speech given by the Chief Secretary earlier also concurs on this point. Generally speaking, the conclusions of the

entire report are actually founded on three arguments: firstly, "views can differ widely upon the interpretation of ordinances and regulations". Just now, the Chief Secretary has shown that his views are entirely different. Secondly, based on "previous cases and the legal advice", it was open to Mr LEUNG to apply regulation 23(3)(b) of the Building (Planning) Regulations in making the decision. That is to say, it is correct and reasonable for Mr LEUNG to invoke this piece of legislation and the Chief Secretary also said so just now and thirdly, the understanding of property developers when making their bids was that the public transport terminus (PTT) would be excluded from the gross floor area (GFA).

Let us first look at the legislation. President, is it true that views can differ widely in interpretation and there is a great deal of ambiguity? I do not think so. The power to grant exemptions is conferred by section 42(1) of the Buildings Ordinance (Cap. 123) and this Members can all see; however, it seems the Government and the ICI have both overlooked section 42(2). In fact, herein lies the crux of the matter. This section stipulates that "Every application for an exemption.....shall be considered on its own merits by the Building Authority who shall not be required to take account of exemptions granted in the past.". The wording of this provision is very clear, that is, the exercise of discretionary power need not and should not take into account precedents. Regulation 23(3)(b), on which Mr LEUNG relied, provides that the exemptions should relate purely to clauses on "The parking of motor vehicles, loading or unloading of motor vehicles" but the ICI held different views. Just now, the Chief Secretary mentioned that the Government also holds another view, however, this is not important because when the government official, Mr LEUNG, exercised his discretionary power, he overlooked the important section 42(2), which I have mentioned, and took into consideration factors that he should not have considered, so he overstepped the legal confines in exercising his discretionary power. Therefore, the decision was definitely without legal basis and illegal. However, the most important thing is that in a meeting held on 22 October 2001, the legal advice given to the Government was that "each case must be considered on its own merits and be decided as the public interest required at the time" by the Building Authority. This piece of legal advice is totally correct and does not differ from what I have said, that is, reference must be made to the stipulation in section 42(2). Regarding the exemption for the floor area of the PTT, how could the public possibly benefit from this move? Even now, I still do not understand this. I can only see that excluding the area would benefit the

property developer, so that the property developer could get an additional 19 937 sq m of floor area and an additional 280 units without cost. Based on the present market value, such a GFA can fetch hundreds of millions of dollars to the coffers.

Regarding the second reason, which mentions past cases, I have already pointed out clearly that the law provides that they do not constitute a ground for exemption. This important point is not discussed throughout the report of the ICI. On the contrary, the report of the ICI went to great lengths to deal with the major reason for Mr LEUNG exercising his discretionary power, which is his consideration of the outcome of past cases. Obviously, this is a manifestation of the bureaucratic mindset. The Government claims that what it does or did is always right, be it things in the past or in the future, so it is the safest to base decisions on precedents and it does not matter even if means a violation of the law. That the ICI had no views on this is indeed very puzzling.

As regards the third reason, that discretion was exercised after taking into consideration the intention or understanding of developers when they took part in the bidding, this is even more unconvincing. May I ask Members which developer will not strive to secure interests for themselves? The property developer of course hoped that the Government could exclude the floor area of the PTT as it could make more profits. However, the most important thing is that building the PTT is a basic requirement in the land lease and if any tenderer says that it did not occur to him that the floor area of the PTT may be included in the calculation of the GFA, I think this is unimaginable. This claim is totally at odds with property developers' principle of considering all clauses in a land lease carefully before making their bids.

Therefore, in view of the foregoing three reasons, to say that Mr LEUNG's exercise of discretionary power is reasonable is really unconvincing. True enough, his decision was controversial and there were also dissenting views within the Government. However, if we look at this from the viewpoint of public interest and if we adhere to the spirit of the legislation, his decision definitely did not comply with the requirements of the legislation and still less is it in public interest. More importantly, for years, the Audit Commission has prepared its reports according to the value-for-money principle and it has won the confidence of the public, whereas the Public Accounts Committee (PAC) is a statutory body representing public opinion. The reports prepared by them deserve the utmost respect by the SAR Government. If the Government wants

to go to the bottom of the matter to find out the truth, it should do so on condition that it respects the conclusions in their reports. If the scope of the thorough investigation includes overturning or questioning their reports, the credibility of the Audit Commission will be undermined, intentionally or unintentionally. Furthermore, if the arguments in the report of the ICI are dubious and as I said, if even a provision in the legislation was overlooked, the Government should waste no time in reiterating its full acceptance of the reports of the Audit Commission and the PAC, rather than accepting the independent report of the ICI with its contradictions and unconvincing arguments "at the same time". If not, this will create another dent in the confidence in what was an originally well-established system. The public do not wish to see the destruction of a time-tested bulwark at our own hands as a result of a single incident, nor will this be a boon to the SAR. Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, the Chairman of the Public Accounts Committee (PAC) has taken the unusual action of moving a motion to reiterate this Council's support for the conclusions and recommendations of its report relating to Grand Promenade and to urge the Government to fully implement the contents of the report. Of course, this is unusual in that the conclusions and recommendations of the three-member ICI are not in total accord with those of the PAC and they are even contradictory and conflicting. This cannot be resolved with the Government's remark that the foci of the two are different because what has happened now is that while both reports share the same concerns, such as whether the exercise of discretion was appropriate, whether there were negative financial implications to government revenue, and so on, their conclusions are poles apart.

I am not a member of the PAC, so it is more appropriate to leave it to a member of the PAC to explain these contradictory conclusions. What I find strange is that after the Audit Commission had published its audit report concerning Grande Promenade in November last year, the Government announced immediately that the ICI would be established to conduct an investigation, rather than wait until the PAC of the Legislative Council had drawn its conclusions and made its recommendations before taking follow-up actions. Be it the Secretary for Housing, Planning and Lands, who said that the Government only wanted to investigate in a more in-depth manner with a view to making improvements and allaying public suspicions, or the Chief Secretary for Administration, who said in making elucidations in this Council last Wednesday

that there was no major public reaction when the decision was made, they have both evaded the question.

Although in the past, the Government and the Legislative Council have also established their own select committees or groups to conduct their own investigations into major social events, the PAC of the Legislative Council has a "very robust" statutory power and legal basis, as the Chief Secretary for Administration put it, to follow up the Audit Commission's Audit Report. This indicates that, unlike the investigation committees established in response to specific social incidents, the Government, in not waiting for the PAC of the Legislative Council to complete its investigation report before taking follow-up action, has thrown the entire process of scrutinizing the Audit Report into chaos and disrupted the process, so it can hardly be said that it is being respectful to the Legislative Council.

Deputy President, I have no intention to speculate about the reason behind the Government's rush to establish the ICI, however, this approach of not doing things according to the procedure reminds me of another similar incident. In late March this year, the Financial Secretary, in order to enable the Budget to be passed with a high number of votes, also took the unusual step of making promises on measures to be taken in the coming year to various political parties. Originally, it is desirable if the Financial Secretary is willing to listen and agree to the demands of political parties in the Legislative Council, however, this has set an undesirable precedent and when Members vote, it is not the overall proposals in the Budget but what they will be able to get that dictates how they will vote. Such an approach is short-sighted. In order to make the Budget pass with a high number of votes, the Financial Secretary was behaving like the CEOs of some information technology companies who, in order to make the shares of their companies perform well in the market during the dot com shares bubble frenzy, tried to jack up the prices of their shares by all conceivable means to the detriment of the long-term interests of their companies.

(THE PRESIDENT resumed the Chair)

President, after coming into power, the Chief Executive, Mr TSANG, attaches great importance to the esteem of the Government among the public. It

is desirable for the Government to attach importance to its esteem. However, the political reality is that it is impossible to command esteem without making calculated political moves but such calculated political moves must be backed up by specific policies in order to win the support of the general public. I sincerely hope that the SAR Government will use its policies to win the approval of the public rather than achieve its goals through political calculations, otherwise, the whole thing will only be a political bubble and when the bubble bursts, Hong Kong as a whole will suffer.

MR LAU KONG-WAH (in Cantonese): Today's motion is unusual but important. Members of the PAC always observe discipline and it has always been the practice that only the Chairman will speak. However, since I am allowed to say all that I wish to say today, I will not be content until I have aired my views.

The Government said that it accepts all of our recommendations, however, the conclusions in these two reports are in fact diametrically opposite. Concerning the Government's claim that the conclusions are the same, I think it is an ostrich policy. The greatest differences between the two reports lie in: firstly, whether the exercise of discretionary power is appropriate and whether it was exercised in a reasonable manner. After the hearings, our conclusion is that the exercise is unacceptable, however, the report of the Independent Committee of Inquiry (ICI) believes that it was reasonable. Secondly, on whether the incident had any financial implications, our conclusion is that there were negative implications but the report of the ICI says that there was no implication, so the two are obviously diametrically opposite.

Therefore, concerning the contents of this report prepared by the ICI, I wish to examine three major points in detail. Firstly, the greatest oversight in this report of the ICI is that it completely ignores the fact that the exercise of discretionary power has to follow a set of guidelines. The guidelines spell out nine criteria, including the consideration of government policy, public interests, planning restrictions, the views of other government departments, fairness, and so on. However, after going through the entire report of the ICI, I found that no reference whatsoever was made to these criteria throughout the report. This is very crucial.

President, when conducting the hearing, we mentioned this set of guidelines on exercising discretionary power, furthermore, this set of guidelines was signed by Mr LEUNG Chin-man himself. When I asked him if any weight had been attached to it when he exercised his discretionary power, his answer was that "the weight was zero". President, just imagine: the policy and guidelines were formulated by him, but when they were eventually applied, the weight attached to them was zero. Will the public find this acceptable? Did the ICI find this acceptable? Can one say that this is reasonable? The Chief Secretary for Administration said just now that he had legal basis, had followed the procedures and made reference to past cases. This we understand. However, the one single point he omitted was that the criteria in the guidelines were not followed and this is very important.

President, secondly, the most misleading point in the report of the ICI is its claim that there was no financial implication and the coffers did not receive less revenue as a result. Since the tendering process had been completed, even though the property developer had built more flats, it was not possible to recover the money. Of course, it is true that the money cannot be recovered now. However, it is important to consider according to what criteria the Lands Department initially set its reserve price. The criteria adopted by the Lands Department had taken into account the fact that the area was included; had it not been included, the reserve price could have been set higher and the revenue for the coffers would have been higher. This is very obvious reasoning and the public can easily understand this. Therefore, if it is said that there was no implication at all, everyone will be able to see easily how very misleading such a claim is. The reply given by the Chief Secretary for Administration just now has also happened to omit this point.

The greatest discovery mentioned in the report of the ICI — to me, it is the greatest pitfall — is that it considers that all along, the legal basis on which the Buildings Authority exercises his discretionary power is wrong, that is, it is wrong to invoke regulation 23(3)(b). If the legal basis is wrong, that means the exercise of power is illegal. This is in fact an even more serious matter, is this not? That is to say, not only did Mr LEUNG Chin-man incorrectly invoke and illegally exercise his discretionary power, even the over a dozen cases in the past are all implicated. Therefore, in such circumstances, the Government had no choice but to step forward and it reiterated today that such an interpretation was wrong. If the interpretation of the ICI and such an important argument are wrong, how can the ensuing conclusions and deductions be reasonable?

Therefore, the ICI said that Mr LEUNG Chin-man was wrong but reasonable and the Government also said that the ICI was wrong but reasonable. Now, the water is even muddier than before and in my opinion, this is in fact making one mistake after another.

President, the conclusions of the ICI, which were reached behind closed doors, have a lot of pitfalls, misleading claims and oversights. Compared with the professional reports of the PAC and the Audit Commission, the better ones are most obvious. Concerning the Chief Secretary for Administration's comment that the mistake made by the ICI was reasonable, the public finds it most unacceptable. If the Government holds that the two conclusions are both acceptable, it is making the water even muddier. If the Government thinks that the exercise of discretionary power can be uncertain, this is to resort to one sleight of hand after another and society and the sector will be knocked into a total confusion. This will also deal a blow to the team of professional civil servants in the Government and even to the professional advice given by the Audit Commission. This will also erode the proven audit system. Therefore, I believe the Government should reflect carefully and speak out clearly, rather than acting as a mediator that obfuscates matters.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, as the Deputy Chairman of the PAC, I really do not wish to see the Legislative Council conduct this motion debate today. Because this debate is conducted today purely due to some differences in the report conclusions reached by the PAC and those by the ICI appointed by the Chief Executive. Originally, it is to some extent understandable that some differences would exist in the conclusions reached in the two reports. However, since the position of the Administration on these two reports and the one prepared by the Audit Commission is quite ambiguous, this has aroused speculations in society and made the public call into doubt the credibility of the Audit Commission, the PAC, the ICI and even the Administration. Therefore, we have no choice but to initiate this motion debate here today.

The Administration has said publicly that it accepts the reports of the Audit Commission, the PAC and the ICI. There are quite a number of similarities in the conclusions of the three reports, for example, the then Building Authority (BA) should not exempt the public transport terminus (PTT) from being included

in the calculation of the maximum gross floor area (GFA), and all three reports recommend that the authorities concerned should include the maximum GFA for a lot in the land lease, and so on.

However, there are some very obvious differences in some of the views expressed in these reports. For example, the Audit Commission and the PAC criticized the official concerned on the ground that the BA had exercised its discretionary power incorrectly and had to be held responsible. Even though such a move did not make the Government sustain actual losses, there were negative implications on public finance. Thus the relevant official was criticized and deemed necessary to be held responsible. However, the report of the ICI overlooks the negative implications on public finance and believes that since no actual loss was incurred to public finance, no one should be criticized or reprimanded. It is really unjustifiable for the Administration to accept such a conclusion at the same time. Therefore, the Administration should at least make clarifications on the parts in which the conclusions are different and state which views it is more inclined to accept as far as the aforementioned point is concerned, as well as giving its justifications. Only in this way will the Hong Kong public be convinced.

Unfortunately, the response given by the Administration is indeed a disappointment to us. When Secretary Michael SUEN made responses in public about the report of the ICI, he went so far as to say that there was no major problem with the land policy in Hong Kong and that the official concerned should not be subjected to disciplinary actions. The reports of the Audit Commission and the PAC spell out in black and white and very clearly the problems in land policy involved in the entire land development project, for example, unclear land lease clauses and the excessive discretionary power vested in the BA, and so on. How can the Administration turn a blind eye to all this?

In addition, the Administration will follow up this Sai Wan Ho development project internally to consider if disciplinary investigation or action on any official is warranted. The public has always been concerned about whether the former BA should assume responsibility for the incorrect use of discretionary power. Even before taking formal follow-up action, the Administration stated that procedurally, any comment on whether disciplinary action is called for is inappropriate. I hope the Administration will be more careful in future, otherwise, the credibility of the Administration will be

undermined. A Government practising by strong governance should not display such feeble behaviour as evading responsibility.

Madam President, it seems that the inclination of the Administration is to favour the conclusions of the ICI and relegate the reports of the PAC and Audit Commission to secondary importance. If the Administration does this, it is tantamount to showing disrespect for the PAC and the Audit Commission. Doing so will undermine their prestige, so how can they exercise their rightful influence in future? If their prestige is undermined, it will be difficult to monitor the operation of the Government. In that event, the risks of the Government misusing, abusing or misallocating public resources will increase. Is this what our Government, which advocates strong governance, wishes to see?

Meanwhile, the Administration, in attaching too much importance to the report of the ICI, may also give the public the wrong impression that through the ICI, the Government is trying to exonerate the official concerned, who may otherwise have to assume responsibility for his mistakes. If the public thinks this way, the impact on the prestige of the Government and the credibility of the ICI will be severe. In that case, it will not be beneficial to the Government in any way. The Administration really must not let this "all-lose" situation for the Government, the Audit Commission, the PAC and the ICI occur. Therefore, when the Administration takes follow-up action on various reports, it should be fair and strike a balance, so as to handle this matter in the fairest and most impartial way.

Madam President, finally, I hope that after this motion debate today, this incident will come to a close. However, I have to stress that the PAC, and the entire Legislative Council and the community as a whole, for that matter, will always monitor how the Government improves the land policy in Hong Kong. We will by no means allow the Administration to drag its feet over progress in this area.

With these remarks, I support the motion. Thank you, Madam President.

MR CHIM PUI-CHUNG (in Cantonese): President, the motion debate today is very important to the future of Hong Kong. This incident has aroused unease in the minds of the people. The High Court heard a case of probate in 2001 and

the case dragged on until 2003 under appeal. In 2005, the final outcome was that even though the Court of First Instance and the Court of Appeal had ruled in favour of a certain party, the final judgement was that it lost its case completely. This arouses doubts among the general public about the political development and other developments nowadays in Hong Kong.

President, secondly, in debating this motion today, we may have fallen victim to the designs of a certain party. Why? The Government, in taking upon itself this burden, is employing the strategy number two of the 36 strategies: to besiege the Kingdom of Wei in order to save the Kingdom of Zhao. A lot of people involved in this case may have to be held accountable, however, if the buck is passed to the Government, they can then get away scot-free and get out of their bind. Of course, this is only my conjecture, however, this is a matter that makes one feel very dubious.

President, the third point is that our Chief Executive, Mr TSANG, has said a number of times in the Legislative Council that the executive and the legislature must co-operate properly, that co-operation would be mutually beneficial and confrontation would not be beneficial to Hong Kong, in particular, it will not be useful to the executive-led system. However, he is actually using all means possible to give the boot to the PAC of the Legislative Council, which is quite credible and authoritative. In view of this sort of policy, how possibly can we have confidence? Does the Chief Executive really want the executive and the Legislative Council to co-operate on good terms and set an example for various areas in the future of Hong Kong, such as constitutional reform and prestige in governance? I do not wish to delve into the details of this matter, but in any event, such a move will arouse enormous doubts in society.

Of course, all these have certainly been meticulously designed by a group of people with a flair for formulating strategies, thinking that if the Government takes upon itself the responsibility in this way, on the one hand, the Legislative Council can be sidelined; and on the other, the Government need not be bogged down in the wrangling anymore. However, that was not the actual outcome, rather, just like the proposals on constitutional reform last year, which the Government thought would definitely be passed, in reality, there were deep-rooted contradictions and high-level contradictions. If we do not seek to resolve them by facing up to the reality, we cannot possibly arrive at any good outcome. I take this opportunity to remind the Central Government that Hong Kong is not independent but a Special Administrative Region of China. In

taking such a step, do some people have the ulterior motive of pitching the executive against the legislature in Hong Kong, so that the public will get a bad impression and negative impacts will be created in various areas, such as the economy and the financial sector in Hong Kong in the future?

We hold no suspicions, however, if the Central Government wants to take up the responsibility for Hong Kong, it has to pay attention to and care about Hong Kong. We cannot rule out the possibility that there may be a Hong Kong-style LEE Teng-hui or CHEN Shui-bian. If things evolve like this, we as Legislative Council Members will only have our share of hard work but the due recognition. In particular, for the brothers in the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), they have no choice but to support a lot of policies under pressure. However, it is nakedly obvious to everyone that they are in a bind. Of course, I am not speaking in their defence. In fact, I myself am also subjected to a certain amount of pressure when the occasion calls for it. When something is beneficial to the Government, officials will come and lobby me, but when mistakes have been made, no action is taken to ascertain responsibility. How possibly can the state of affairs be like this? Therefore, there are some issues which a lot of Members dare not even raise, but in addressing the President, I hope that the Central Government and the representatives of the Central Government can listen and watch. Only in this way will it be fair.

Concerning the actions and measures in respect of this incident, it is worthwhile for the Government to conduct a comprehensive review. Members will all remember that several years ago, the Government owned 60% of the land on which the Cheung Kong Center is located and the Cheung Kong (Holdings) Limited owned 40% of it. After paying a land premium, that piece of land now belongs to the Cheung Kong (Holdings) Limited. However, recently, I learned from the newspaper that the land use of that piece of land had been changed. Although more than 15 years have passed since this happened, in any event, the public have a great sense of unease and displeasure, that is, they wonder if any collusion between the Government and business is involved. In fact, this may not necessarily be the case, but as the Government — as I said in making my second point — it has to review the retirement system for senior officials thoroughly.

Since Hong Kong is a very small place and people can come across all sorts of things in their daily lives, if the Government does not review the

retirement system for senior officials, suspicions about collusion between the Government and business will always exist and they will make Hong Kong people feel quite uneasy. As a senior official in the SAR Government, be it a Secretary of Department, Bureau Director or even high-level leaders, they all have a sense of mission for society. If they can leave the entire nexus of interests after retirement, this will be enormously helpful to the future governance of Hong Kong. Otherwise, since all of them have alumni who still work in government departments — although they may not have direct or indirect relationships with them — if they receive calls from the latter, will they not engage in this sort of communication with one another all the same?

Therefore, if the Government does respect the Legislative Council, all of us should face the reality in view of this incident and conduct a comprehensive review of the whole system. If someone behaves furtively and thinks that he can resort to stealthy means to achieve his ends, then Members of the Legislative Council should use their wisdom and fall back on the spirit of serving the Hong Kong public. This is another incident that has boosted the unity among Members in the wake of the incident over West Kowloon. It will make the Government conduct reviews of its internal operation and various aspects, so that it will act in a manner that is absolutely responsible to the Chinese Central Government and to the people of Hong Kong, as well as displaying absolute sincerity in working towards better co-operation between the executive and the legislature.

With these remarks, President, I support the motion.

MR TOMMY CHEUNG (in Cantonese): Madam President, ever since the Audit Commission published its Report No. 45 and made public its investigation report on the development of a site in Sai Wan Ho, the public are very concerned about its account of the situation, for example, whether it is true that Mr LEUNG Chin-man, who was both the BA and the Director of Buildings at that time, exercised his discretionary power incorrectly in not including the bus terminus in the gross floor area (GFA) and in granting bonus GFA, thus leading to a loss of public revenue.

The PAC of the Legislative Council, in line with its tradition, the Rules of Procedure and the agreement on its scope of work reached with the Government,

held six public hearings to hear the evidence given by 17 witnesses and had 19 internal discussions before establishing the conclusions and recommendations of the PAC. As a former member of the PAC, I fully trust that the PAC is fair and impartial and that its conclusions are founded on facts. In principle, the Liberal Party agrees with the conclusions and recommendations of the PAC and that the Government should fully implement the recommendations of the PAC.

In other words, in order to avoid the recurrence of the Grand Promenade incident as revealed by the Audit Commission, we support the recommendations of the PAC, namely, the BA has to ensure that, in exercising his discretionary power, he will include in his consideration of an application the factors listed in any applicable Practice Note issued by the Buildings Department, and the Administration has to review the criteria for deciding whether or not the maximum GFA of a site should be specified, with a view to removing any ambiguities about the development potential of the site.

However, the conclusions drawn by the three-member Independent Committee of Inquiry (ICI) are not in total accord with those of the Audit Commission and the PAC. This has greatly mystified the public and even triggered a debate on who is right and who is wrong, thus arousing concern about whether the credibility of the Audit Commission and the PAC has been eroded.

I am very pleased to see the Director of Audit issue a statement yesterday evening reiterating that the Audit Commission will adhere steadfastly to the principle of fairness and impartiality and carry out value-for-money audit independently and in a professional manner, and that the credibility of the Audit Commission will not be jeopardized by the report of the ICI. He also pointed out that the PAC had urged the Government to fully implement its recommendations and made it clear that the Audit Commission and the PAC were both of the view that the BA, in excluding the bus terminus from the GFA calculation, had brought about negative financial implications for the Government. Regarding the different opinions held by the government-appointed ICI on the financial implications of this incident, he said that it was the result of interpretations from different angles.

I believe this is precisely where the problem lies, that is, the Government established its own ICI in addition to the hearings conducted by the PAC. In fact, if we look up the history, it had not been the Government's practice in the past. However, in recent years, the situation has witnessed some changes.

The first such instance was the Hong Kong Harbour Fest. In addition to the PAC, the Government established its own ICI and together with this instance, there have already been two such instances. The situation is indeed a cause for concern. As regards a Member's criticism that the Government's move has violated the agreement reached between the PAC and the Government some years ago and described it as *ultra vires* on the part of the Government, I am afraid such a claim is a bit exaggerated.

This is because, according to the paper which the Chairman of the PAC submitted to the Provisional Legislative Council in its meeting on 11 February 1998, the agreement reached between the Government and the PAC deals only with procedure, that the Government has to submit a Government Minute within three months after the PAC has laid its report on the table of the Legislative Council, however, it does not say that the Government cannot appoint any ICI of its own.

However, the Liberal Party also agrees that in order to avoid further controversy and causing confusion among members of the public, the Government and the PAC should sort out the problem in this area, such as in what circumstances can the Government appoint an ICI and how it should co-ordinate with the Legislative Council when it decides to do so. Anyway, the public has been given the mistaken impression that one report is trying to discredit another. This is most undesirable and warrants the Government's concern.

With these remarks, Madam President, I support the motion.

DR RAYMOND HO (in Cantonese): Madam President, I still recall that on 27 June last year, the incumbent Chief Executive, Mr Donald TSANG, came to this Chamber to attend the Chief Executive's Question and Answer Session soon after his assumption of the office of the Chief Executive. He said in no implicit terms that he chose to meet with Members at the first possible time because he wanted to demonstrate with concrete actions the sincerity and determination of the Government in establishing a cordial relationship between the executive and the legislature and also to communicate with the Legislative Council. At the same time, he said that both the executive and the Legislative Council should make the well-being of the people the priority consideration and he also thought

that "unity brings mutual benefits and division mutual harm". However, from the circumstances surrounding the development of the Grand Promenade incident, I cannot see the Government having demonstrated any sincerity and determination as pledged by the Chief Executive, but his observation of "unity brings mutual benefits and division mutual harm" is indeed an apt description of the situation on this occasion.

Although the recently released independent report on the Grand Promenade incident is not in total accord with the conclusions drawn earlier by the Legislative Council's PAC, the Government still arbitrarily describes the two reports as "complementary", and says that the Administration will implement the recommendations of both reports. If the Government does not suffer a deficiency of logical thinking, then it must be oblivious of the two adverse effects caused by accepting both reports. This will make the public unable to understand the incident from a proper prospective, and it will also constitute disrespect to the PAC. Today in this Chamber, the Chief Secretary for Administration even stressed that the Independent Committee of Inquiry (ICI) had already explicitly clarified its "erroneous but also reasonable" conclusion. This is really arbitrary and illogical.

In fact, the Director of Audit and the PAC are truly "complementary" partners. With combined strengths, they play very strong functions in making the Government fulfil its financial accountability to the Legislative Council. The PAC relies on the findings of the audit report compiled by the Director of Audit to conduct open hearings and publish its PAC Report, whereas the effectiveness of the Director of Audit has also been enhanced through the conclusions and recommendations made by the PAC. The PAC has always functioned well and exercised its function of monitoring public expenditure according to the principles of fairness, impartiality and openness. On the contrary, due to such constraints as the time factor and the suitability of its members, the impartiality of the ICI appointed by the Chief Executive had been questioned, and it may not win the recognition of the public. In particular, in the Grand Promenade incident which involved huge financial interests, and in events that caused severely negative public opinions, the ICI had even become the subject of great controversies.

The way in which the Government has handled the two reports has definitely dealt a blow to the proven government audit system. In addition, it

has also undermined the credibility of the PAC and also further injured the relationship between the executive and the legislature, thereby prolonging the argument between the executive and the legislature which is detrimental to the governance of the Government. The most unfortunate victims are of course the general public of Hong Kong. Our Government has three gems, namely, the civil servants, the Independent Commission Against Corruption and the Audit Commission because they bring extremely strong confidence to foreign investors. I hope the Government would not damage them one after the other. Instead, the Government should treasure the three gems of the Hong Kong Government.

With these remarks, Madam President, I support the motion.

MR JEFFREY LAM (in Cantonese): Madam President, as a member of the PAC of the Legislative Council, I support this motion.

The PAC is independent from the establishment of the Government and at the same time has its own constitutional status. The PAC, in a fair, impartial and open manner, oversees the financial position of the Government and public sector organizations, and examines all government expenditures to check whether public money is used properly. Under our strict supervision, the Government must do its level best to work with the PAC to maintain this mechanism, establishing its image as an accountable and open Government.

The Rules of Procedure of the Legislative Council confers power on the PAC to study reports submitted by the Director of Audit, and summon government officials and persons concerned, such as Policy Secretaries, to attend public hearings to give an account on the details of incidents, or to provide to the PAC the required documents, information and records. Therefore, from the legal and constitutional perspective, the work of the PAC is recognized and its status is established. The past performance of the PAC has all along proved that the mechanism is effective and supported by the wider public. The legitimacy and credibility of the PAC have been proved long ago.

As the work of the PAC is always a great concern to members of the public, the PAC only arrives at the conclusions in its report through extremely cautious and stringent procedures. Take the Grand Promenade incident as an example, the PAC has held six hearings, summoned 17 witnesses and conducted

19 internal discussions before submitting its report to the Government in February. Each and every comment in the report and even the choice of words has gone most cautious consideration, and repeated discussions and examinations have been held before the conclusions were eventually drawn.

Madam President, I have spent so much time explaining the composition and work procedures of the PAC for I wish to emphasize that the credibility of the PAC is indisputable. Therefore, I hope the Government will, as it did in the past, respect the conclusions and recommendations made by the PAC in its report on the Grand Promenade incident. I hope that the Government will unequivocally express its support for the report of the PAC and fully implement the recommendations in the report, preventing the relationship between the executive and the legislature from deteriorating.

With these remarks, Madam President, I support the motion.

MR LEUNG YIU-CHUNG (in Cantonese): President, credibility cannot be attained by one's will. Instead, it has to be built up by one's actual working performance, through which the public's approval and recognition is gained. Meanwhile, one has to be careful and prudent at all times, and upholds his own viewpoints and convictions. Only by doing so can one maintain his hard-earned credibility. Besides, credibility is very fragile. An inadvertent slip may make you lose all your credibility overnight. This time, the incident involving the Sai Wan Ho development has made me see clearly the problem of fragile confidence.

In fact, the report of the Audit Commission has already stated the issue in very explicit terms. It said, "Audit estimated that the financial implications of excluding the public transport terminus from the gross floor area calculation of the Site amounted to \$125 million." However, in the report of the ICI established by the Government, it said that as it deliberated its decision, there was hardly any financial implication to the Government. With two different versions of the incident, of course it would trigger off major queries in society. But this is not the most significant point. The most significant point lies in the unexpected statement made by the Director of Audit, Mr Benjamin TANG, when he responded to questions raised by the press. He said that the \$125 million mentioned in the report of the Audit Commission was purely a figure for the reference of the public. He also did not mention anything about the loss in revenue incurred by the Government.

President, suppose whenever the Audit Commission submits a thick report, all the figures in it are only for our reference, then I shall think that they have not lived up to our expectations. If this is really the case, how can it prevent its credibility from being rocked? As a matter of fact, now we have two reports with entirely different bearings: One suggests going East, and the other West. But our Director of Audit surprised us by saying that, regardless of going East or West, it does not matter at all; it is just a matter of different bearings adopted by different parties, thereby leading to different results. It does not matter at all. If this is the case, why should there be the Audit Commission? Basing on this logic, are all the comments or observations made by the Audit Commission in the past purely for our reference only? Are we suppose to forget them all after listening to them or reading them once? If so, why should we maintain such a sizeable Audit Commission to monitor the fiscal expenditures and operations of the entire Government?

All along, there has been a well established procedure that has proved to be effective between the Audit Commission and the PAC of the Legislative Council. If the PAC finds it necessary, it will conduct hearings in an open and impartial manner, and all the relevant persons will be invited to attend the meetings to make clarifications. This arrangement has proved to be effective. And we simply fail to understand why the Government decided to set up the ICI to deal with this issue. President, I think setting up this ICI will only place the Director of Audit in a most embarrassing situation.

President, why should I say so? It was because at the time of setting up the ICI, the Secretary said that the main purpose was for allaying the concern of the public as well as conducting investigations to confirm whether Mr LEUNG Chin-man had exercised his discretionary power conferred by law in an appropriate manner. The ICI had released its findings, which are completely different from those of the Audit Commission. Under such circumstances, how should the Audit Commission deal with the issue? As the Government stressed that the ICI was independent and impartial, how can the Director of Audit say that its findings are wrong? Can he do so? Of course not. Since he is on the pay roll of the Government, how can he say that the government-appointed ICI was wrong, inappropriate and its findings unacceptable? But on the other hand, if he has to accept it, he simply cannot explain his own stance with good justifications, nor does he know how to make clarifications for his own report. So under such a situation in which he can please neither party, all he can do is to

say something as ambiguous as possible. As I have said, regarding this issue, everyone may adopt a different point of view. I would like to ask the Government: Has it ever occurred to them that such a practice will only place the Director of Audit in a most embarrassing situation? Insofar as he is concerned, he has no choice. In the face of two conclusions, what should he do? Therefore, I think the present practice will only present a maze to everyone — the further we go into it, the more we feel at a loss as to what we should do. We certainly have no idea of how to deal with the situation now.

The Government says, "Do not worry; it does not matter at all. We shall accept all the reports, and we shall implement all of them proactively, and so on, and so forth." President, by making such remarks, the Government is deceiving itself as well as others. It is a cover-up attempt and the Government is being sly in making such remarks because in any issue, there must be a distinction between right and wrong. On this issue, who is right and who is wrong? If there is no conclusion, how can the Government implement any recommendations? Therefore, in my opinion, as the incident has evolved to the present stage, the Government should assume the full responsibility. The Government has spoiled the practice that has all along proved to be effective. Unilaterally the Government set up the ICI in the hope of absolving the departmental officials of their responsibility. But in the end, it has just done a disservice. In fact, in many past incidents, the PAC has managed to resolve problems by way of conducting its investigations into the matters, and usually the actual problems or the roots of the problems can be identified. The present approach would only make everyone feel that the whole incident is rather lousy. In fact, as of today, I still cannot see that the Secretary has adopted any explicit stance on this issue. He has been speaking in a most ambiguous manner. I would like to express my deepest regret and disappointment over this. President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): We in the Hong Kong Federation of Trade Unions support the motion moved by Dr Philip WONG of the PAC and accept the outcomes reached by the PAC.

Why is it that three different versions have now emerged? We know that because of the report published by the Audit Commission, we established an investigation committee, that is, the PAC, specifically to conduct an

investigation and make its conclusions. The Government also appointed a three-member Independent Committee of Inquiry (ICI) to conduct an investigation. I am not a member of the PAC, however, I take a keen interest in this matter, particularly because in the morning the other day, I heard an interview of Dr Philip WONG on the radio and I felt very angry after listening to him, so I decided that I had to speak today.

I think that, of course, there are grey areas in this world, however, generally speaking, there should also a distinction between black and white. Concerning discretionary powers, I do not rule out the possibility that there can be many different interpretations, however, some matters can still be clearly defined. Therefore, I believe that these matters cannot be as ambiguous as the Chief Secretary for Administration put it today. A group of young people are listening to our debate on the gallery and I really hope that they will not be taught a wrong lesson.

I wish to comment on the work of these three bodies. Madam President, you can see that I have been reading this report very attentively. Since I am not a member of the PAC, I have to read all its contents carefully because I do not want to give my speech today based purely on my personal impressions.

I find that the report of the ICI referred to regulation 23(3)(b) of the Buildings (Planning) Regulation. If I try to understand it using the logic that I have studied, I still cannot deduce the rationale that underlines the entire passage. What I understand is that, since Mr LEUNG Chin-man has invoked the wrong provision, this amounts to having committed misconduct, so it stands to reason that he should be arrested, yet this was not done. Then it is said that there are precedents in the past, therefore, doing so is permitted. What are they? I asked Mr LAU Kong-wah what they were. It turned out that in these cases, the criteria were very important, including public interest and a series of criteria derived from this criterion. Although he had sought legal advice in view of these criteria, he found that different people held different views, so it was difficult to decide to which party the benefits of doubt should be given.

Madam President, in the Panel on Welfare Services, we often have to deal with the issue of the discretionary power of the Social Welfare Department (SWD). In the last term, we had discussions specifically on the exercise of discretionary power by the SWD. We know that some difficulties are

encountered in the course of exercising it, however, the problem is that when some areas have already been clearly defined, I think the claim made by the ICI that "in the past, there were cases that invoked this regulation in excluding the floor area of the public transport terminus and before making the decision, Mr LEUNG had consulted public opinion" is unacceptable. I think that there is a problem here. On the one hand, the ICI believes that Mr LEUNG invoked a wrong provision (but we think he invoked the right one); on the other hand, it said that there are precedents. How should the benefit of the doubt be assigned between these two factors? I believe it should not be assigned to them.

Next, let us look at the issue of exemption under section 42 of the Buildings Ordinance. I have discussed with Mr KWONG Chi-kin the several points on exemptions mentioned by the ICI. From the legal point of view, Mr KWONG Chi-kin stressed that if there are areas in which the law has been complied with, they should be pointed out, however, if there are areas in which the law has been breached, they should be treated as instances of violations. However, it seems that they can say a certain aspect is reasonable, justifiable or legal as they please. In some aspects where the law is considered to have been violated, they can say that certain provisions in the legislation have conferred certain powers; and in areas where there is a lack of justification, it is said that the action on a certain point is correct. Who is correct actually? I wish to tell the students that if you have time, you can get hold the report of the ICI to have a look, and you can also go back and examine it together with your teachers as a subject of study in your Liberal Studies classes.

I have served in the Legislative Council for more than a decade and after reading this report, all I feel is that this is laughable. That morning, after listening to the interview of Dr Philip WONG, I told him on his return that I would speak in support of him. Why? Because the Government was so full of obfuscation when it talked about this issue and when it talked about public interest, it seemed it was too keen to shirk its responsibilities, so much so that I felt it was somehow teaching people a wrong lesson. Of course, Madam President, I have no intention of criticizing the ICI, particularly in view of the fact that one of its members is a Judge (in my mind, Judges are very just and impartial). However, the impression that this report gives me is that what is legal may not necessarily be reasonable and what is reasonable may not necessarily be legal. Therefore, it must be made clear as to on what criteria was this judgement based. If there is no criterion, how can this matter be judged?

Madam President, in addition, when talking about money matters, I was all the more puzzled. Madam President, it is very evident that the developer built 200 units more and it is evident that it received an additional several hundred million dollars in proceeds, yet the ICI went so far as to maintain that no loss had been incurred. This really left me scratching my head the whole morning. That day, when Dr Philip WONG was interviewed on the radio, he was also very angry in talking about this point. He said that even though he had no intention of triggering a controversy, this incident had obviously made the coffers lose over a hundred million dollars. How could one say that no loss had been incurred? As we all know, all along, Dr Philip WONG has not employed the tactic of "empowerment" like we do when it comes to government policies and he is the more moderate type. However, that day, he also sounded very angry.

That day, on coming back, I searched for some information for reference and I also requested colleagues to search some information for me. Subsequently, I felt that sure enough, the action taken then was not justified and it was not fair to the first tenderer — I did not ask further and cannot remember who the first tenderer and the second tenderer were and the Secretary does not have to frown — anyway, the bids made by the two tenderers were very close. However, the tenderer who had made enquiries with the Government got an answer in the negative whereas the developer who had not made any enquiries got an answer in the affirmative. Such an example should not be followed. Today, the Chief Secretary for Administration told us that in future, a maximum GFA would be imposed.

Madam President, for decades, I have devoted myself to working for the labour sector and I believe that the most important thing is that of positioning oneself. If something is right, one should say so; if it is wrong, one should also say so. One cannot sit on the fence, nor should one advance specious arguments. Among the criteria of being reasonable, justifiable or legal, which of them was adopted in making the judgement? I think it is necessary to ask how the ICI avoided the suspicion that it is defending the Government. A lot of people have said the same thing. How did it avoid the suspicion that it has given all the benefit of the doubt to Mr LEUNG? I think the Government should respond to these questions.

Madam President, I support the motion moved by the Chairman of the PAC today. Thank you.

DR YEUNG SUM (in Cantonese): Madam President, I rise to speak in support of the motion proposed by the Legislative Council Public Accounts Committee (PAC).

I have only one point to raise in my speech today. It is a point from the constitutional perspective. Basically, the Government has the administrative power of establishing independent committees of inquiry to look into incidents of public concern or incidents affecting public interest. But my speech today will focus on a query regarding constitutional convention. I am not questioning whether the Government has the power of doing so. My only point is that constitutionally speaking, we must also take account of constitutional convention in addition to the powers of the Government. This time around, before the PAC carried out its investigation into the report published by the Director of Audit, the Government suddenly announced the establishment of a three-man Independent Committee of Inquiry (ICI) to investigate whether Mr LEUNG Chin-man had exercised his discretion appropriately. This has dealt a heavy blow to the convention followed by the PAC.

Madam President, you are also well-versed in our constitutional convention. One of the major tasks of the Director of Audit is to carry out value-for-money audits of government expenditure, with a view to ascertaining whether public money is used appropriately. After the Director of Audit has published a report, the PAC will, in accordance with the Basic Law and our constitutional convention, conduct hearings if necessary. And, the merit of such hearings is that they are all conducted openly. Although there may sometimes be closed-door hearings, they are basically open. Therefore, generally speaking, the public tend to look at the hearings of the PAC

MR ALBERT CHENG (in Cantonese): President, I wish to clarify.

PRESIDENT (in Cantonese): You cannot clarify. You can only raise a point of order.

MR ALBERT CHENG (in Cantonese): Yes, it is a point of order.

PRESIDENT (in Cantonese): What point of order do you wish to raise?

MR ALBERT CHENG (in Cantonese): Dr YEUNG Sum said that there were closed-door meetings, however, we did not hold any closed-door meetings.

PRESIDENT (in Cantonese): You do not have to clarify, nor is this a point of order. What you are doing is to interrupt. If by interrupting, you hope Dr YEUNG Sum can clarify any part of his speech, you can ask Dr YEUNG Sum if he is willing to answer your question, however, if you want to clarify any part of your own speech, since you have not yet delivered your speech, you are not allowed to do so. You can deliver your speech later on but for now, please sit down. If you want to speak, please press the button to indicate your wish to do so.

MR ALBERT CHENG (in Cantonese): Now you are talking about clarification.

DR YEUNG SUM (in Cantonese): Madam President, I would like to thank "Tai Pan" for further elaborating my speech inadvertently. Although what he did was not in line with the Rules of Procedure, I still wish to extend my thanks to him.

Madam President, I feel that PAC's credibility remains unchanged in the minds of the people. This is mainly attributable to the fact that our meetings are conducted in open sessions, and members of the PAC come from various parties and groupings, with no particular party dominating it. This is a very good practice. It is against such a background that the PAC can effectively or, to a great extent, monitor the way in which the Government spends public funds in accordance with the Basic Law. Such a convention and such a historical background do have the support of a very clear foundation and certain legal basis. However, most unfortunately, the Government's practice this time has basically dealt a very heavy blow to our convention.

Madam President, before discussing this heavy blow, I wish to emphasize several points. There are several merits in our past convention. First, it implements the requirement in the Basic Law that the executive should be accountable to the legislature. Therefore, the PAC can independently and openly monitor the way in which the Government spends public funds. This is

a constitutional requirement of the Basic Law. Secondly, this convention has been proven and carries very great credibility, further demonstrating that the executive respects the role and operation of the legislature. Although the Government has the right to establish independent committees of inquiry from time to time, it simply would not do so in the past. We regret for the approach adopted by the Government this time, and feel that it would bring about bad consequences in several aspects. First, the Government violated the convention that had all along been observed. Although the Government does possess such administrative authority, the adoption of such an approach had basically violated the convention that had all along been observed. Second, in taking such a course of action, the Government had left the people or Honourable colleagues with the impression that the executive did not respect the independent and open role of the PAC in monitoring the Government. This makes us very dissatisfied. Third, Madam President, I feel that the people are most concerned about one point, that is, the Chief Executive had made use of his administrative authority to establish this Independent Committee of Inquiry (ICI) before the PAC had officially started its open hearings. In doing so, he had balanced the impact brought about by the conclusions of PAC's report — he had balanced it.

I have just gone through the Chief Secretary for Administration's speaking notes very carefully, and I have also marked up many points. Basically, the Government can accept all the three reports, that is, it can accept the Audit Commission's report, it can accept the PAC's report and it can also accept the ICI's report as well. With regard to the work of Mr LEUNG Chin-man, had he made a mistake in exercising his discretionary power? The Chief Secretary explains that the ICI found that he had made a mistake, but his action was also very reasonable. In the 11th paragraph of his speech, he says basically he finds it a wrong decision, but on the other hand, he feels that it was reasonable. In short, Mr LEUNG had "made a mistake in a reasonable manner".

I have been sitting in this Chamber for a long time. I find such a statement rather amusing. I dare not challenge the Judge from the Court of Final Appeal or the senior counsels, especially their legal judgements. But I really find this conclusion amusing. They said that the procedures were very reasonable because the law does confer on him the discretionary power, and he had sought professional advice and independent opinions, and he had considered past practices. Therefore, in terms of procedure, the decision was reasonable. I found this a rather fair statement. However, when they said in spite of the fact

that the decision was wrong, it was reasonable, then I found this somewhat "strange". I would find it all right if the procedure adopted is described as fair. However, if it is said that though the decision was wrong it was reasonable, then I would feel that there is a problem. This has also made the people feel that the Chief Executive has successfully attained his purpose through such work.....I must clarify this: I am not saying that this ICI has worked specifically to suit what the Chief Executive intends to achieve. I do not wish to challenge their independence in this aspect, but the ICI or the Chief Executive has achieved such an effect that it seems to have played the role of a fire services chief who has successfully extinguished the fire or disaster that challenged the prestige or credibility of civil servants. At least, it has confused the people's understanding of this incident.

Thank you, Madam President.

MR LEE WING-TAT (in Cantonese): President, I rise to speak in support of the motion moved by Dr Philip WONG, Chairman of the PAC. I am not going to repeat those issues already mentioned by some Honourable colleagues. I just wish to talk about my own viewpoints.

First, why are the Audit Commission and the PAC so important? In fact, there are authorities in different spheres of society. For example, with regard to the Rules of Procedure in the Chamber of the Legislative Council, President, you are the authority. The rulings of the President cannot be challenged. Earlier on, Mr Albert CHENG spoke at the wrong moment because he did not have a clear understanding of the Rules of Procedure, and interrupted the proceedings. He simply should not speak at that moment, that was all. With regard to the verdicts passed by the Court, the Court of Final Appeal is the authority, and its verdict cannot be appealed.

There are lots of decisions made by many authorities in society. Regarding the practice of examining whether our Government has spent money in the most appropriate manner, we have the value-for-money audits, in which the Audit Commission is the authority, and the PAC of the Legislative Council is the authority in examining such audit reports. Such authority has been established through our persistent efforts for many years, and everybody knows that this is an authority that cannot be challenged, that is, its decisions are nearly

equivalent to the final decisions. Regarding the verdicts passed by Judges of the Court of the Final Appeal, they cannot be appealed. Regarding the rulings made by the President in this Council, they also cannot be appealed. Although we may discuss the issues concerned at a later time, the rulings cannot be challenged. The value-for-money audits and studies conducted by the Audit Commission are authoritative, so are the hearings conducted by the PAC on such audit reports.

I think the greatest problem is that the Government has — I am not sure whether it has done it intentionally or unintentionally; I hope it is the latter case — reduced or even substantially affected the authority of both the Audit Commission and the PAC. This is detrimental to the community of Hong Kong as a whole. Due to the separation of powers between the executive and the legislature, the executive departments would make lots of decisions. And some other organizations independent of the executive departments should assume the role of auditing or supervising the executive departments. In other words, the Audit Commission is charged with the responsibility of conducting the value-for-money audits, and the PAC is responsible for supervising the Government. Such a framework has already been arranged constitutionally and implemented as a convention for years, and the people have also accepted it.

In certain places or countries (Britain is one of such countries, as far as I can remember), the public accounts committees in fact consist of mostly members of the opposition party. Why should it be so arranged? The reason is since the Government has to spend money, then the job of examining whether the money has been spent most appropriately should be left to those who do not have a part to play in spending the money. This is not a convention unique to Hong Kong, but common in many places. This is meant to ensure that, with the separation of powers, the different powers can check each other. And such checks and balances are defined very clearly.

President, it was unwise of the Government to establish an ICI soon after the Audit Commission had released its report, and it would bring about very bad consequences. From a positive perspective, the Government might have adopted the present course of action simply because of its thinking that the PAC was only responsible for the value-for-money audits, whereas the legislation and authorization issues were not relevant to the PAC. That was why it had to establish the ICI. This is a positive understanding the Government's move in this regard.

However, from another perspective and I believe this was the actual perspective adopted by the Government, the Government's approach was actually a precaution taken against the possible emergence of a "bomb". The ICI was designed as the "bomb disposal unit" for neutralizing the incident or for the production of another report. With the emergence of another report, lots of discussions and confusion will emerge in society and such an effect has already emerged. After Honourable colleagues had read through the entire report, the Government then told the people that its conclusion was wrong but reasonable. The people were baffled by this statement. Then the Government said that although the Audit Commission had pointed out that statistically there was a financial loss of \$120 million, and the PAC had also confirmed the accuracy of the figure, the ICI said that no losses had been incurred financially.

Regarding the three conclusions released, which one should the man in the street believe? The plain objective of this approach is to prevent the Hong Kong community from getting an authoritative conclusion on the Grand Promenade incident. It is the objective the Government has been trying to achieve. But this is detrimental to the authority of the Audit Commission and the PAC.

I hope the Executive Council can stop employing this kind of designs because it will undermine the executive-legislature relationship. I also find this totally unfair to the Director of Audit, Mr Benjamin TANG. With regard to the study and audit conducted by him, how can its conclusion be different from the one provided by the ICI? What kind of stance should he adopt? How can he assure his colleagues in the Audit Commission that their future value-for-money audits will still be authoritative and trusted in society? How can they believe that their work will not only gain the respect of their colleagues, but also that of the people of Hong Kong?

President, regarding such issues as authorization and the financial aspects, I think they can be dealt with at a later stage. But the overall arrangement should not make the people and the Legislative Council feel that the Government has messed up the whole incident and that it is becoming increasingly confusing. I have not made up this allegation. This is how one of the newspaper editorials reported the incident. Some facts appear to be reasonable after the Government has made some remarks about them, but everyone in society has been confused.

The Chief Secretary and the Secretary must realize this: How can the people finish reading all the reports? In fact, they would usually believe in authoritative conclusions, and that is all. Now, the conclusion is, there is no authoritative conclusion in society. I hope in future the Government can refrain from playing such tricks when value-for-money audits are conducted by either the Audit Commission or the PAC. This is not a desirable approach and it will also undermine the executive-legislature relationship.

With these remarks, President, I support the motion.

MR ALAN LEONG (in Cantonese): President, from a positive perspective, under the thorough investigation of the three reports, the Grand Promenade incident has become the most frequently investigated and the most thoroughly examined public administration incident in recent years. After the release of the Report No. 45 of the Director of Audit, Honourable colleagues of the PAC of the Legislative Council followed up the incident immediately. On the other hand, the Chief Executive appointed in the meantime a three-member ICI to investigate the way in which the Building Authority (BA) had exercised his discretionary power at that time. On the issue of whether the Government should conduct an investigation in parallel with that of the PAC, many Honourable colleagues have already made comments on them, so I do not wish to repeat them here. Instead, I would like to discuss the illogicality of the logic and the conclusion adopted by the ICI.

President, on the one hand, the ICI considers that, with the exception of exempting the public transport terminus (PTT) from GFA calculation, all the decisions made by the BA in exercising his discretionary power on four occasions were "reasonably and properly taken". With regard to the exemption of the PTT from GFA calculation, the ICI is of the opinion that, since there were similar previous cases in the past, together with the support from legal advice, though the decision was "wrong", it was "reasonable", so the BA should neither be blamed or criticized.

In fact, since the ICI has already considered that the BA had made a legal mistake in invoking regulation 23(3)(b) of the Building (Planning) Regulations, there was practically no legal basis for the BA to exercise his discretionary power.

More importantly, President, the ICI further considers that even if the BA had exercised his relevant discretionary power in accordance with section 42 of the Buildings Ordinance, the cumulative effect will also be inconsistent with the policies of the Buildings Department, the Lands Department and the Planning Department. The ICI points out in paragraphs 10.36 and 10.37 that had the control under the above regulation 23(3)(b) and section 42 of the Buildings Ordinance been enforced strictly, the bulk of the buildings in the development would have been substantially reduced. Otherwise, the height, bulk and density of the buildings would become too great. In short, the ICI thinks that the BA had not strictly enforced the legislation. In its letter to the Chief Executive, the ICI explicitly pointed out that the situation had aroused the concern of its members.

President, a mistake is a mistake, which will never become correct just because the BA had followed all the procedures. If we wish to adopt a highly technical and legal perspective to consider the issue, at best we can only say that the ICI is unwilling to use the effect of exercising the discretionary power to replace the effect of the BA's exercise of his discretionary power. However, the BA's discretionary power will not become properly exercised as a result of this.

Actually, as we further analyse the report, we can see that the ICI's report is quite similar to the investigation report conducted by our colleagues of the PAC when the latter expressed alarm, dismay and strong resentment over the BA's approval of changing the site classification, the BA's granting of the bonus areas and his decision of excluding the PTT from GFA calculation, and considered all this unacceptable. They are actually expressing the same ideas.

In fact, the ICI's report should really lash out at the way in which the BA exercised his discretionary powers, instead of apparently exonerate him.

However, all such self-contradictions cannot cover up one plain fact, that is, the developer of Grand Promenade has successfully built 280 additional flats, involving a total floor area of nearly 200 000 sq ft, which is really out of proportion when compared with the total floor area originally granted to the developer. The financial implication is estimated to be at about \$120 million. The Grand Promenade incident has exposed a serious flaw, that is, there are many loopholes under the current three-tier regulatory framework of planning, lands and construction. When the Planning Department has striven to impose

certain control for the sake of overall planning as well as the needs for the sustainable development of Hong Kong, the Lands Department, in its capacity as the landlord, will try to eliminate such control in order to enhance the revenue generated from land. In such a tug of war, the total GFA is capped in neither the outline zoning plan nor the lease conditions.

Finally, as the law-enforcement agent of the Buildings Ordinance, the BA has to single-handedly face the requests for maximizing the land use made by the rich and powerful developers. It is only after this incident that the public has started to realize that the BA is in possession of such great discretionary power that can grant floor area with a value of more than \$100 million, and that with a single signature, the public coffers can lose as much as over \$100 million.

President, in order to eliminate such shortcomings, there are some common points in the recommendations of the three reports. In particular, the Government must review from time to time the different aspects such as the legislation, the operating procedures of planning, lease conditions and the exercise of discretionary power, and so on, so that eventually the planning intentions and lease conditions can become more open, explicit and impartial. I believe, all these are the beliefs upheld by our PAC colleagues when they submitted the report, and the Government does have the responsibility to face these recommendations squarely, thereby further ensuring that the land use in Hong Kong can have a healthy development.

President, I support the PAC report without any reservations; and with these remarks, I support the motion.

MR JAMES TO (in Cantonese): President, I am not a member of the PAC. But after listening to Secretary Michael SUEN's response to the report released by the three-member ICI on that day, I think I must say something about certain arguments.

The first point is, on that day, Secretary Michael SUEN said that he supported the ICI's conclusions, saying that the public had not incurred any losses. Why? It was because all the bidders (including the second highest bidder) should have known all the relevant legal provisions as well as the Practice Note and should have taken all the factors into consideration before submitting their tenders. Why should it be so? The difference between the

final tendering prices submitted by the second highest bidder and the highest bidder was only 1%. The second highest bidder did ask the Government whether (that factor) would be included in the gross floor area (GFA) calculation, and the authorities did answer that it would be included in the calculation. If we quantify this factor, it would represent a value of over \$100 million. What must be presumed is that the second highest bidder had already known it (the way of calculation) and still submitted the tender at the present tendering price, and such a tender price was not higher than that of the highest bidder. However, if the second highest bidder's tender price was higher than that of the highest bidder, then the Government would have incurred some losses.

On this issue, I feel that there is a contradiction. Why? Even if I accept that the second highest bidder had known all the relevant conditions very well, but judging from the *prima facie* evidence, he did make an enquiry by telephone, and the Government's reply was that it had to be included in the GFA calculation. Therefore, the answer provided would have possibly caused some uncertainties to the second highest bidder, that is, whether that factor would be exempted from the calculation. Therefore, he had submitted a certain tender price, which should have reflected the result of his telephone enquiry as well as the uncertainties so generated. On this basis, I would reckon the situation in this way: the uncertainties could not be regarded as "zero" because he did make the enquiry and the Government had really given such a reply, and at the same time, we cannot consider the official as completely wrong, false or what had said would never happen. Therefore, on this issue, it would be unjustifiable if we insist that the Government has not suffered any losses in public revenue.

However, very unfortunately, not only did I hear Secretary Michael SUEN say so the other day on the ICI's report, actually the Chief Secretary seemed to have said so in the beginning of his speech today. Please refer to the 16th paragraph of his speech. In fact, he said to this effect, "The bidders should have considered all the relevant factors, and their tender prices should have reflected these factors." In fact, such relevant factors should include that deliberate enquiry by telephone as well as the reply that such a factor would not be exempted. I feel that such factors must have made the second highest bidder reduce his tender price because the factor had generated some uncertainties. No matter how small such uncertainties are, they would still have the effect of slightly reducing his tender price.

Another point is, the PAC had asked the former Director of Buildings, Mr LEUNG Chin-man, what he would actually consider as public interest. Earlier on, some Honourable colleagues said that the benefits had actually gone to the developer because he can pocket an additional profit of over \$100 million, that is, the revenue he can generate from the sale of properties. Of course, the revenue he can generate may differ if properties are sold at the different prices. Calculating at the price at that time (that is, the amount of money that can be generated from the sale of each sq ft), the revenue so generated could amount to over \$100 million. The PAC asked him what kinds of public interest would be involved. As mentioned by some Honourable colleagues earlier on, he had not considered the nine items (or several items) of factors which he should have taken into account, and one of such factors is called public interest. Therefore, when certain colleagues in the PAC asked him what public interest was, he answered that public interest meant the provision of a public transport terminus (PTT).

However, I think this answer was actually most absurd. If Mr LEUNG should give such an answer in Court — I said "if" — I shall have difficulty in believing that the Judge would think that such an answer could reflect that he had exercised his discretionary power in good faith. Why? It was because it had already been explicitly specified in the tender document the provision of a PTT. If the provision of such a facility had already been specified in the tender document, and it was eventually provided, why should an additional amount of over \$100 million be paid to the developer? Can this be called "public interest"? Let me make one more assumption: At that time, someone might have proposed that, in view of the scarcity of trees there, if an exemption was granted, the developer will plant 50 additional trees there. Then at least there would be 50 additional trees on that piece of land, and you may say that the exemption was well justified. However, it was not the case in reality. The provision of something has already been specified explicitly in the tender document, and eventually it was provided, and still it was described as "public interest". If so, then the consideration must be irrelevant, and it must be a mistaken consideration.

Finally, if a disciplinary hearing has to be conducted, I think this point alone (the PAC cannot pursue this any further because no matter how we asked him, he always provided this answer) is sufficient justification for asking him in an internal disciplinary hearing conducted by the Government why he should

answer in such a manner. In a disciplinary hearing, he should be asked: Why should a facility that must be provided under any circumstances regarded as a factor of "public interest"? If he continues to answer the question with the same reply, then in fact we can only infer that he was not sincere and honest when he exercised his discretionary power in that case.

The third point I shall dwell on today will involve an even more significant issue, namely, the Government's action in seeking an additional legal opinion. This has been described in the 14th paragraph of the speech of the Chief Secretary. Originally the ICI said it (the decision) was wrong but reasonable, then it further explained what the mistake was and why it was reasonable — that is, considerations in the light of different scopes would produce different conclusions, and so on. However, after the Government has interpreted the incident in this way, it only reflected that the Government in fact did not accept that it (the decision) was wrong. In other words, the Government thinks that there was absolutely no mistake at all because the legal advice said that the ICI's interpretation of regulation 23(3)(b) of the Building (Planning) Regulations was too narrow, and that explains why the Government had sought another legal opinion. That additional legal advice adopts the view that the provision of the PTT can be considered as having complied with the spirit of that legislation, so it can be included in the scope of exemption. Under such circumstances, after going through the Government's final interpretation, the ICI is in fact saying that Mr LEUNG had been absolutely correct and reasonable. If so, it will create the contradiction. I hope the Government (*the buzzer sounded*)

PRESIDENT (in Cantonese): Mr James TO, the time is up.

MR ABRAHAM SHEK: Madam President, today, I shall not be talking about the details of the three reports, as many of my colleagues have eloquently spoken on. I shall somewhat be speaking on the constitutional crisis which this incident has brought about.

A public storm was raised with the release of the Independent Committee of Inquiry (ICI) report on the Grand Promenade. Why was such a public storm raised when normally, ICI reports are always welcomed? The answer is very simple: Even as late as this afternoon, the Chief Secretary for Administration said that the objectives of the three reports are more or less the same. This is

partially true. The results and the conclusions are more or less the same. This is for the public to decide.

Such a response by the Government totally surprises me. It speaks of the ICI and the Legislative Council as if in the same breath, even though the former was appointed by the Government and operated under closed door, while the latter operates under statutory powers and is guided by strict Rules of Procedure in open hearing, and by Members elected by the citizens of Hong Kong. It is beyond the comprehension of any reasonable man to accept such unreasonableness of the Chief Secretary for Administration's response.

The Basic Law stipulates that the Legislative Council's functions, among other things, include monitoring the work of the Government and examining the budgets. The Public Accounts Committee (PAC) is charged with the duties of examining the Audit Report. In examining this particular incident, the PAC has conducted detailed investigations and an open hearing. The PAC's conclusions and recommendations are conscientious, responsible and fair. However, it appears that the Government has adopted a defensive attitude and distrusted any investigation into this particular incident conducted by the Legislative Council, despite its repeated acceptance of PAC reports. This creates great confusion. Originally, the Audit Commission's Report and the PAC Report were presented to offer the true facts of this incident and provided clear and fair recommendations, as I said earlier. However, the Government then appointed its own ICI to conduct another investigation which it claimed would be "independent". "Independent" of what? Does it mean that the PAC is not independent? (*Laughter*) This has led to today's general debate, and that leads people to rightly or wrongly believe that the Government wants to establish a new monitoring system, when possible results of the PAC or the Legislative Council are not in its favour. Indirectly, this executive-led innovative way of creating new committees has violated the very system of separation of powers among the executive, the legislature and the Judiciary.

Madam President, with the said incident having progressed this far, I think it is essential for us to restate the Legislative Council's standpoint and review current executive-legislative relationship through today's debate.

The fact is, this issue is significant not only because of the contents of the reports, but also because of the Government's attitude towards the acceptance of separation of powers, which is one of the fundamental aspects of Hong Kong's

political system. The core questions are: Is the Government complying with this separation mechanism among the legislature, the executive and the Judiciary? Does the Government respect the Legislative Council, the responsibility of which is to monitor the Administration? And lastly, does the Government take the Legislative Council's recommendations seriously? In appointing the ICI, the Government directly and indirectly hints at the distrust and disrespect it feels towards the Legislative Council. This might not be true, but it gives us this feeling. Accepting the three reports with no preferential distinction, and equating the three-man ICI to the Legislative Council on the same basis show the Government's poor attitude towards the Legislative Council and its custodianship of the system of political system as enshrined in the Basic Law. We may not have universal suffrage for the election of the Legislative Council or the Chief Executive, but we do have a well-proven and established system of government and political system of the separation of powers among the executive, the legislature and the Judiciary. For this reason, Members of this Council zealously guard our powers for the good of Hong Kong.

Madam President, the divide which exists today between the Government and the Legislative Council can be attributed possibly to a mutual lack of trust. It also reveals that there has been little improvement in executive-legislative relationship and clearly, this incident is a case in point. Therefore, it is essential that this incident be handled properly to avoid any further deterioration of such important relationship.

To resolve this problem, we must resolve it at the root. The way to deal with this crisis hinges on the Government's attitude. If the Administration shows some respect towards the Members of the Legislative Council and is sincere in improving executive-legislative relationship, then it should take its actions in a practical manner and offer concrete responses.

With the experience gained in this particular incident, we should by all means enhance executive-legislative relationship with a rational and responsible attitude.

Thank you.

PRESIDENT (in Cantonese): Mr Abraham SHEK, your speaking time is up.

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

MR ALBERT HO (in Cantonese): Madam President, I seldom have this chance of supporting a motion moved by Dr Philip WONG, (*laughter*) so I must say a few words about it.

The most important spirit of today's motion is to uphold the constitutional authority of the Legislative Council; opinions in this regard are most significant. The three reports of course contain lots of viewpoints. We may conduct in-depth analyses, discuss and put forward all kinds of opinions, but Honourable colleagues who have spoken today, though they might belong to different parties/groupings and held widely divergent views on constitutional development in the past, are now all united in one voice to uphold the remaining, very limited and very little authority of the Legislative Council. In this regard, I am strongly in favour of this common stance. If such remaining authority is still being exploited and undermined, I really do not know what meaningful purposes does it serve for us, Members of the Legislative Council, to go on sitting here, doing so much work and holding so many meetings? How can we tell the people that we deserve to go on working here?

Madam President, I do not know what constitutes the essence of the spirit of "strong governance" advocated by Chief Executive Donald TSANG soon after he had assumed his present office. But I have witnessed two incidents: First, when the discussion on constitutional development was conducted in the Legislative Council, and when it progressed towards a point he considered no consensus could be reached, he established a new platform, the Commission on Strategic Development, saying that the views of its members could reflect the viewpoints of various sectors of society and the extensive views of society could be gauged; and that their conclusions could form the basis of discussion in the next stage. We feel most sorry about this. And the Secretary for Constitutional Affairs does not even wish to come to the Legislative Council to engage in dialogues with us.

Secondly, regarding this Grand Promenade incident, the Director of Audit had released his report and made his criticisms in it. Our tradition is very simple, the PAC conducts open hearings and invites officials to attend meetings to answer Members' questions and queries, so as to further follow up the opinions of the PAC. This mechanism has proven to be effective and widely

supported by the people and enjoys very high credibility. However, this time the Government had acted very abruptly by appointing a three-member Independent Committee of Inquiry (ICI). By establishing a new platform, the Government left people with the question whether it is adopting a confrontation stand against the PAC. Many Honourable colleagues have mentioned this point, so I do not wish to make any additional points.

Although (needless to say) the ICI's report arrived at very different analyses and conclusions from those of the PAC, Madam President, what surprises me most is a shocking point in the report, that is, the exclusion of the GFA of the PTT from calculation. The report considered that although it was a decision without any legal basis, the error was still reasonable because there had been some precedents and all the necessary procedures had been followed according to past practices. The Government immediately consulted the opinions of a senior counsel, and then said, oh sorry, such a practice is legal, so the opinions held by the Judge and the senior counsels in the ICI were wrong, and only that senior counsel consulted by the Government was correct. It means that the past exemptions did have legal backing, and that the ICI's interpretation was too narrow. The Government did not accept even this point. In other words, the Government intends to do some cut-and-past jobs with the three reports to produce a report that the Government thinks and finds acceptable. Why should it do this? Is it because the opinions of the Judge in the ICI are too authoritative, so the Government worries that the people may query whether the it had granted many exemptions to property developers through exercise of discretion with no legal basis, thereby causing a loss in public revenue amounting to over \$1 billion? Is this its fear? Madam President, if it has adopted such an attitude, I believe it is self-deceptive.

I know the Secretary is heavily loaded with his portfolio of duties. Though he is a Policy Secretary, he cannot be held responsible for each and every system that has been in use for decades. Likewise, the Chief Executive, Mr Donald TSANG, cannot be held completely responsible for the errors made by many officials in the past. It is all because they cannot have complete control over everything and conduct reviews of them and have all the mistakes rectified. We can hardly have such expectations, otherwise we must have an almighty person to take up the task before this can be done. However, at least we can demand the Government to be honest in addressing squarely the questions raised by us, facing the shortcomings of the system or mistakes caused by

shortcomings of the system. However, it has not been the case. The ICI appointed by the Government told it that such a problem did exist — certain parts of the ICI's report were already queried by the people, but this had become unimportant now — by pointing out that the discretion did not have any legal basis. In spite of this, such a mistake committed by him was still found to be understandable. That was the rough idea. However, even on this point alone, the Government refused to conduct an in-depth and comprehensive review of it and reflect upon what had gone wrong. Instead, it hastened to appoint another senior counsel to rectify this loophole. I do not know how many senior counsels the Government has consulted. A possible scenario could be: The Government might have consulted many senior counsels, but finally it could identify this senior counsel who put forward such an opinion. Is this what has actually happened? We have great doubts about such an attitude of the Government and feel most sorry about it. If we are unwilling to honestly face the problem uncovered and proceed to solve it, and instead just adopt a defensive attitude to protect ourselves — the officials just try their best to protect their posts, whereas the entire Government just tries to protect the overall reputation of the Government — refusing to review, reflect on and reform the shortcomings in the system, then as I witness the degradation of the "strong governance" to such an extent, I really feel pessimistic about our future.

I so submit.

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

DR FERNANDO CHEUNG (in Cantonese): President, frankly speaking, I am not at all versed in the property issues. I know more about the social welfare affairs. Therefore, I should learn more from Mr Abraham SHEK in this aspect. Regarding this Grand Promenade incident, I do not wish to repeat the arguments already mentioned by many Honourable colleagues earlier on. With regard to the relationship between the executive and the legislature, the approach adopted by the Government is somewhat self-deceptive. The PAC and the Audit Commission had conducted thorough examinations of the Grand Promenade incident, but the Government seemed reluctant to accept the conclusions made in their respective reports and instead set up an ICI. The conclusions of the ICI's report are very obvious. Although the report contains different information, the

Government accepts it in entirety. On this issue, I do not wish to repeat the arguments. But why am I so concerned about this issue? It is because social welfare entails public funds, but where do public resources come from? How should they be made use of? All these questions have a bearing on the overall public interest.

Let us take a look at the practice of exempting such so-called green facilities from gross floor area (GFA) calculation. This policy has been implemented since 2001. I found that the loss in public revenue resulting from such exempted GFA is rather stunning. I had raised a question to the Government in this regard. In mid-March, I submitted a written question and received a written reply from Secretary Michael SUEN on 26 April. My question explicitly requested the Government to provide information on each of the following items since the implementation of the policy: The amount of floor area exempted for green facilities; the additional floor area of each of these projects; the premium the developers had to pay for these additional floor areas and the current market value of such floor areas.

The Government replied that, given the time constraint, it was not possible to provide information on all the projects. However, the Government said that since the implementation of the policy, there had been 117 such relevant projects. Although the figure varies slightly from the 228 projects as reported earlier by the *South China Morning Post*, we still believe in the Government's reply that there had been 117 relevant projects; the total GFA exemption for green facilities amounts to 188 600 sq m, and a total premium of \$443 million had been paid in this regard. According to a rough calculation of the data derived from the additional floor areas and the amount of premiums paid, the average premium per sq ft is \$261.

Let us take a look at the current market price of the floor area, which is generally as high as \$3,000 to \$4,000 per sq ft. And such price is just the very ordinary price as far as the floor area of properties is concerned. However, Grand Promenade paid the premium for the additional floor area at the rate of \$261 per sq ft. We can see how much public revenue has been lost. And are those so-called green facilities really environmentally-friendly? We find that those so-called "sky gardens" are always so windy as if typhoon signal number three is hoisted. People standing in such places will become very shaky as if they are acrobats ready to perform in a flying trapeze show.

What benefits do such green projects bring to Hong Kong as a whole? What is their value? Their value is really spectacular — we find that the developers can get lots of exemptions, thereby generating tremendous additional proceeds. For Grand Promenade alone, the *South China Morning Post* estimates that the property developer can generate additional income amounting to over \$100 million. On the contrary, we have to fight to the best of our abilities to make the Government hand over five single-parent centres to us, so as to enable us to provide services to single-parent families. The five single-parent centres throughout Hong Kong only require a total expenditure of less than \$8 million in operating costs. According to my calculation, the Grand Promenade project alone can generate sufficient revenue to operate the five single-parent centres for 80 years.

President, for issues that I do not know too much, I do not wish to speak on them. However, while we have witnessed the generosity of the Government in this regard, it has completely ignored our requests for granting eye-glass allowances to the children, not reducing the CSSA substantially and providing slightly more allowances for the old, the weak and the handicapped. We now find how powerful the government officials are — as long as they like, they can put their signatures on the relevant papers, and over \$100 millions can go down the drain immediately.

President, I really have no clue as to what we should do about it. I can only hope that the Government can seriously examine the overall relationship between the executive and the legislature, and face positively the Legislative Council's findings arrived at open deliberations. In the meantime, the Government should really conduct a review seriously. Such so-called green facilities are nothing but excuses for massive transfer of interests, thereby preventing public revenue from serving the people adequately.

With these remarks, President, I support the motion.

MR ALBERT CHAN (in Cantonese): President, the final conclusion reached by the three-member ICI can be described as a rationalization of collusion between the Government and business, wastage of public money and bureaucratic incompetence.

President, the report of the ICI has come up with an astounding conclusion. In the first two sentences of page 2 in the ICI's letter to the Chief Executive, it is said that since Mr LEUNG made the decision after studying the relevant views, he should not be held responsible for any subsequent errors. This conclusion is indeed totally absurd. All bureaucrats will invariably study the relevant views in the course of policy-making. All policy decisions will invariably take account of the relevant views. But this time around, someone has decided the whole thing by himself, ignoring the importance of other opinions and making a decision which injures public interest and Treasury revenue and which funnels huge benefits, huge monetary benefits, to the real estate developer concerned. Actions must be taken to hold the decision-maker culpable. The conclusion reached by the report is truly incomprehensible.

I believe and am convinced that the Government has overtly or covertly indicated to the ICI that it should make a conclusion different from that of the Audit Commission. Why has the Government done so and made such an arrangement? It is indeed baffling. It seems that after noticing the disobedience of its left hand, the Government has instructed its right hand to cut off the left. In the end, the left hand has been cut off, but the right has also become largely crippled.

I believe that members of the public and most of those who have any knowledge of land planning will not accept the ICI's conclusion and recommendations. Criminal responsibility under the law and the responsibility associated with administrative blunders are two different matters. This committee of inquiry led by a Judge might have examined the issue from the perspective of the laws relating to corrupt and illegal practices and criminal responsibility. The Judge may not know anything about the basic operation of the bureaucratic administrative machinery. This may be a reason for the shameful and ridiculous conclusion. But then, to a certain extent, the Government has expressed its acceptance of the conclusion, thus highlighting the absurdity of the issue.

In quite a number of speeches, including his address in the Legislative Council today, the Chief Secretary for Administration has confirmed that the Government will totally accept and actively implement the recommendations of the Public Accounts Committee (PAC). But it has behaved like a person with split personality — when it sees something, it says it is superb, but later, when it comes across something else, something else that is opposed entirely to the

former, it also describes it as wonderful. This is absolutely not the kind of behaviour to be expected of a government advocating "strong governance".

I believe that the Secretary may feel aggrieved because the one who made the decision and gave the instruction might be higher in ranking than him. Of course, it is impossible for us to get any concrete proof. However, from the perspective of this theory and based on the Government's mode of operation, we can say that the recent series of events has definitely been not normal. Perhaps, some individual high-ranking government officials have been trying to harbour certain government officials under condemnation. They have thus been doing something secretly to protect these officials. That is why all these justifications have been advanced.

I very much hope that the Government can learn from Chinese history. I now wish to follow the example of "Uncle Wah" and talk about history. The story I wish to tell is about ZHUGE Liang executing MA Su in tears. MA Su was a highly capable government official who was thought of very highly by ZHUGE Liang. But MA Su committed a very serious blunder. And, for the sake of maintaining army discipline, ZHUGE Liang could not harbour and protect his trusted follower. Therefore, in the end, he had to behead MA Su in tears.

Our Government has not only ignored the sacred duty of the PAC but also turned a blind eye to public opinions. In order to meet the personal wish of individual high-ranking government officials, and influenced by personal sentiments, it appointed a committee of inquiry, thus ruining the relationship between the executive and the legislature and also the achievements of the PAC over the years. The Government has ignored the value of the existing system and the importance of public opinions. It has made the decision based on its subjective judgement. This cannot be called "strong governance" at all. This is only an act of harbouring one's subordinates and villains. Therefore, if the top echelons of the Government continue to act in this manner instead of conducting any review, the accountability of the entire Civil Service will be swept away. Also, other civil servants who were once aggrieved — especially those low-ranking civil servants who were either dismissed or disciplined due to some minor problems — will become even more furious. And, they may even make their own rulings to condemn the acts of top government officials harbouring their trusted subordinates and also the injustices done to other civil servants.

Therefore, I hope — the Chief Secretary for Administration and the Chief Executive are not here now and I will try to ask him again tomorrow — a review can be conducted. President, I support the motion.

MR ALBERT CHENG (in Cantonese): The debate today relates to the report of the three-member ICI. Many Members and public opinions all hold that the Government's appointment of the ICI is meant to uphold the Government's prestige in practising strong governance. I think differently.

In the past, whenever there were any controversies, such as the Antony LEUNG incident and the SARS outbreak, public opinions and Legislative Council Members would frequently demand the establishment of an independent committee of inquiry. This is actually a mechanism supported by Members all along. We all think that independent committees of inquiry can command both credibility and recognition. Concerning the ICI in this recent incident, I hope that Members can do some recollection with an objective and impartial attitude. When the ICI was first appointed by the Government, the whole idea was welcomed by both public opinions and Members. There was no disagreement at all.

But it has turned out that the report of the ICI is so very absurd. We must not be bad losers. We should not express welcome only when its report is to our liking and criticize it when it is not. Having said that, I must add that I do not support the ICI appointed by the Government. Why? President, we will usually demand the Government to set up an independent committee of inquiry when there is no investigation mechanism. But in the case of Grand Promenade, investigations could be conducted by the Public Accounts Committee (PAC) of the Legislative Council, and in fact, there was already an investigation report of the Government's Audit Commission. It was therefore unnecessary to set up an independent committee of inquiry. But why did Members (including me) support the idea? President, all was because the public knew that neither the Audit Commission nor the PAC had any power to examine or criticize government policies and hold any government officials accountable. At that time, the appointment of an independent committee of inquiry was welcomed widely in society because we all hoped that the committee could fulfil our expectation, whether or not it is reasonable and sound. We thought that the ICI would make a ruling on the government official who failed in

his duties. We even hoped that it would take actions or draw conclusions on his failure, so as to fill in the gaps left by the PAC and the Audit Commission. On this very basis, we accepted the proposal on setting up an independent committee of inquiry.

As I have pointed out, we must not behave like bad losers after the publication of the report. But I suppose the greatest failure of the Government or the most controversial point is the very furtive attitude it has adopted since the release of the report. As mentioned by the Secretary, the Government's attitude is obvious — all the three reports are correct. The Government's attitude is very infuriating.

Why did I say that the ICI is absurd? I have my justifications. In the fifth and sixth paragraphs of his speech today, the Chief Secretary for Administration outlines the terms of reference of the ICI. Quoted here is part of the fifth paragraph: "On the incident of the Sai Wan Ho site development, the Government noted that the public was concerned about the possible uncertainties in the exercise of discretionary power by the Building Authority (BA) on land development projects. The Government considered it necessary to conduct a detailed examination on the exercise of discretionary power by the former BA to be accountable to the public." I do not wish to waste any time, so here is part of the sixth paragraph: "At that time, the PAC was aware of this move of the Government, and members of the PAC generally considered that the work of the ICI set up by the Government and that of the PAC was of a different nature and not contradictory to each other." I will quote only these two paragraphs. The terms of reference of the ICI are very clear. It needs not consider the value-for-money factor, nor does it have to find out whether the Government has incurred any losses. This is the task of the Audit Commission, PAC members and Members of the Legislative Council (including me). As we understand from the fifth and sixth paragraphs, the ICI's investigation should be related to areas outside the terms of reference of the Audit Commission and the PAC. But the report stated that the Government had not suffered any losses and there were precedents.

President, in regard to precedents, we have had some arguments with the Secretary in the public hearings, and they are put on the record. By "precedent", it is meant that if the construction of government buildings is not

specified as a condition in the public auction or granting of a lot, the Government will have to grant extra floor area to the developer as compensation at a ratio of 1:5 in case it subsequently requires the developer to add public facilities to the project. This ratio is very attractive. This is the meaning of "precedent". But in the case of Grand Promenade, as early as at the grant of land, the developer already knew that a public transport terminus (PTT) must be constructed. Whether or not the Government would provide any benefits, the developer must still construct it. Why did the Government still provide additional floor area? It was a dereliction of duty of the Building Authority (BA) at that time. Mr LAU Kong-wah also pointed out that the Government had actually set down nine guidelines on the exercise of discretion, but the BA did not comply with them in giving his signature of approval. There was one more unacceptable thing which was not considered and even mentioned by the ICI. Before the bidding, a certain developer wrote to the Government (Contrary to what Mr James TO said, the developer did not telephone the Government). I must clarify this point. President, I now have the chance to make clarification. The developer wrote a letter to the Lands Department, enquiring whether the PTT would be included in the calculation of floor area. Having consulted the Director of Architectural Services, the Director of Lands replied that it must be included in the calculation. As a result, the developer included the PTT in its calculation and quoted a price that was 1% lower. In the end, it became the second successful bidder. But the ICI did not take account of this. I cannot understand why.

Moreover, the most infuriating thing about paragraph 9.51 of the report is its indirect criticism or condemnation of the PAC. Part of it reads: "Giving weight to the legal advice he considered.....Mr LEUNG's decision as BA was reasonable and not open to sound adverse criticism." Our report severely criticizes the BA, but the ICI's report indirectly criticizes us for partiality. I think this leads to freedom of speech implications.

Time is up. With these remarks, I support the motion. Goodbye.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Members wish to speak, I now call upon the Secretary for Housing, Planning and Lands to speak.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I thank Dr Philip WONG for moving the motion today. I am also grateful to Members for their valuable comments on this subject. I do not intend to repeat what the Chief Secretary for Administration has said in his speech. Instead, I would like to focus on giving an account of the progress and current position on the implementation of various improvement measures by the Government to address the recommendations put forward by the Audit Commission, the Public Accounts Committee of the Legislative Council (PAC) and the Independent Committee of Inquiry (ICI).

I wish to reiterate that we have all along been actively co-operating with the Audit Commission and the PAC and providing support to their work. We acknowledge their work and we will not change this in future. We are grateful to the PAC for examining in detail the report tabled last year by the Director of Audit on the value for money audits in respect of the development of site in Sai Wan Ho and for putting forth a number of constructive recommendations to the Government.

The Government has also been taking up this issue seriously. Following the Audit Report, we have been aware of the keen concerns of the public about the possible uncertainties in the Building Authority (BA)'s exercise of discretionary powers in the development project. In this connection, the ICI has been established to look further into the matter. The initiative was supported by the PAC and the public at the time. At that time, we have not received any comments that this action is not sensible, while we also have not heard any comments that this action would have any adverse impact on our constitutional framework. Moreover, the credibility of the ICI was well recognized.

In fact, the reports of the PAC and the ICI contain a number of similar recommendations on ways to improve the existing land development approval mechanism. In the motion moved by the Chairman of the PAC, the Government is urged to fully implement the recommendations of the PAC. I would like to take this opportunity to brief Members on the progress made by the Government in implementing the various improvement measures.

First of all, I shall speak on the pre-tender enquiries. In this connection, the PAC recommended that the Lands Department (LandsD) should, before the close of tendering of the land sale, publicize all enquiries received in relation to gross floor area (GFA) calculation and the answers given to the prospective tenderers; and in respect of the information to be publicized for the protection of prospective tenderers, a clear definition of "fundamental ambiguity" should be provided in the Lands Administration Office Instruction of the LandsD.

I wish to point out that it has always been our objective to enhance the transparency of the land sale procedures. For this reason, the LandsD has revised the relevant internal guidelines, clearly stating the circumstances under which the information provided to prospective land sale tenderers in response to their enquiries on uncertainties about the development parameters (such as GFA, carparking requirement, provision of government/institution/community (GIC) facilities) would be publicized on government websites and in newspapers.

In view of its concern over the development intensity of a site, the PAC recommended that the Planning Department (PD) should specify the maximum GFA for the site in the concerned outline zoning plan (OZP) and update the assessment made by the Department on the requirement of public facilities provision for the district before the land sale.

The Government fully recognizes the importance of having the planning intentions achieved. To meet the community's aspiration for a quality living environment, the Government is, together with the Town Planning Board (TPB), taking the initiative to progressively introduce restrictions on building heights and development intensity in the statutory town plans. Before the sale of a site, it is the normal practice of the PD to give advice to the LandsD on the maximum GFA of the proposed development project. To ensure that the district will be provided with sufficient public facilities for the community, the PD will also reassess the provision of public facilities in the district before the sale of a site, and inform the relevant departments accordingly.

The PAC also recommended that the LandsD should, where appropriate, incorporate into the lease conditions the site development requirements of the Hong Kong Planning Standards and Guidelines (HKPSG). In fact, it is the LandsD's current practice to incorporate into the lease conditions the site development requirements of the HKPSG. However, if the site development requirements relate to the provision of GIC facilities but the relevant user

departments cannot take up the facilities for maintenance and management due to the lack of a development programme or funding approval, after consultation with the user departments concerned, the LandsD will not require the provision of such facilities under the lease conditions. The Government will then require the facilities to be provided in another appropriate development site in future.

Regarding the provision of government accommodation, the PAC recommended that the Director of Architectural Services should draw up a set of accurate design requirements and that the relevant government departments should be notified if the Architectural Services Department (ASD) considers that the implementation of the original design parameters to be included in the lease conditions was not feasible. The PAC also recommended that the Director of Lands should pursue other feasible options with the relevant government departments to implement the GIC design requirements before the close of tendering if there are doubts about the original proposal.

In this connection, the ASD has reviewed the procedures for the preparation of the Technical Schedule to be included in the lease conditions. They will be adopted in the future provision of GIC facilities to ensure that the GIC design requirements are properly drawn to scale in the layout drawings for incorporation into the lease conditions of the site. If the ASD considers that the implementation of the original GIC design parameters to be included in the lease conditions is not feasible, it will notify the LandsD or the relevant government departments to make changes to and finalize the design parameters.

If doubts are raised by prospective tenderers on the feasibility of GIC design requirements, the LandsD will refer them to the user departments. The pursuit of any feasible alternative designs is a matter for consideration by the user departments. The LandsD will inform the prospective tenderers of the outcome of such relevant consideration and publish the relevant information before the sale of a site is successfully triggered, so that all prospective tenderers will be aware of the matters affecting the originally proposed GIC design requirements.

The PAC also recommended that the LandsD should, where appropriate, stipulate explicitly in the lease conditions of a site whether the government accommodation required would be included in the GFA calculation. If the lease conditions contain a maximum GFA clause, it is the LandsD's current practice to stipulate in the lease conditions whether the government accommodation required

would be GFA accountable in order that prospective tenderers can take this information into account when bidding for a site.

Insofar as site classification is concerned, the PAC recommended that the Buildings Department (BD) should fully consult other related government departments prior to the sale of a site before giving advice to them.

The BD has accepted the recommendation of the PAC and it will consult all relevant departments prior to the sale of a site on any factors affecting the site classification. The BD will also seek legal advice on any legal ambiguities about site classification. It has also put in place a mechanism which requires that advice on site classification provided to the LandsD prior to land sale will be subject to the decision of the Building Authority Conference only to ensure the consistency of relevant decisions.

The PAC also recommended clarifying the criteria of street for the purpose of site classification under the Building (Planning) (Amendment) Regulation 2005. We made amendments to the Building (Planning) Regulation to clarify the definition of "street" for site classification under the law to facilitate a clear classification of site so as to determine, beyond doubt, the development intensity of a site before sale. The amendment regulation came into effect on 31 December 2005.

As regards the granting of GFA exemption, the PAC recommended that the Director of Buildings should seek legal advice on unclear legal issues prior to the sale of land. In this connection, improvements have been made by the BD. For example, where there are any unclear legal issues concerning GFA exemption, the BD will seek legal advice before giving advice to other government departments. In order to clarify whether PTT needs to be included in GFA calculation, the BD has also revised the guidelines issued to the industry to make it clear that PTT has to be included in GFA calculation unless specified otherwise under the relevant statutory OZPs or there is a specific approval granted by the TPB for such exemption.

The PAC also recommended that improvement should be made on the arrangements for appointing external observers to attend the Building Authority Conference. In this regard, internal guidelines on the appointment of such external observers and their declaration of any conflict of interest have been

issued by the BD, and procedures and criteria for doing so have also been established.

On the question of granting of bonus GFA, the PAC recommended that the Director of Buildings should consult and reach a consensus with the relevant government departments before he grants any bonus areas in return for the dedication of areas for public use. We are happy to accept the recommendation made by the PAC in this regard.

As the BA may grant concessions not covered by lease conditions, to safeguard the Government's interest in this regard, the PAC recommended that the LandsD should stipulate, as appropriate, a maximum GFA clause in the lease conditions, and review the criteria for deciding whether or not the maximum GFA of a site should be specified. We will consider actively whether the maximum GFA should be stipulated. In the light of the PAC's views, the Housing, Planning and Lands Bureau (the Bureau) has initiated a review to study whether it is appropriate to include a maximum GFA clause in all the leases of Government land in the future.

As a matter of fact, if the development intensity of a site has been specified in the OZP, the lease should have normally spelt out the maximum GFA. If, from the planning point of view, there is no need to restrict the development intensity, laying down the maximum GFA in the lease, as we have said many times before, has both merits and demerits. I have clearly explained this at the hearing of the PAC. I have also made it clear that a delicate balance has to be struck between enhancing the certainty of lease conditions and obtaining the optimum sale price and this is not an easy task. The Government will carefully consider the recommendations made by the PAC and consult the Legislative Council, the industry, and the professionals concerned and stakeholders before determining the way forward.

The PAC is also concerned how the Bureau would improve the communication and co-ordination among the BD, the LandsD and the PD. The Government concurs with the PAC on the importance of effective communication and co-ordination among government departments in handling property development approval to achieve the planning intention.

The Bureau, PD, LandsD and BD are continuously working closely together in this aspect. The role of the Bureau is to formulate general policies

on matters relating to planning, land administration and buildings. In the process of land development, the three departments play their own roles according to the policies and the relevant legislation, and at the same time keep in close contact.

There are established mechanisms to discuss and resolve inter-departmental issues at various stages of the development process, including the District Lands Conference, Building Authority Conference and District Planning Conference. The departments will consult the Bureau for guidance on issues involving policy implications. The Bureau has also set up ad hoc groups and working groups, chaired by the representatives of the Bureau, to enhance co-ordination among the departments, in dealing with both ad hoc and individual matters, as well as systemic issues. The Government has undertaken to continue to seek improvements in this area.

The PAC has also stressed the importance for the BA to consider the factors listed in the relevant Practice Note in his exercise of discretionary powers. Indeed, to enhance accountability and transparency when exercising his discretionary powers granted to him under the Buildings Ordinance for processing various applications, the BA has issued Practice Notes on various subjects for reference by the industry. Internal guidelines have also been issued to serve as general guidance for relevant officers.

Applications will be submitted, depending on complexity, to the committees chaired by the Assistant Directors of the BD or the BA for consideration and approval. I would like to emphasize that the BA and officers authorized by him to exercise such discretion have to act in good faith, follow the law and the criteria promulgated in the Practice Notes and take into account all factors relevant to the issue under consideration in the exercise of discretion.

We also seek to further enhance transparency. The BD has published a summary of the matters considered at the Building Committee of the Department, and the decisions made, on the Department's website.

We also note the views of the PAC and the ICI on the different functions and duties of the BA and Director of Buildings. I would like to give a brief explanation here. The Director of Buildings is the head of a government department (that is, the BD). He is a civil servant responsible for the management of the department and its staff. He leads and directs the work of

the Department. He is also the Government's main advisor on all matters relating to the safety and health standards of private buildings. The BA is a statutory authority established under the Buildings Ordinance. He is responsible for the carrying out of the duties imposed on and the exercise of the powers granted to him under the Ordinance for controlling the safety and health standard of private buildings. These duties and powers include the approval of plans of new buildings, the regulation of the design and construction of building works, and the implementation of legislation by requiring owners to repair their buildings or slopes and to remove unauthorized building works.

Under the Ordinance, these duties are to be carried out and the powers exercised by the Director of Buildings. Therefore, when the Director of Buildings carries out such duties and exercises such powers, he is the BA. The actions that he takes and the decisions that he makes under the Buildings Ordinance are governed by the provisions of the Ordinance and the relevant legal principles.

From the above follow-up actions and improvement measures taken by the Government, it is clear that the Government has seriously considered the views of the Audit Commission and the PAC, and is determined to fully implement their recommendations.

Although the Government has accepted and is following up the above recommendations, the public still has an impression that the PAC and the ICI have made contradictory conclusions over the exercise of discretionary powers by the BA. I would like here to provide the following supplementary information.

The PAC has expressed alarm and strong dissatisfaction, and found it unacceptable that the BA exercised his discretionary power to exclude the PTT from the GFA calculation. The Government fully understands and appreciates that the PAC's conclusion was reached after a number of hearings. The ICI also conducted an in-depth study on the same issue and concluded that the discretion to exclude the GFA of the PTT from calculation was wrongly exercised. As far as the conclusions of both reports are concerned, instead of being contradictory as perceived by the public, they are similar.

The ICI further examined the issue that while the exercise of discretion was wrong, whether the BA has, before making the decision, endeavoured to

consider the issue carefully, made reference to previous cases, and consulted other parties at the Building Authority Conference and sought legal advice on the issue. The ICI concluded that the former BA should not be blamed. To prevent any recurrence of similar incidents in the future, the ICI put forward a number of recommendations to improve the inadequacy in the existing system. The recommendations mostly accord with those of the PAC. Therefore, on this basis, the Government accepts the ICI's conclusions on the BA's decision to exercise the discretion.

Another issue of public concern is the apparently different conclusions arrived at by the PAC and the ICI on the financial implications brought about by the BA decision to exercise the discretion. In the PAC report, it was pointed out that the BA's decision had negative financial implications. The tender price offered for the Site could have been higher if the PTT had been excluded from the GFA calculation. The Audit Report stated that the financial implications of excluding the PTT from the GFA calculation could amount to \$125 million, which means the value of the GFA concerned may be expressed in terms of \$125 million, and not that the Government has lost \$125 million in revenue. In this connection, I would like to explain the Government's understanding of the issue.

Firstly, I would like to cite some facts. The reserve price of the lot as assessed by the LandsD before the close of tendering was \$1,850 million. According to press reports which quoted the assessment made by members of the property and surveying sectors three to four days around the tender closing date, the value of the Site ranged from \$1,900 million to \$3,000 million. In the end, the actual tender price was \$2,430 million, almost \$600 million above our reserve price.

Why is there a considerable difference between the reserve price, the valuation and the actual price paid? The reason is that under the existing system, tenderers are aware that they can put forward different designs to the BA and apply for the exemption of certain facilities from GFA calculation. I am now quoting the part relevant to this point from ICI's report, "It is impossible to judge how the successful bid was calculated. However, the price paid was considerably more than the reserve price. In an open market situation in a highly sophisticated industry such as in Hong Kong, the assumption is that all the factors were taken into account and the best market price was obtained." (End of quote) On this basis, we agree and accept the ICI's conclusions.

We believe that in bidding for the Site, tenderers should have considered all the relevant factors, including the application they might make to the BA for exemption of various items from GFA calculation, the market price they might obtain for the development, and so on. Such factors should have been reflected in their bids.

Certainly, no other parties, except for the individual tenderers, could tell the exact extent to which their bids for the Sai Wan Ho development project were affected by their expectation that the BA would approve the exemption of the PTT from the GFA calculation. As such, we cannot assume that the Government has lost \$125 million in revenue because of the exemption.

However, as pointed out by the Chief Secretary for Administration earlier, the Government understands the public concern that they are not clear about the actual development potential as reflected by the price offered by the developer, and thus they may have some doubts about it. In view of this, the Government has accepted the recommendations of the PAC and the ICI, and revised the guidelines issued to the industry to state clearly that all PTT will account for GFA, unless the relevant OZP stipulates other requirements or a specific planning approval has been granted by the TPB. This will serve to remove the doubts of the public about the matter.

President, finally, I would like to emphasize the partnership between the Government and the PAC in promoting the efficiency and cost-effectiveness of government departments. The Government will continue to monitor the implementation of the improvement proposals put forward by the PAC and submit periodic reports to it.

Thank you, President.

MR LAU KONG-WAH (in Cantonese): Secretary, can you please clarify a certain part? May I request the Secretary to clarify a certain part of the speech he has just delivered?

PRESIDENT (in Cantonese): Mr LAU, you have missed the juncture at which you may interrupt. You should have immediately risen to ask the Secretary to

clarify when he came to that part of his speech. If he was willing to make the clarification, he might listen to your question. If he was unwilling to make the clarification, he might go on delivering his speech.

MR LAU KONG-WAH (in Cantonese): Does it mean that, at the present time, I can no longer ask the Secretary for a clarification?

PRESIDENT (in Cantonese): Yes.

PRESIDENT (in Cantonese): Dr Philip WONG, you may now reply. You have four minutes 29 seconds.

DR PHILIP WONG (in Cantonese): Madam President, I wish to thank all the 23 Members who have spoken in support of the motion as well as the conclusions and recommendations made by the Public Accounts Committee (PAC). And I would also like to thank the Chief Secretary for Administration for explicitly stating that the Government accepted all the recommendations made by the PAC and would proactively implement them. Madam President, though the major points of emphasis of Members may not be the same, this has exactly illustrated the characteristics of a democratic council, that is, the co-existence of diversified viewpoints and the tolerance of different voices. With the support from this Council, the PAC will work even harder in future in order to fulfil its responsibility of monitoring public expenditures as well as ensuring that all public expenditures are spent in a proper manner.

I would like to point out that the PAC does not oppose to the exercise of discretionary power by officials. Instead, the PAC is of the opinion that, when they exercise their discretionary power, they should take all relevant factors into consideration and attach appropriate weightings to such factors. However, there is a voice in society which holds that this motion moved by me will deter future Building Authority from exercising his discretionary power, and will have far-reaching negative impact on land development. I trust our senior civil servants would not harbour the mentality of "doing less means erring less".

Earlier on, some Members requested the Government to declare its stance, that is, choosing between these two reports. How the Government should act on the Independent Committee of Inquiry (ICI)'s report is an issue that it has to handle. The Secretary and the Chief Secretary are very important officials in high positions. They must have the capability to distinguish between right and wrong. I hereby call on them to really and sincerely support the PAC's conclusions and expeditiously implement its recommendations, so as to eliminate the misunderstanding in society caused by this incident to the effect that the public has been led to think that there is a deterioration of relationship between the executive and the legislature. Regarding the Government's action in establishing the ICI to study the Director of Audit's report before the PAC can do so, the PAC and the Financial Services and the Treasury Bureau will rectify this. I must state this explicitly, regarding the Government's decision to establish the ICI, the PAC did not have any knowledge of it beforehand and had not made any open comments in this regard.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Philip WONG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Miss TAM Heung-man voted for the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present and 23 were in favour of the motion; while among the Members returned by geographical constituencies through direct elections, 22 were present and 21 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

PRESIDENT (in Cantonese): Second motion: Financial assistance to patients of Severe Acute Respiratory Syndrome and their families.