

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 4 May 2011

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE LEE CHEUK-YAN

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

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE ALBERT HO CHUN-YAN

DR THE HONOURABLE MARGARET NG

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION, AND
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

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

PROF GABRIEL MATTHEW LEUNG, J.P.
SECRETARY FOR FOOD AND HEALTH

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

MS JULIA LEUNG FUNG-YEE, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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

CLERKS IN ATTENDANCE:

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2011	59/2011
Food Safety Ordinance (Commencement) Notice	60/2011
Hong Kong Airport (Control of Obstructions) (Exemption) (Amendment) Order 2011	62/2011

Other Papers

No. 89 — Language Fund
Audited financial statements together with the Report of the Director of Audit for the year ended 31 August 2010

No. 90 — Report by the Trustee of the Correctional Services Children's Education Trust for the period from 1st September 2009 to 31st August 2010

Report No. 20/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First Question.

Means of Toll Payments for Tunnels and Roads

1. **MR CHAN KAM-LAM** (in Cantonese): *President, given that there have been comments that as motorists may make toll payments for tunnels and roads only by Autotoll or in cash at present, it is inconvenient to them and results in longer time for cars to pass through the toll booths, will the Government inform this Council:*

- (a) *whether it knows the current number of Autotoll accounts, and the percentage of vehicles paying by Autotoll in the total number of vehicles using these tunnels and roads in each of the past five years;*
- (b) *given that the authorities have indicated that they keep an open mind about and encourage the introduction of new toll collection systems for tunnels and roads, whether the Government has discussed with the Octopus Cards Limited (OCL) the payment of tolls by Octopus cards; if it has, of the progress; if not, the reasons for that; and*
- (c) *whether the Government or tunnel operators had conducted any survey in the past three years to obtain the views of tunnels and roads users on the means of toll payments; whether they had conducted a feasibility study on accepting toll payments by Octopus cards; if they had, of the outcome of the study; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, both manual and automatic toll collection lanes are available in all tolled tunnels and roads in the territory for motorists to pay the toll fee either in cash or electronically. The first automatic toll collection system in Hong Kong was installed by the Autopass Company Limited at the Cross Harbour Tunnel and Aberdeen Tunnel in August 1993. The Electronic Toll Limited then installed another automatic toll collection system at the Tate's Cairn Tunnel in September 1995, and the Shing Mun Tunnels and Tseung Kwan O Tunnel in October 1997.

As "Autopass" and "Electronic Toll" were two different systems and were designed separately, if motorists needed to use the tunnels installed with different automatic toll collection systems, they had to apply for two electronic tags and pay administration fees to both companies. This was inconvenient to motorists. Since October 1998, the automatic toll collection systems of all the tolled tunnels and roads have all adopted the "Autotoll" automatic toll collection system.

To subscribe to the "Autotoll" service, a vehicle owner is required to open an account with Autotoll Limited and display a tag containing information of the vehicle concerned on his vehicle. Vehicles with such a tag need not stop at the toll booth, and the tunnel or road tolls are deducted from the users' account by the toll system management company.

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

- (a) There are currently nine tolled tunnels, namely, the Cross-Harbour Tunnel (CHT), Eastern Harbour Crossing, Western Harbour Crossing, Lion Rock Tunnel, Aberdeen Tunnel, Shing Mun Tunnels, Tseung Kwan O Tunnel, Tate's Cairn Tunnel and Tai Lam Tunnel, and two tolled roads, namely the Lantau Link and the Tsing Sha Highway (Sha Tin — Cheung Sha Wan Section) in Hong Kong. All of them are equipped with the "Autotoll" automatic toll collection system. According to the information provided by Autotoll Limited, there are currently about 250 000 Autotoll tags in circulation. Between 2006 and 2010, the annual number of vehicles using the "Autotoll" system represents about 40% to 60% of the total traffic flow of individual tolled tunnels and roads. The average utilization rate of the "Autotoll" system remained at about 50% over the past five years. The utilization rate of the "Autotoll" system at individual tolled tunnels and roads has been circulated to Members at Annex for reference.

(b) and (c)

Vehicles using the "Autotoll" system can save time by not having to stop at the booth to pay the toll. Compared with manual toll collection, the "Autotoll" system can enhance toll collection efficiency at tolled tunnels and roads and is beneficial to the management of tunnel portals.

The Government keeps an open mind about introducing new toll collection systems for tunnels and roads. We have been discussing with the OCL on the introduction of an Octopus toll collection system for tunnels and roads, and studying the technical feasibility of its proposed toll collection system. In considering the introduction of a new automatic toll collection systems for tunnels and roads, apart from providing another alternative for motorists to pay tolls, we need to explore the technical feasibility of such a system (such as the interfacing of the proposed system with the existing toll collection system of the tolled tunnels and roads) and other relevant factors, including whether adoption of an Octopus toll collection system can enhance toll collection efficiency, achieve a smoother traffic flow at the tunnel portals as well as its cost-effectiveness.

Further to the discussions between the Government and OCL in recent years, the preliminary proposal made by OCL is that its toll collection system would adopt a "stop-and-pay" mode, that is, motorists would need to stop the vehicle at a toll booth and place the Octopus card at the card reader to effect payment. This is similar to a "semi-automatic toll collection system". We have explored with OCL the technical feasibility of installing its proposed Octopus toll collection system at existing tolled tunnels and roads. OCL considered that Octopus card readers and associated software need to be installed at the existing toll collection system and interfacing problems between the Octopus system and the existing toll collection system would need to be resolved to ensure that the new toll collection system will not affect the operation and reliability of the existing one. OCL's preliminary conclusion is that the proposed system should be technically feasible.

However, apart from technical feasibility, we also need to consider the cost-effectiveness of the relevant proposal. Under the payment mode proposed by OCL, toll collectors still need to manually select the appropriate toll for each vehicle according to its vehicle category. Therefore, there might not be much manpower savings. Besides, as a motorist still needs to stop the vehicle and present the Octopus card for payment, there may only be slight, if any, improvement to the vehicular flow at the tunnels. Furthermore, there might be unnecessary delays when a motorist's Octopus card does not have

sufficient balance. If the toll collection system proposed by OCL were to be adopted, OCL will charge the costs of purchasing and installing the relevant Octopus facilities, as well as the administration and maintenance fees for operating the system. Whether the relevant expenditure is cost-effective requires further study. The Government will continue to explore the above issues with OCL.

Annex

Utilization Rate of Autotoll Systems at
Individual Tolled Tunnels and Roads in the Territory

<i>Tunnel/Road</i>	<i>Utilization Rate of Autotoll (%)</i>				
	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Cross-Harbour Tunnel	39%	39%	39%	39%	40%
Eastern Harbour Crossing	53%	52%	52%	52%	51%
Western Harbour Crossing	60%	58%	58%	58%	57%
Lion Rock Tunnel	48%	48%	47%	47%	46%
Aberdeen Tunnel	53%	52%	52%	53%	52%
Shing Mun Tunnel	44%	44%	44%	44%	43%
Tseung Kwan O Tunnel	48%	47%	47%	48%	47%
Tate's Cairn Tunnel	56%	55%	55%	57%	56%
Tai Lam Tunnel	57%	58%	59%	61%	60%
Lantau Link ⁽¹⁾	48%	47%	47%	47%	46%
Tsing Sha Highway (Sha Tin — Cheung Sha Wan Section)	N/A	N/A	47%	49%	48%
Total	51%	50%	50%	51%	50%

Note:

- (1) Since the Autotoll service is only available for the traffic leaving Lantau, the number of Autotoll transactions has been doubled to reflect the utilization rate of the two-way traffic.

Source: Autotoll Limited

MR CHAN KAM-LAM (in Cantonese): *President, it can be seen from the Secretary's main reply that the Government's major consideration is whether or not the traffic in the lanes can flow smoothly. We use the CHT or other tunnels every day and always find the lanes for vehicles using the "Autotoll" system to be very congested. May I know if the Secretary is aware of this? At present, the major cause of traffic congestion at a number of harbour crossings is the two or three "Autotoll" lanes, but the Government has never considered ameliorating the existing traffic congestion problem caused by "Autotoll" lanes at present.*

In addition, apart from the consideration of smooth passage, another major consideration of consumers or motorists is convenience. Apart from discussing the technical feasibility, may I know the Government's discussions with the OCL on other issues relating to charges? Has it ever considered the possibility that the charges can be reduced to a minimum if the Octopus system is installed in these lanes or the toll collection booths, so that convenience for motorists can be enhanced?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Member said just now that one of our considerations is smooth passage through the toll collection lanes. Of course, we hope that motorists can have different choices. At present, regarding the traffic flow, as I pointed out in the main reply, some 40% to 60% of the motorists use the automatic toll collection system. In respect of the toll collection lanes, about 30% to 40% of them are served by the automatic toll collection system. We think that the present traffic flow management is appropriate. Of course, we will continue to monitor the present situation. We all understand that during the rush hours, traffic congestion occurs at the CHT but we consider it most imperative to give motorists choices. At present, both the manual and automatic toll collection lanes are meant to give motorists choices.

As regards the discussions with the OCL, technical feasibility is certainly one of the aspects but I believe that the interface problems between the systems must be solved first and the next step will be related to the charges because this matter involves not just motorists. As I explained earlier on, if Octopus card readers are installed in the manual toll collection lanes, how much cost will be incurred? It is also necessary to examine this matter. At present, there are a total of 67 manual toll collection lanes at all tunnels and if the choice of toll

payment by Octopus card is to be provided in all the lanes, be it through the installation of card readers or some other future toll collection system, it can be studied only as the next step.

MR CHEUNG HOK-MING (in Cantonese): *President, the use of the Octopus card is commonplace in Hong Kong society and even primary school students can now use it to make purchases at the tuck shops in their schools, yet the tunnels still do not accept toll payment with the Octopus card. Residents of the New Territories seldom go to the urban areas, so not many of them have subscribed to the "Autotoll" service. If they need to use the tunnels, they only have two choices: If they have the exact amount of money, they can pay the exact toll, otherwise, they have to get the change back and the queues in these lanes are often longer. All along, we have been considering the technical feasibility and the Secretary also pointed out just now that this payment method was technically feasible, the only problem being that it may not be possible to lower the cost. May I ask the Secretary if it is because the use of an Octopus system will increase the cost that it may not be possible to lower the cost and the tunnel tolls will increase instead? Are there figures to support this point? If the cost will not be increased but the traffic flow can be speeded up, why does the Government not take on board this proposal?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, on the question of whether this "stop-and-pay" mode can speed up traffic flow, our preliminary view is that the efficiency of this toll collection method is more or less the same as that of paying the exact toll, that is, it is not true that the use of the Octopus card can raise the efficiency significantly. As I explained in the main reply, since the Octopus system cannot enable us to identify whether the passing vehicle is a truck, taxi, private car or other types of vehicle, when motorists use manual toll collection lanes, the workers in the booths still have to select the vehicle type and applicable toll before motorists can swipe their cards. Although this mode requires this additional step, we think one of the advantages is that consumers can have another choice, albeit it may not be possible to speed up traffic flow or raise the efficiency significantly. However, we still think that it is necessary to continue to discuss with the OCL.

I said just now that technically, there should not be any problem but it is also necessary to consider the interface between the Octopus toll collection

system and the existing system as well as the overall operation. I think cost-effectiveness is one of the considerations, but it is not the only consideration.

MR ALBERT CHAN (in Cantonese): *President, in the past, the OCL was beset by problems, including the misuse of personal data, and many licencees of green minibuses have reflected to me their discontent with the charges and administration of the OCL and consider them to be very unfair to green minibus companies operating with a small capital.*

Basically, the OCL is a private company. Some Members pointed out that the Government, in finding ways of making greater use of the Octopus card, is actually helping a private company, so it is perhaps using its public powers to help a private company make inordinate profits in another way.

If the Government considers the Octopus to be a very important public service, does it have any plan to nationalize the OCL, so that this service will be provided entirely by the Government and the rights and data of the public can be protected, thus unlike the case in the past, when individual executives could abuse their power to lead to the leakage of the data of the public and affect the public?

PRESIDENT (in Cantonese): Mr CHAN, your supplementary question bears no direct relevance to the main question.

MR ALBERT CHAN (in Cantonese): *This is not so, President, because the original proposal is to enable motorists to use the Octopus card to pay tunnel tolls. My reasoning is that since the OCL is a private company, if the Government really wants to look into this matter, it should include the nationalization of the OCL in its study*

PRESIDENT (in Cantonese): Are you asking the Secretary if the OCL will be nationalized, such that the Octopus card can be used to pay tunnel tolls?

MR ALBERT CHAN (in Cantonese): *Yes, this is precisely the whole logic.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I cannot see the logical relationship between nationalizing the OCL and using the Octopus card to make various types of payments because at present, be it in convenience stores, other places or on public transport, the Octopus card can be used.

As regards the incident mentioned by the Member, be it in relation to the transfer of data, the method of handling adopted by the OCL or the existing Personal Data (Privacy) Ordinance, as far as I know, the Government will submit the relevant legislative proposals to the Legislative Council this year. In other words, on the protection of personal privacy, efforts have been made and the protection in law will also be enhanced.

I believe that bearing this in mind, if Members suggest that consumers should be given one more choice, I think it is worthwhile for us to examine it and we are also conducting a study in this direction. As I said just now, what stage has the study now reached? Technically, we believe it is on the whole feasible but operation-wise, there is still a host of issues that call for continued study.

On the whole, I believe Members will all agree that it is certainly desirable to give consumers more choices, but if we relate this matter to personal privacy, we think it may not be logical. However, even in respect of the protection of personal privacy, we have also made efforts.

MR ALBERT CHAN (in Cantonese): *President, she did not answer my supplementary question. What I mean is that if the Government wants to conduct a study*

PRESIDENT (in Cantonese): Are you asking the Secretary if the OCL will be nationalized before all else?

MR ALBERT CHAN (in Cantonese): *Yes, but she did not answer this in any way.*

PRESIDENT (in Cantonese): Secretary, will the OCL be nationalized before consideration is given to using the Octopus card for the payment of tunnel tolls?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we do not have such a plan.

MS MIRIAM LAU (in Cantonese): *President, according to part (a) of the main reply, in the past five years, the number of vehicles using the "Autotoll" system accounted for about 40% to 50% of the annual number of vehicles using individual tolled tunnels and the average was 50%. Take the CHT as an example, the utilization rate of the "Autotoll" system is 40% but in fact, the number of vehicles using "Autotoll" booths is far smaller than that using manual toll collection booths, and this is the case both at the CHT and other tunnels. Of the 16 toll collection booths at the CHT, only four are "Autotoll" booths. In other words, tolls are collected manually at all the other booths. At the CHT, for example, the manual toll collection booths handle 60% of the vehicles but they need 75% of the booths to do so. Obviously, the traffic congestion at that tunnel is due to the fact that the traffic flow through the Autotoll booths is fast but that through manual toll collection booths is slow.*

Will the Government consider, particularly with regard to the CHT, encouraging more vehicle owners to use the Autotoll system by such means as increasing the number of Autotoll booths or discussing with the company concerned a reduction in the deposit for the tag and the monthly administration fee, so as to encourage more vehicle owners to actively use the automatic toll collection system when using the tunnels?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, Ms LAU has put it very correctly. As I said when answering another supplementary question, the traffic flow handled by the automatic toll collection system is about 40% to 60% and the average is 50%, but in terms of lanes, 30% to 40% of them are served by the automatic toll collection system. I think the

underlying rationale is easily understandable, that is, we hope that a balance can be struck, so that the public can have choices. Some of them need to change their money but others do not, so the latter can pay the exact toll in cash, while there are also a lot of motorists who use the automatic toll collection system. It is undeniable that the efficiency of the automatic toll collection system is higher because there is no need to stop and pay, so even though there are fewer automatic toll collection lanes, their handling capacity is higher than their percentage in the total number of lanes.

As regards whether or not it is necessary to increase the number of automatic toll collection lanes at certain tunnels, for example, the CHT, of course, we will continue to discuss with the companies concerned in view of the situation. However, regarding the question of whether or not, the administration fee or deposit can be reduced as an incentive, in fact, these two matters should be determined by the company concerned on its own. There is no requirement that they be subject to government approval because we have not signed any operation contract with the company concerned. However, we will encourage the company to consider this suggestion.

In fact, the deposit is mainly for the tag and if motorists no longer use the automatic toll collection tag, the full sum of \$150 will be refunded, whereas the administration fee is charged on a monthly basis. I will reflect this to the company concerned, in the hope that it will do something about this and see if there is room for downward adjustment. Certainly, it is also necessary for the company to charge a certain amount of administration fee to maintain the operation of the system.

MS EMILY LAU (in Cantonese): *President, in the process of considering the automation of the toll collection systems of tunnels and roads, of course, it is necessary to consider if efficiency can be enhanced and the relevant technical issues. However, have the authorities also considered the fact that excessive automation will make some people lose their jobs, particularly low-skilled workers? The Government has already introduced automation on many access roads, thus leading to the loss of many job openings. If it wants to carry on in this way, how will the authorities deal with this aspect?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we think that a balance has already been struck. As I explained just now, although the automatic toll collection system handles 40% to 60% of the traffic flow, only 30% to 40% of all lanes are equipped with such a system. Therefore, a certain level of manpower still has to be maintained to man the manual toll collection booths, be it those requiring the payment of exact tolls or those with changing service. To motorists, this is very important because it gives them choices, particularly bearing in mind the fact that the automatic toll collection system is not a free system and users have to pay a monthly fee. Therefore, we think that a balance needs to be struck.

At present, a balance has been struck between the management of traffic flow and the allocation of lanes generally, so we have no plan to increase the degree of automation significantly.

MS EMILY LAU (in Cantonese): *President, the Secretary has not replied as to how many jobs were lost as a result of automation?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I do not have the actual figures on hand. I believe it is not possible to introduce automation overnight and each year, we would request the tunnel companies, be it private companies or those operating on a contract basis, to maintain a certain level of manpower in accordance with the contract because tunnels are very important transport facilities, so there must be adequate manpower to handle the traffic flow, toll collection and work in other areas. We have requirements in respect of manpower.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. We will now proceed to the second question.

Enhancing Emergency Ambulance Services to Facilitate Patients to Switch to Private Healthcare Services

2. **MRS SOPHIE LEUNG** (in Cantonese): *President, before putting my question, I must declare that I had served as the chairman or a member of the*

governing committee of a number of public hospitals. At present, I am the chairman of the Clinical Governance Committee of a private hospital.

At present, unless patients can prove that they must be taken to designated hospitals for treatment because of special medical needs, emergency ambulances managed by the Fire Services Department (FSD) in general will take them to the Accident and Emergency (A&E) department of the nearest public hospital. In this connection, will the Government inform this Council:

- (a) whether it knows the current number of private hospitals offering A&E services and 24-hour out-patient service in Hong Kong; whether the Government has any plan to encourage private hospitals to provide A&E services; of the Government's estimation, in view of the expansion of services by private hospitals, of the division of work between public and private hospitals and their respective positioning in the provision of A&E services;*
- (b) whether the Government will study amending the guidelines for conveyance of patients by emergency ambulances, such as setting up a mechanism under which ambulances may take patients, who are in semi-urgent condition, to private hospitals for treatment according to their requests even if they cannot prove that they have special medical needs; if it will, of the details; if not, the reasons for that; and*
- (c) whether the authorities have tried to collaborate with the trade and charity organizations to develop the market for paid semi-urgent and non-urgent ambulances services, or even cross-boundary patients conveyance service, so as to facilitate patients who are financially better-off to switch to private healthcare services, thus alleviating the burden on public healthcare services; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, at present, A&E services in Hong Kong are mainly provided by the Hospital Authority (HA). The HA has set up A&E departments in 16 public hospitals under its seven clusters to provide service to the public in different districts across

the territory. Generally, hospitals provided with A&E departments must be specially designed and be able to provide other specialist services at the same time and be equipped with appropriate staff and facilities, in order that comprehensive support and treatment could be provided to patients in critical conditions. Having regard to the needs of the patients conveyed to A&E departments, hospitals may transfer these patients to other departments for further diagnosis or arrange them to receive suitable specialist surgery. My reply to the various parts of the question is as follows:

- (a) Services provided by private hospitals are subject to regulation by the Department of Health (DH). The existing Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes (the Code of Practice) issued by the DH sets out the requirements for implementation by private hospitals as well as requirements for various types of clinical and supporting services. As for A&E services, the Code of Practice specifies that hospitals operating A&E services must provide, on a 24-hour basis, an adequate range of pathology service, radiology service, operating theatre service, pharmacy and dispensing services, intensive care service, cardiac service and other related supporting services appropriate to the needs of patients in emergency. On staffing and skills training, private hospitals are required to appoint a specialist in emergency medicine to assume overall responsibility of the A&E services, and arrange medical practitioners who are competent in emergency medicine and nurses and staff who have received relevant specialist training for duty at the A&E department for provision of services. In addition, private hospitals are required to have a policy in place to mobilize additional personnel to attend to emergency situations. They should also review regularly their facilities, equipment and staff training in relation to A&E service. The DH will inspect the private hospitals from time to time to ensure that their service standard, equipment and staffing are in compliance with the requirements.

With a view to enhancing the overall service capacity and service quality of our local healthcare system to cope with increasing service demand, the Government has been proactively promoting and facilitating development of private hospitals. We encourage private

hospitals to provide a wide range of services to cope with the demand of the community. In determining whether to provide a specific kind of service, private hospitals will take into account service demand as well as availability of supporting services, staffing arrangement and ancillary facilities in their hospitals. Since the provision of A&E service requires the support of other facilities and specialist services, in general private hospitals may not be able to provide A&E service. At present, 24-hour out-patient services are available in seven of the 12 private hospitals, with one of them providing A&E service as well.

- (b) At present, emergency ambulance services in Hong Kong are provided by the FSD. The FSD is committed to providing prompt and effective emergency ambulance services for people in need. To ensure timely medical treatment of patients and prudent use of public resources, ambulances convey emergency patients to the nearest A&E department or clinic under the HA. The A&E service currently provided by the HA serves different districts across the territory. The relevant hospitals are also able to provide the required supporting facilities and services. Patients requiring urgent medical care are therefore mainly transferred to A&E departments or clinics in public hospitals for treatment.

In addition, to prevent the abuse of public resources and the negative impact on the use of ambulances by other patients in emergency, a patient who requests conveyance to a designated private hospital must produce a valid certificate endorsed by the private hospital or a private doctor. The certificate, on one hand, is meant to prove that there is a need for the patient to be conveyed by ambulance for treatment at a designated hospital. On the other hand, it is also required to confirm that the private hospital concerned will admit the patient. The conditions of the patient must also be stable for possibly longer journey. We note that the Security Bureau has liaised with the Hong Kong Medical Association and the Hong Kong Private Hospitals Association on the abovementioned arrangement.

- (c) The existing A&E and emergency ambulance services provided by the HA and the FSD respectively can cope with the demand in general. Currently, no private ambulance service or cross-boundary

patient transfer service is provided in Hong Kong. As exchanges between the Mainland and Hong Kong have become more frequent, the Government has been maintaining communication with the relevant Mainland authorities to explore how to facilitate referral of Hong Kong residents from the Mainland to Hong Kong for treatment. The HA has reached an agreement with the relevant authorities of Shenzhen to implement the transfer of patient records of Hong Kong residents on a pilot basis starting from the first quarter of 2011. Designated hospitals in Shenzhen and Hong Kong will work in co-ordination under the arrangement. When a Hong Kong resident who has received treatment in a designated hospital in Shenzhen is transferred to Hong Kong for treatment, the hospital can pass the patient's clinical record to the designated hospital in Hong Kong to facilitate direct liaison between the hospitals in the two places after the patient has been transferred back to Hong Kong. The arrangement is only applicable to patients who participate on a voluntary basis and are in stable condition.

As regards the provision of cross-boundary ambulance service and non-emergency patient transfer service, it involves the key issue of patient safety and also other complicated issues relating to regulation, such as qualifications and training of the healthcare personnel providing the services, vehicle specifications of the ambulance and road safety, regulation of equipment for emergency services and service quality, and so on. The Government will continue to closely monitor the demand for cross-boundary patient transfer service and explore in detail any feasible model and arrangements for the provision of such service.

MRS SOPHIE LEUNG (in Cantonese): *First of all, President, thanks to the Secretary for such a detailed reply. In the reply to the last paragraph of part (b) of the main question, the Secretary mentioned that a patient who needed transfer to a private hospital must produce a valid certificate endorsed by the private hospital or a private doctor. As many people are unaware of this requirement, many patients are first taken to public hospitals against their wish, which in turn aggravates the burden on public hospitals.*

It was also mentioned in the last paragraph in that part of the reply that the Government "notes that the Security Bureau has liaised with the Hong Kong Medical Association (HKMA) and the Hong Kong Private Hospitals Association on the abovementioned arrangement". In this connection, may I ask why the DH does not play any role? The DH should be in a more suitable position to determine how the relevant certification can be more specific. In other words, the DH should have a better idea of the medical requirements, and the Security Bureau should not handle this instead. Can the Secretary respond to this?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, thanks to Mrs Sophie LEUNG for her supplementary question. To my understanding, the Security Bureau is involved because the FSD is directly under it. I have also mentioned in the main reply that the FSD has all along been in charge of this type of ambulance service. As regards the question of whether the DH is involved in or aware of the arrangement, we certainly understand the whole process and issues discussed by them, and we also agree to the current arrangement. On the other hand, I also understand that members of the general public may not know the arrangement made after liaison because this consensus was not reached until around March or April this year.

President, according to the information I have on hand, if a patient needs to be transferred from one private hospital to another, or bears a letter issued by the medical practitioner of a private clinic proving that the patient is suitable to be transferred to another private hospital under the circumstances at that time, coupled with the fact that the attending doctor of the private hospital concerned will attend to the patient and arrange for appropriate treatment, I understand that the FSD has agreed to the transfer arrangement made under such circumstances.

MR ANDREW LEUNG (in Cantonese): *President, regarding part (b), as pointed out by Mrs Sophie LEUNG just now, it may not be possible for a patient to be transferred to a private hospital if he must first obtain so many documents before he can be taken there. A couple of years ago, one of my family members had a similar experience. Because he was suffering from senile diseases, the medical practitioner whom he frequently consulted arranged for him to be taken to a private hospital. It was good for him as a patient to be taken to the private*

hospital after boarding the ambulance, as he had always been treated by that medical practitioner.

May I ask the Government whether it will really consider charging fees or other approaches if a patient makes a request to be taken to a private hospital, rather than requiring the patient to, as mentioned in part (b) of the main reply, produce so many documents, which is basically beyond his ability? This arrangement can, on the one hand, provide convenience to patients, and on the other, ensure effective use of public resources.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the arrangement I mentioned just now is also the arrangement asked about by Mrs LEUNG. In the main reply just now, I have already explained that A&E departments that can really provide the full continuum of services that are available only in public hospitals. In the event of some unexpected acute conditions, the most appropriate approach is for the patients to receive appropriate treatment in the A&E departments managed by the HA. In some cases, however, a medical practitioner may have arrived at the home of a patient to provide consultation, and, after preliminary assessment, considered that the patient, though considered to be in an emergency condition, can still be taken direct to the arranged private hospital for treatment. This is one of the feasible approaches under the negotiated arrangement. If a patient is at home and a private medical practitioner is also on scene, an arrangement can then be made for the patient to be taken to a private hospital direct. Alternatively, if a patient has already arrived at the clinic of a private medical practitioner for treatment and, after receiving preliminary assessment, it is considered that a private hospital can admit this patient, then an arrangement can be made for a public ambulance to take this patient from the private clinic to the private hospital. Having reached a consensus on the way of handling in these two respects, they also consider this approach feasible.

DR LEUNG KA-LAU (in Cantonese): *My question to the Secretary concerns the cross-boundary ambulance service mentioned in the last paragraph of part (c) of the main reply. Let us for the time being put aside the cross-boundary ambulance service, as arrangements on the Mainland will be involved. May I first ask the Secretary what difficulty will be encountered in*

developing private ambulance service in Hong Kong? The Secretary has mentioned in the reply that patient safety and other complicated issues relating to regulation will be involved, but actually the approach can be very simple, as public ambulance service is already available. We just need to follow the requirements and way of regulation of the public ambulance service and the problem will be resolved. Why can we not act in the same manner?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Thanks to Dr LEUNG for his supplementary question. On the provision of non-public ambulance service, Members should understand that all the existing ambulance services are provided by either the FSD or the Auxiliary Medical Service (AMS), both being organs of the Government. Therefore, there is no comprehensive regulatory framework through which we can regulate by law the ambulance service operated by the non-government sector.

On the other hand, if other categories of ambulances are to travel on the roads, we would also need to consider many technical details, such as whether the installation of sirens should be allowed on these ambulances? Moreover, public ambulances currently enjoy priority in right of way, so should private ambulance service be allowed to enjoy the same priority? We must take into consideration that the patients being conveyed by private ambulances may not be in genuine acute conditions, or as urgent as those conveyed by public ambulances. Due to various factors, we should consider carefully whether the provision of private ambulance service can cope with our future demand in terms of technical details. Judging from the present circumstances, if various conditions of the public ambulance service are applied, including training of ambulance personnel, transport and road arrangements and the hardware and ancillary facilities of ambulances, to the private sector without careful consideration at this point for the provision of private ambulance service, I think we must further study it in detail.

MR LAU KONG-WAH (in Cantonese): *President, I would like to follow up the issue of cross-boundary patient transfer service. With respect to its reply that the Government is closely monitoring the demand for cross-boundary patient transfer service, can the Secretary inform this Council of the demand figures? Furthermore, I note that ambulances of the two places would be parked at the*

boundary at certain times for the transfer of patients. Actually, this approach may not be good for patients, and the efficiency of the ambulance service will be undermined. Hence, this existing model is actually unsatisfactory. Not only will some Hong Kong people who are in the Mainland wish to return to Hong Kong for treatment, some Mainland people who fall sick in Hong Kong may also wish to return to the Mainland expeditiously for treatment. Hence, I would like to request the Secretary to give us the present demand figures. According to the model being explored by the Government, can a more direct and speedy method be provided, such as the provision of such service by the Government?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Thanks to Mr LAU. Insofar as figures are concerned, about 6 000 cases recorded throughout the previous year are considered cross-boundary emergency transfer service. Hence, we can tell from the service volume that there is a certain demand for this. However, in examining the cross-boundary ambulance transfer issue, it is most important for us to ultimately make consideration of patient safety and medical needs the starting point. In other words, we can act only if medical conditions permit and when patients are in a stable condition suitable for transfer across the boundary and over a long distance.

Firstly, we have made the first step at the technical level. At present, several hospitals managed by the HA have already reached an agreement with several specific hospitals in Shenzhen to establish a mechanism for the direct transfer of patient records in the hope of genuinely providing assistance. When such cases arise in Hong Kong and the Mainland, the hospitals of the two places can notify each other of the latest condition of the patients at the first opportunity to help them receive appropriate treatment.

Secondly, as mentioned by Mr LAU just now, we need to study whether ancillary facilities can be provided in terms of hardware. Members should understand that different provinces and municipalities have their own arrangements for regulating emergency and ambulance services, such as ambulance arrangement, transport arrangement, training of ambulancemen, and so on. As I mentioned just now, ambulance services in Hong Kong are currently provided by the public sector, with training provided entirely by the FSD and the AMS. As regards the scope beyond these two government departments, such as some non-governmental or charity organizations which are interested in

providing assistance and services on this front, we still need to examine the entire regulatory framework to see what we should do and what preparations have to be made in terms of manpower.

The third point concerns the transport problem mentioned by us. If cross-boundary vehicles are required — as stated by Mr LAU just now — what transport arrangements should be made? As I explained just now, ambulances in Hong Kong at present enjoy priority in right of way and, at the same time, are allowed to sound their sirens. However, should such arrangements be made for other vehicles, such as cross-boundary or non-public vehicles, and what impact will such arrangements have on the actual traffic conditions? We hope to study these conditions in further detail.

MR ANDREW CHENG (in Cantonese): *President, I hope the Secretary can give an undertaking in the light of his overall reply. He mentioned in the last sentence of part (b) of the main reply that it was noted that the Security Bureau would liaise with the authorities concerned over some non-emergency situations, such as patients do not actually need to use the A&E services provided by public hospitals but are concerned that problems will occur during their taxi journeys, the growing demand for cross-boundary transfer service for patients not in emergency, and so on. During his liaison with the HKMA and the Hong Kong Private Hospitals Association, will the Secretary give serious consideration in this direction, namely setting up two teams, one for the provision of the existing emergency services and the other for non-emergency services though the costs and fees of the service provided might be charged accordingly? I believe many patients will not mind paying the relevant fees. They just hope to be taken by ambulance to the designated or cross-boundary private hospitals. This will not pose an additional burden on government resources, and what is more, there will be more jobs for the people. Will the Secretary agree to including this direction of development in his scope of consideration for liaison and gearing work towards this procedure?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we note that the preliminary proposal under liaison among the Security Bureau, the HKMA and the Hong Kong Private Hospitals Association was actually put into implementation only in recent months. I believe, insofar as any pilot or new

programmes are concerned, we must clearly examine the effectiveness of the programmes and whether they can cope with the present demand seen in the market. I believe the authorities concerned have undertaken to review this as well as the effectiveness of the programmes under liaison within one year. Meanwhile, I also agree, as mentioned by Mr CHENG just now, we need to consider whether or not it is necessary to provide ambulance service and first aid personnel with medical knowledge for some non-essential or non-emergency cases, so as to reduce the chances of patients not in extreme emergency encountering problems during the course of conveyance. Insofar as this respect is concerned, as I mentioned just now, we are willing to give joint consideration to several aspects: First, the issue of software, that is, training and regulation of ambulance personnel; second, the transport arrangements; and third, examining the effectiveness of the existing pilot programme, which has just started.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. We will now proceed to the third question, which will be asked by Mr Alan LEONG for Dr Margaret NG.

Opinion Surveys Conducted by Central Policy Unit

3. **MR ALAN LEONG** (in Cantonese): *President, it has been reported that the Central Policy Unit (CPU) had recently commissioned the Center for Communication Research of The Chinese University of Hong Kong to conduct an opinion survey, and one of the questions asked was whether it was necessary for the Financial Secretary to resign. In this connection, will the Government inform this Council:*

- (a) *of the objective of the CPU's conducting the aforesaid opinion survey;*
- (b) *whether the CPU had previously conducted any opinion survey on the question of whether it was necessary for a particular government official to resign; if it had, of the details; if not, why the question of whether it was necessary for the Financial Secretary to resign was included in the aforesaid opinion survey; and*

- (c) *whether the CPU will make public the results of the aforesaid opinion survey; if it will, of the date and form of publication; if not, the reasons for that?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the Government's reply to the three-part question raised by Mr Alan LEONG for Dr Margaret NG is as follows:

- (a) The Government attaches great importance to public opinion. The aim of conducting opinion polls is to gauge public views on various policy and social issues in an objective and scientific manner for reference in policy formulation. The CPU regularly commissions academic institutions or commercial research bodies to conduct polls on different political, economic and social topics as well as matters of concern to the general public. It has commissioned an institution to collect public views on the 2011-2012 Budget and their response to some incidents in the community.
- (b) The CPU has conducted opinion polls on similar subjects before. The results were for the Government's internal reference only and therefore not published. The CPU will not comment on individual polls.
- (c) Results of the opinion polls conducted by the CPU are for internal reference only and the Government will not publish them. The CPU will continue to conduct opinion polls in an objective and scientific manner to help the Government assess public opinion.

MR ALAN LEONG (in Cantonese): *President, I must point out that it is totally unacceptable now for politically accountable officials to give a reply to a question from this Council with such an attitude. Part (b) of the main question of Dr Margaret NG asks whether the Government had previously conducted any opinion surveys on the question of whether it was necessary for a particular government official to resign and if it had, of the details.*

It appears that the Chief Secretary has given a reply in part (b) of the main reply, indicating that such an opinion poll was conducted on that subject. He

pointed out that "The CPU has conducted opinion polls on similar subjects before." But as to the part of the question on "if it had, of the details", the Chief Secretary has only stated in the main reply that "the results were for the Government's internal reference only and therefore not published". However, when questions are asked on the details of these opinion polls which should include when they were conducted and the number of times they were conducted, and so on, even if the findings are not published, an account should be given on the contents of the opinion polls. I would like to give the Chief Secretary one more chance, so may I ask whether he would like to add anything?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I have made clear the Government's position and policy, and I have nothing to add.

MS CYD HO (in Cantonese): *President, in many of the studies undertaken by the CPU before, there have been many criticisms from the academia of the CPU using a public instrument for private ends and monopolizing knowledge gained by public money because the CPU has been reluctant to publish the details and the basic data concerned. May I ask the Chief Secretary how he would account to the public that he has been acting in a fair manner, without using a public instrument for private ends?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I believe the public is clearly aware of the policy of the SAR Government. Insofar as the recommendations made by the Government on various policy areas are concerned, if there is a need to introduce legislative proposals to the Council or apply for funding, an account will be made to the public through the Council. With respect to policy studies and surveys conducted by the Government and whether or not the policies so formulated in the end meet the needs of the society of Hong Kong, I think the public will pass a judgment on them.

MR ANDREW CHENG (in Cantonese): *President, part (a) of the main reply is very simple and straightforward and it asks about the objective of the Government in conducting the said opinion survey and one of the questions asked was whether it was necessary for the Financial Secretary to resign. But the Chief Secretary has not replied to these questions in his main reply. He has only*

pointed out that the aim of conducting opinion polls is to gauge public views on some prevailing social issues. Maybe I should put it in another way. Is it because public reaction was so strong after the delivery of the Budget by the Financial Secretary, to the extent of reaching what Prof LAU Siu-kai has described as a tipping point and was about to explode, that the CPU had to conduct a survey to explore what other measures should be taken, such as giving out cash, as a means to prevent the Financial Secretary from facing the possibility of having to step down? This is the perspective from which I raised my question. I hope the Chief Secretary can tackle the question direct and answer the question of whether an opinion survey was conducted to prevent public sentiments from reaching a tipping point and exploding, so a study was conducting on giving out \$6,000 to everyone to pacify the public?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as I said in the main reply, the CPU will conduct opinion polls for the SAR Government and this is a regular and ongoing job. Whenever the Government has got any policy issue to handle, such as before the publication of a policy address or before the delivery of a budget, it will conduct this sort of opinion poll.

These opinion polls are conducted on a regular basis to help the Government gauge public views. It remains of course that we will not rely on these opinion polls alone to gauge public views. The news reports every day can reflect on issues of public concern and the views expressed by Members from different political parties and groupings in the Council can also reflect the pulse of society and public sentiments. Therefore, the Financial Secretary and my colleagues concerned have heard the views expressed by various political parties and groupings and an adjustment has been made. As a result, the Budget was passed earlier on.

MR LEE WING-TAT (in Cantonese): *President, it is reported that opinion polls previously conducted by the CPU included those asking members of the public whether or not Martin LEE was a traitor and whether Anson CHAN had suddenly become a follower of democracy. May I ask the Chief Secretary what kind of opinion polls are these and whether the CPU has become the political tool for the Donald TSANG Administration in controlling and manipulating public opinion?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as a general rule, we will not respond to any report or comment which is speculative in nature. Although it would be hard for me to respond to the two examples cited by Mr LEE Wing-tat at the beginning of his supplementary question, about the question of manipulating public opinion, I would think that the record must be set straight on certain fundamental facts insofar as elected Members are concerned. There are 7 million people in Hong Kong and more than 3.4 million of them are voters. No government, department or political party or grouping can hope to manipulate public opinion. As public figures we have to effect administration, discuss political matters and do our work while giving due respect to public opinion.

MS AUDREY EU (in Cantonese): *President, the contents of the main question are pretty specific, and the main reply does not deny the core issue raised in the main question, and that is, the CPU has conducted an opinion poll asking members of the public whether the Financial Secretary should resign. We have read many reports on that afterwards, and even the entire questionnaire was disclosed. So may I ask the Chief Secretary whether the contents of the questionnaire for that survey have been leaked? Has the Government investigated the causes of the leakage of the questionnaire and will this have any impact on the governance of the SAR Government?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, in order to ensure accuracy and objectivity in the opinion polls, we have instructed the agency responsible for undertaking the survey that under the instructions given, the poll takers were not allowed to disclose to any interviewee or any other party that the poll was commissioned by the Government. This is because if this item of information is disclosed, the interviewees would know that the survey was undertaken on the commission of the Government and the reply they gave might hence be affected. The accuracy of the poll might be affected as well.

As to Ms Audrey EU's question of why there are news reports on this particular survey, as public figures we know that the media in Hong Kong are very professional and they are highly competent and pervasive. However, we will not make any further comment on such reports.

MR JAMES TO (in Cantonese): *President, asking members of the public in an opinion poll whether a certain public officer should step down can be considered marginally linked to social policy and personnel changes in the Government. But we do not know how a question asking members of the public whether or not Martin LEE is a traitor has anything to do with what the Chief Secretary has said in the main reply, that the aim of conducting opinion polls is "to gauge public views on various policy and social issues for reference in policy formulation". Just how are they related and what policies may use them as reference? I can tell the Chief Secretary that the two questions mentioned in the supplementary question asked by Mr LEE Wing-tat are solid facts which informed parties know and they were relayed to the opinion survey body concerned only a very short time ago. I can even tell the Chief Secretary the details. So the Chief Secretary needs not deny them as they are not hearsay or reports, but simply facts. What help does it give to the Government in formulating social policies when members of the public are asked whether or not Martin LEE is a traitor? If it does not help policy formulation, does it constitute a waste of public money?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, the principles, stands and practices of the CPU in conducting opinion polls have been clearly stated in the main reply. I will not give any further comment on questions arising out of conjecture.*

MR RONNY TONG (in Cantonese): *President, it has been confirmed that the Government has conducted an opinion poll on whether a certain politically accountable official should resign. May I ask, conversely, why the CPU thinks that this is a useful indicator? On the question of whether or not a politically accountable official should resign, the Chief Executive has said on more than one occasion that it is his prerogative and that depends on whether or not the performance of that particular official is politically correct. President, may I ask the Chief Secretary, if an accountable official has made a wrong political decision, but according to public opinion, that official does not have to resign, then if that means that the official does not need to hold himself accountable to the public? Or, if that accountable official has not made any mistake, but it is the opinion of the public that he should resign, does he have to resign immediately? May I ask the authorities what are the indicators and criteria that*

must be adhered to over the issue of whether a politically accountable official should resign?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, ever since this political appointment system was designed in 2002, the Government has made it clear to the Council that criteria are set for the Accountability System for Principal Officials. Under the Basic Law, the Chief Executive shall be accountable to the Central Authorities and the Hong Kong SAR; and the principal officials who serve Hong Kong together with the Chief Executive shall of course be accountable to the Legislative Council and the public.

Any policy formulated by the Government will have an impact on the economy of Hong Kong and people's livelihood. So it is with the most serious and stringent attitude that we discharge our duties. Hong Kong is a free and open society with the rule of law and it is marching in the direction of universal suffrage. We are accountable to Hong Kong society with respect to the proposals we make in this Council on behalf of the SAR Government, the legislative work we do and the budgets we compile.

As to the question of whether a certain principal official has the support of the Council and the public, this is a judgment we have to make always. It remains also a judgment as to whether a principal official or a politically appointed official should apologize to the public at any point in time and whether he or she should step down to bear the political responsibility. As we know, since 2002, there are principal officials who have taken these two actions. They bowed and apologized to the public and resigned to assume responsibility. But the Budget was passed with the support of this Council.

MR RONNY TONG (in Cantonese): *I am not too sure as to whether he has answered my supplementary question. President, my question is very simple. Does the Government think that opinion polls or public opinion the only or most important indicator?*

PRESIDENT (in Cantonese): Mr TONG, please only stand up and ask your question after I have called upon you.

MR RONNY TONG (in Cantonese): *President, I have been fixing my eyes on you and anticipating your call to rise and speak. (Laughter)*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, public opinion certainly plays an important part. The views expressed by the Council and the reactions of the media are also important, too. But the most important point is we should do our best to serve Hong Kong society.

MR WONG YUK-MAN (in Cantonese): *President, it would be a waste of time if the oral questions from now on are like this one today and if the Directors of Bureaux give replies like the Chief Secretary did. Then what kind of powers will Members of the Legislative Council have? The right to ask questions is one such powers, for with this Members can ask oral questions and written questions every week in the meetings of this Council and it is hoped that with these questions, officials will be responsible to the legislature, tantamount to being answerable to public opinion.*

In the reply he has given to the three parts of the main question, the replies to two parts are completely the same. Can you now confirm whether or not the CPU has conducted such an opinion survey? Has any survey ever been conducted on the question of whether or not the Financial Secretary should step down or resign? You have not given such a reply in the main reply. Part (b) of the main question mentions why the question of whether it was necessary for the Financial Secretary to resign was included in that particular opinion survey. Had any survey been conducted on the question of whether the Chief Executive should resign? Your reply is that the CPU has conducted opinion polls on similar subjects before. What exactly are such similar subjects? What I mean is

PRESIDENT (in Cantonese): Mr WONG, please raise your supplementary question.

MR WONG YUK-MAN (in Cantonese): *My supplementary question is, this reply from the Chief Secretary is really stupid. He is simply fooling us.*

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

MR WONG YUK-MAN (in Cantonese): *Why does he want to fool us? President, please ask him for me, why does he want to fool us? Can he not answer this question? Is this question related to the main question? If not, I will frame this question in another way.*

PRESIDENT (in Cantonese): Mr WONG, on the reply given by the Government, you are expressing

MR WONG YUK-MAN (in Cantonese): *No. I want to ask him now, why does he want to fool us? These replies he has given are all meant to fool the Legislative Council. So, President, please ask the Chief Secretary, why does he want to fool Members of the Legislative Council?*

PRESIDENT (in Cantonese): Please sit down. Let me ask the Chief Secretary to answer.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, we have given a true account of the policy, stand and practice regarding opinion polls conducted by the CPU all through these years to the Council. With respect to part (b) of the main question, I have made it clear that the CPU has conducted opinion polls on similar subjects before. President, all through these years we have adhered to our position of not publishing the findings of such opinion polls and making comments on them in public. I must say that I have tried my best to give a concrete response to the key points.

MS EMILY LAU (in Cantonese): *President, the Chief Secretary has pointed out in the main reply that "The aim of conducting opinion polls is to gauge public*

views on various policy and social issues in an objective and scientific manner for reference in policy formulation." I wish to follow up the supplementary questions raised by Mr LEE Wing-tat and Mr James TO.

The CPU has conducted opinion polls asking members of the public whether they think Martin LEE is a traitor and whether Anson CHAN suddenly becomes a democrat. Have the authorities ever received any comments from the academia or the public, saying that these polls are not impartial, professional, scientific and objective, and that the CPU is regarded as the psychological warfare unit of the ruling team or clique of the SAR and hence these polls are a waste of public money? Since you people have this intention, why do you not set up a psychological warfare unit? How can the public be convinced if you use public money in such a manner?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the opinion polls conducted by the CPU cover a wide range of social and economic issues, as well as those related to people's livelihood and matters of concern to the public. The questionnaires used are set by the CPU independently and in the design of each questionnaire, the questions posed must meet the four standards of logicity, objectivity, accuracy and clarity. The CPU has adhered to these standards all through the years in determining the contents of the questionnaires and conducting such surveys.

MS EMILY LAU (in Cantonese): *President, my question is about whether the Government is using public money to turn the CPU into a psychological warfare unit for the ruling clique. Is such a practice misuse of public money?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the budget of the CPU for each year is approved by the Finance Committee and this Council after deliberations. I trust the Council would adopt a rigorous attitude in vetting the annual budget of the CPU. Moreover, the use of public money by the Government is subject to the monitoring of this Council and the public.

MR PAUL TSE (in Cantonese): *President, the military operation conducted by the United States in Pakistan lately was highly confidential and critically important. However, the White House made public after the event the policy decisions made at the time and how the top officials watched the live telecast of the action in a bunker. Just at what level the studies carried out by the CPU are authorized and to whom should it report its findings? Even in the case of the Independent Commission Against Corruption, it has to report to the former Governor and the incumbent Chief Executive, so to officials at which level should the CPU report? Can it conduct whatever survey it likes? Are there any restrictions with respect to the persons to whom it should report? I would like to hear an explanation on this from the Government.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the CPU shall report its work to the Chief Executive, the Chief Secretary for Administration and the Financial Secretary. It also collaborates with various bureaux at the Government Headquarters by conducting research on topics in policy studies given by the bureaux. However, we respect the interactions of the CPU with the related academics and CPU members at various points in time. This facilitates its giving of advice to the Government.

The CPU is aware of the public interest in its work and so apart from certain reports of studies conducted for internal use on a specific or restricted area, some of the reports of studies made by the CPU would be made public in due course. In the year 2010-2011, for example, the CPU has released 11 consultancy reports on its website and these reports are available for public perusal.

In other areas of its work, the CPU also maintains a high degree of transparency and much information is available to the public. For example, the papers used and discussions conducted by the various committees under the Commission on Strategic Development can all be browsed on the Internet. During the past couple of years, the CPU organized seminars during the time when the planning of the Twelfth Five-Year Plan was being undertaken. Mainland scholars, people from professional bodies in Hong Kong and other groups were invited to attend and discussions were conducted on what role Hong Kong could play. So with respect to the work done by the CPU, it has to report

to the top management in the Government and it strives to maintain a high degree of transparency to the public.

PRESIDENT (in Cantonese): Fourth question.

Assisting Hong Kong People to Purchase Milk Powder

4. **MR ANDREW CHENG** (in Cantonese): *President, regarding the problems of the short supply of and the speculative surge in the prices of milk powder locally, the Secretary for Food and Health, in reply to a question at the Council meeting on 16 February this year, advised that the Government had been proactively liaising closely with major milk powder suppliers, the Hong Kong General Chamber of Pharmacy and major retailers, and that the suppliers and retailers of milk powder had actively taken steps to meet the market demand. Yet, it has been reported that as milk powder has remained in short supply in Hong Kong at the retail level since the Chinese New Year, members of the public still have difficulties in purchasing milk powder, and apart from relying solely on the voluntary actions and self-discipline of the suppliers and retailers of milk powder, the Government has not taken any measure to stabilize the supply and prices of milk powder in Hong Kong. In this connection, will the Government inform this Council whether it will consider setting up milk powder retail outlets at the hospitals and clinics under the Hospital Authority (HA) and the Department of Health (DH), or setting up milk powder retail outlets in collaboration with other social welfare organizations, and giving priority to Hong Kong people with infants or young children in making purchases at these retail outlets, in order to solve the problem of Hong Kong people being unable to purchase milk powder; if it will, when the plan will be implemented; if not, of the reasons for that and whether other effective measures are in place to help members of the public purchase milk powder?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the Government cares about babies' health and has been promoting the merits of breastfeeding in order to encourage its adoption by parents. The Government also understands that some parents still prefer infant formula, and has therefore paid particular attention to its safety and supply. Since the reports of shortage of

infant formula, we have been proactive in liaising closely with major infant formula suppliers, the Hong Kong General Chamber of Pharmacy and major retailers. We have been assured by the suppliers that they have sufficient stock on hand, and that they will increase supply to cope with the growing market demand.

The major infant formula suppliers have all agreed that meeting the needs of local babies is their prime responsibility, and they have been closely monitoring the market situation. If necessary, arrangements will be made for increasing supply in Hong Kong to ensure a stable supply of infant formula in the local market. The major brands have already set up hotlines or purchase and delivery services to ensure that the needs of local babies are met. Individual suppliers have pointed out that there has been an upward trend in requests for purchase and delivery services from their members, which shows that the public has got used to purchasing infant formula under the membership system.

Retailers have also been closely monitoring the sale situation, particularly those retail outlets in areas near the boundary and along the East Rail Line. They have actively approached the suppliers to discuss arrangements for increasing supply and delivery to expedite replenishment, so as to meet the demand of the market. Some retail outlets have set sale quota for certain brands of infant formula in order to cater for the demand of local citizens.

While considering whether infant formula should be sold by public organizations, we must balance it with the Government's policy in promoting breastfeeding. The World Health Organization (WHO) recommends breastfeeding as the way of providing the best food for healthy growth and development of infants. It recommends that babies under six months of age should preferably be exclusively breastfed, and then continue to be breastfed along with supplementary foods up to two years of age or beyond. The Government has all along endeavoured to promote, protect and support breastfeeding and to implement this policy through the DH and the HA. Healthcare professionals provide counselling service for breastfeeding mothers, and help post-natal women acquire breastfeeding skills and tackle the problems they may encounter during breastfeeding. Maternal and Child Centres under the DH also conduct workshops to equip breastfeeding working mothers with the necessary skills so that they are prepared for continuing breastfeeding after returning to work. To enhance parents' understanding of diet for babies and

infants, the DH plans to produce a parenting education kit on healthy diet for babies and infants, which will include a handbook, education VCDs, recipes, and so on, so as to disseminate correct health information among parents. Besides, public hospitals have banned promotional activities on breast-milk substitutes within their premises. Starting from 1 April 2010, the HA purchases milk powder from contract suppliers by tender and no longer accepts free samples of breast-milk substitutes. It is also stipulated in the tender contracts that the suppliers must comply with the International Code of Marketing of Breast-milk Substitutes of the World Health Organization (WHO Code), which aims at ensuring that the sale and advertising of breast-milk substitutes will not discourage breastfeeding so as to achieve more effective implementation of the breastfeeding policy in hospitals.

The Government is now in the process of drafting a Hong Kong Code of Marketing of Breast-milk Substitutes (the Hong Kong Code). The Hong Kong Code aims to regulate the manufacturers and distributors of breast-milk substitutes and to prohibit them from advertising and marketing their breast-milk substitutes and related products by way of malpractice. In developing the Hong Kong Code, the Government will take into account the details and scope of regulation recommended in the WHO Code. When the Hong Kong Code comes into effect, we will monitor its implementation to ensure that the correct information reaches the parents.

Hong Kong practices free trade. With an open and fair trading platform and transparent information, the stable and sufficient supply of infant formula by traders is ensured and a reasonable price for infant formula is maintained. The Consumer Council (CC) also releases information of major brands of infant formula through the *CHOICE* Magazine and its website, including the out-of-stock rate, prices, customer services information and hints for switching formula for babies, and so on. Such information will increase the market transparency and competition. Although there are shortages in the supply of particular brands at certain times, the overall supply of infant formula is still sufficient. President, we consider that the existing measures have helped stabilize the supply of infant formula. The Administration will continue to keep close liaison with the CC, major suppliers, importers and retailers of infant formula to jointly ensure the stable supply of infant formula in the local market.

MR ANDREW CHENG (in Cantonese): *President, from the reply of the Secretary overall, it seems that the Government still has not grasped the picture of how the market is out of control. The Bureau seems to be still sticking to an ostrich policy, burying its head in the sand and oblivious to the reality.*

I would like to point out to the Secretary that breast-milk and infant formula are certainly inter-dependent because in reality, it is indeed difficult for working women to continue breastfeeding their babies when they are two years of age or beyond, and children who are two years old or even 10 years old still need to take milk powder but parents cannot buy milk powder because its supply is out of control now. My question is: Will the Government set up retail outlets in public hospitals or clinics? This may not necessarily defeat the breastfeeding policy, as they are indeed inter-dependent, and this can also ensure sufficient supply of milk powder for young children who cannot be fed breast-milk and hence need to take milk powder. This is what I mean. I hope the Secretary can respond to this point because in implementing the breastfeeding policy, we just cannot ask mothers to breastfeed their children till they reach adolescence, can we, President?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Let me provide some information to Mr CHENG. On the need of children to take infant formula beyond the age of two, the WHO has actually stated clearly that it is unnecessary for them to take infant formula as a breast-milk substitute, not to mention children aged above 10.

If, in individual circumstances, parents consider feeding their children different kinds of food or they prefer breast-milk substitutes (such as infant formula), this is certainly their own choice. But breast-milk aside, infant formula is considered essential for children who are two years old or below and it is absolutely not the case that children need to take infant formula till they are 10 years old. This should not be an essential food for normal children.

MISS TANYA CHAN (in Cantonese): *From what I have heard, the Secretary is very proactive in promoting breastfeeding. We all know that when we take a meal, we take it in the dining room or in a restaurant, but why do babies in Hong Kong have to take their meals in lavatories? May I ask the Secretary what measures have been implemented to provide suitable places in shopping*

malls or venues where the flow of people is heavy for mothers to breastfeed their children in tandem with the promotion of the breastfeeding policy? It is because I have received numerous complaints about mothers having to breastfeed their babies inside lavatories, and my relatives are also facing the same situation. This is perhaps because mothers are not accustomed to feeding their babies in public places or they find it inconvenient to do so, as there is no suitable place for them to breastfeed their babies.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, regarding hardware support, the Government has carried out a lot of work every year in respect of public facilities especially over the past few years, providing baby-care rooms designed for breastfeeding in many public places. In particular, rooms are provided for breastfeeding in all newly developed public premises.

However, in respect of private venues, as far as I understand it, the planning and lands departments have provided guidelines to private developers and contractors. In the guidelines, it is clearly stated that they are expected to provide such facilities by all means, particularly in places where the flow of people is heavy, such as new shopping malls, or during the redevelopment or expansion of these venues or when developing new buildings. From what we can see now, facilities for breastfeeding are provided in the more recently developed shopping arcades.

Having said that, there may still be individual cases of baby-care rooms not being provided because, for instance, some shopping arcades were completed a long time ago and no improvement works have since been carried out. We certainly cannot rule out this possibility. But here, let me reiterate once again that if mothers really wish to breastfeed their babies, we will certainly make ongoing efforts in respect of hardware, and whether in the Government or in the code of practice for private development, we will seek to provide greater convenience to the public and set up breastfeeding facilities in more and more places.

MR FRED LI (in Cantonese): *President, the Secretary should know that babies aged zero to six months can only be fed milk. Although the Secretary or the*

Government has often emphasized the policy of calling on more mothers to breastfeed their babies, the fact is that many mothers have to feed their babies with infant formula for various reasons.

I would like to ask the Secretary why — this seems to be like a "Rashomon affair" — there are still mothers complaining about being unable to buy milk powder. According to government statistics, some 40 000 babies were born every year in Hong Kong. Does the Government know why — the supply of milk powder is absolutely sufficient to meet only the needs of some 40 000 babies born in Hong Kong — there is still a shortage of supply? It is because parallel importers have purchased milk powder at a high price and as a result, local mothers are unable to buy milk powder. How should the Government address this problem? The main reply falls short of providing a solution. I hope that the Government will truly solve this problem for us, because the most famous and popular brands of infant formula have been bought out at high prices by mainlanders and as a result, mothers who feed their babies with infant formula but not breast-milk are unable to buy infant formula. What will the Government do to solve this problem?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have personally held meetings more than once with importers, wholesalers and retailers, and our department will conduct checks regularly. For instance, we have particularly looked into the situation during the Labour Day Golden Week. Certainly, as I said in my reply earlier on, many local mothers are, in fact, gradually growing accustomed to buying different brands of infant formula by joining the so-called "mothers' clubs". These clubs operate their ordering and delivery services in a one-stop manner, and major infant formula traders have made an undertaking to the authorities and to the customers that they will ensure that members of these "mothers' clubs" will be supplied with infant formula for feeding their babies. In this respect, we have seen that this has become an increasingly popular practice.

That said, as to whether there are individual cases in the market where, at the retail level, it may sometimes be more difficult to buy infant formula in certain districts or one or two particular brands of infant formula, we do not rule out this possibility. But judging from the overall supply, as Mr LI has said earlier, with regard to the overall supply of infant formula in Hong Kong, for

instance, according to the figures in the past three years, President, in 2008, the number of babies born — disregarding whether or not the pregnant women are locals — 78 800 babies in total were born and 12.95 million kg of infant formula was imported, whereas in 2010, 88 500 babies in total were born but as much as 21.21 million kg of infant formula was imported, showing an increase of 57%. Compared to an increase of only 12% in the birth rate, the volume of imported infant formula has far exceeded the birth rate. This is one point.

Second, we also hope to see enhanced transparency in the information in the market, so that when consumers (including parents) buy infant formula, they can know such information as whether the infant formula will be out of stock and the prices, as well as whether there will be considerable price hikes. In this respect, we will closely liaise and co-operate with the CC which updates the information regularly. Apart from reporting all the information in detail in its monthly *CHOICE* magazine, the CC also publishes these graphs and tables on its webpage for reference by parents to enable them to fully grasp the current information of the market, so that infant formula will not become out of stock or in short supply in the market.

MR WONG SING-CHI (in Cantonese): *President, the Secretary has spoken in a high-sounding manner and at great length, and towards the end he said, "..... so that infant formula will not become out of stock or in short supply in the market", in which case parents will be able to buy infant formula. But the problem is that infant formula is indeed out of stock now, and many mothers are unable to buy it.*

The Secretary mentioned that according to the suppliers, there are a lot of "mothers' clubs". First of all, may I ask the Secretary whether he knows how many people have registered as members of these "mothers' clubs"? What is their proportion in the total number of people? Besides, does the Secretary consider the number of registered members adequate? If not, does it not show that the Government basically does not know what to do and is incompetent in tackling the overall shortage of infant formula?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have the answer as to the size of membership of these "mothers' clubs". This, I believe, is a commercial secret of infant formula traders. Nor do I think that the

Government can and should collect all these statistics, because it is a choice of parents as to how they buy infant formula. It is inappropriate for the Government to control how they should buy infant formula. However, I do not agree with the comment that infant formula is extensively out of stock in the market now, because we have clearly seen the supply situation, particularly the supply during the Labour Day Golden Week holiday. We have negotiated with various infant formula importers and retailers to ensure sufficient supply.

Another indicator for Members' reference is the number of complaints relating to infant formula received by the CC and of course, many of them are about infant formula being out of stock. In the first quarter of 2011 (from January to March), the total number of complaints was 123 but the number dropped significantly in April as only eight complaints were received in the entire month of April. So, we can see that it might be due to what happened some time ago, particularly after the outbreak of nuclear power plant incident in Japan, that there was a shortage of Japanese brands of infant formula which account for a quarter of the total supply in the market. But the authorities have made some efforts and explained to the public repeatedly that all brands of infant formula are very much the same despite some minor differences and that it is not difficult for babies to switch to other brands of infant formula without affecting their health. We have made these efforts and closely monitored the market, while an assurance is also given by retailers and wholesalers to ensure sufficient supply in the market. I hope Members will understand that according to the current statistics, it seems that the said situation has ceased to exist now. We should look ahead. We will continuously review the supply in the market, with a view to helping the parents.

MS STARRY LEE (in Cantonese): *President, in reply to Members' questions the Secretary pointed out that under its existing policy, the Government hopes to promote breastfeeding of babies by mothers. This is certainly the best. But does the Secretary know that in terms of planning, apart from providing lavatories or space for mothers to breastfeed their babies, a facility required to encourage working women to continue breastfeeding their babies is the refrigerator.*

The Secretary may not be able to grasp the information on the facilities on private premises, but does he know whether or not such facilities are provided in

the offices of his colleagues in government departments and organs? These facilities should include lavatories or space suitable for breastfeeding and also refrigerators. Does the Secretary have such information in respect of the new Legislative Council Complex, so that Members, when necessary, can access these facilities?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have the plans of the new Legislative Council Complex on hand. So, I cannot answer Ms LEE's question about whether or not there will be refrigerators for the purpose of breastfeeding and breastfeeding rooms there. But I think I have said clearly in my reply earlier that breastfeeding rooms and baby-care rooms are provided as far as possible in all public facilities where the circumstances allow, especially in newly developed public buildings and premises, for the convenience of colleagues and members of the public visiting public buildings or government offices, such that they can be facilitated or enjoy convenience in breastfeeding.

As regards private premises, as I explained earlier, colleagues in the Planning Department and the Lands Department will hold meetings with private developers and issue guidelines to clearly set out the policy and encourage developers to provide baby-care rooms in places with heavy flow of people and visited more frequently by the public, in order to make it convenient for breastfeeding. As to whether such facilities are provided in private offices, President, it is certainly our wish to strongly appeal to the private sector to provide these facilities in all places where possible, so as to make it as convenient as possible for mothers to breastfeed their babies.

PRESIDENT (in Cantonese): We have spent over 21 minutes on this question. Fifth question.

Construction of a New Road Harbour Crossing

5. **MR CHIM PUI-CHUNG** (in Cantonese): *President, given that cross harbour tunnels have an impact on transport and the economy of Hong Kong, will the Government inform this Council whether it has any plan to construct the fourth road harbour crossing (RHC) in the near future; if it has such a plan,*

when and where the harbour crossing will be constructed; if not, of the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Administration's major consideration in deciding whether and when a strategic infrastructure facility should be constructed is the necessity for such a project. Regarding cross-harbour transport infrastructure, we will also monitor the need of the public. Apart from RHC as mentioned by Mr CHIM Pui-chung in his question, cross-harbour railway is also an important infrastructure to satisfy the community's need for cross-harbour facilities.

As a matter of fact, with a population of 7 million people but only a land area of 1 100 sq km, excluding country parks and greenbelts, the actual area of land available for development in Hong Kong is only 200 sq km. Such development intensity is probably the highest in the world. If the 7 million people solely rely on vehicles for their daily trips, a large area of land will be required for the construction of roads, and will also aggravate the problem of roadside air pollution and increase energy consumption. This is not conducive to sustainable development.

As such, making full use of railway and developing it into the backbone of the mass transport system is an important part of Hong Kong's long-term transport strategy. This has taken into consideration the fact that railway is an environmentally-friendly, efficient and land-saving mass transportation, and very much suits the circumstances in Hong Kong. Trains are driven by electricity and will not have roadside emission, and the energy consumption per capita is also lower than that of vehicles. A passenger railway network can provide frequent and speedy transportation service for a large number of passengers. Hong Kong's railway network is largely constructed underground which takes up relatively less ground surface. This helps relieve the burden of constructing additional roads in the urban area where the development intensity is high.

Therefore, we have strived to develop the railway network to meet the need of the society. For better utilization of railway resources, through the provision of other transport modes (for example, buses and minibus), pedestrian walkway systems (for example, footbridges, subways escalators and lifts), park and ride facilities, and so on, to provide linkage to railway stations, members of the public

in areas not directly covered by the railway network are encouraged to use the railway service.

At present, developments in Hong Kong are largely concentrated on both sides of the Victoria Harbour. The north shore of Hong Kong Island and Kowloon already accommodate nearly half of the population and provides 70% of the employment opportunities in Hong Kong. The intensity of the railway network in these areas is thus higher, so as to meet the traffic demand, including public demand for cross-harbour trips.

We have a total of three cross-harbour railway links, that is, Tsuen Wan Line running from Tsim Sha Tsui to Admiralty, Tseung Kwan O Line running from Yau Tong to Quarry Bay, and Tung Chung Line running through Kowloon to Hong Kong. Although the utilization rate for the cross-harbour section of the railway links concerned is quite high during rush hours, there is still reserve capacity, and part of the railway links will only start to saturate in the early 2020s. We are now making every effort to take forward the Shatin to Central Link (SCL). With the full commissioning of the SCL in 2020, it will provide an additional cross-harbour capacity of 85 000 passengers per hour, which will satisfy the cross-harbour transport need of the public in a timely manner. We also anticipate that the SCL could attract some of the passengers who currently use vehicular cross-harbour transport modes (for example, buses, private cars, and so on) to switch to use the SCL. This will help relieve the burden of the cross-harbour tunnels. It is also anticipated that some passengers who travel via Tsuen Wan Line, Tseung Kwan O Line and Tung Chung Line for crossing the harbour will switch to the SCL for their cross-harbour journey, and this will be conducive to relieving the burden of the existing cross-harbour railway lines.

As regards long-term development, the Administration has engaged consultants in mid-March 2011 to review and revise the blueprint for railway development on the basis of the Railway Development Strategy 2000, in order to meet the demand for local and cross-border railway transport until 2031. The need for the fifth cross-harbour railway will be covered.

Notwithstanding the numerous advantages of railway transport, the Administration also recognizes that roads and railways have different functions. Apart from the provision of feeder service for the railway network and serving the areas not covered by the railways, roads are in fact essential for commercial vehicle operations. The railway system can hardly serve such functions. As

such, the Administration recognizes that apart from developing the railway network, there is also a need to continue to develop the road network according to actual need. And in deciding whether and when to construct a fourth RHC as proposed in the question, necessity and feasibility of such a project are the key considerations of the Administration.

According to our current assessment, the total capacity of the three existing RHCs is able to accommodate the vehicles currently using the three RHCs. And upon the opening of a number of new connecting roads currently under construction or planning, the total capacity of the three RHCs will be further increased. Amongst these, Road P2 connecting the vicinity of MTR Airport Express Station in Central and Hung Hing Road in Wanchai will be fully opened in 2011, while the Central-Wanchai Bypass will be commissioned in 2017. Upon the commissioning of all relevant roads, the total capacity of the three RHCs will be increased by 15%. And as the commissioning of the cross-harbour section of the SCL will attract a certain part of the passengers currently using road transport for their cross-harbour trips to switch to the SCL, this will help reduce the number of passengers using road transport. Therefore, the total capacity of the three existing RHCs should be able to meet the overall cross-harbour traffic demand.

Furthermore, the technical difficulties of the proposal will need to be considered in deciding whether a fourth RHC should be constructed. Generally speaking, the construction of cross-harbour tunnel would involve establishing pre-cast yards at suitable location(s) for casting the tunnel units. Concurrently, the seabed along the predetermined tunnel alignment will be dredged using dredgers to prepare the foundation for accommodating the tunnel units. The tunnel units will be towed by barges to predetermined locations and lowered to the foundation. Space around the units will be backfilled to hold them in position. Rock armour will then be placed on top of the units for protection. The seabed will be restored after the completion of works. In view of the needs of the foregoing construction process and the impact on the traffic on both sides of the Victoria Harbour, our conclusion is that there are considerable technical difficulties in the construction of the fourth RHC.

Firstly, there must be sufficient space for providing the tunnel portals. As the areas on both sides of the Victoria Harbour are already highly developed,

there will be considerable difficulties in finding space to build the portals and the necessary connecting roads. Also, traffic will have to be diverted during the construction of the new RHC and its connecting roads. Given that the major roads on both sides of the harbour are already heavily congested, traffic diversion arrangements may create very serious traffic problems. And after completion of the works, these existing roads may not have adequate capacity to cope with the extra traffic brought about by the new RHC.

Secondly, quite a number of technical issues would have to be resolved in relation to the execution of the tunnel construction works on the Victoria Harbour or the foreshores on both sides, including maintaining road and marine traffic, avoiding impacts on underwater public utilities, accommodating changes in seabed and ground conditions, and avoiding the impact on environment, and so on, which will be major challenges.

Moreover, depending on the design, geographical constraints and actual construction, permanent or temporary reclamation of the Victoria Harbour or the foreshores at the two sides would likely be required. Owing to the presumption against reclamation in the harbour under the Protection of the Harbour Ordinance (Cap. 531), overriding public need for reclamation must be established to rebut the above presumption before such a project may proceed. How to avoid or minimize the extent of reclamation would be major engineering challenges. And as the total capacity of the three existing RHCs is sufficient to meet the overall cross-harbour traffic demand, it may not be possible to establish the case for an overriding public need.

Indeed, as the construction of the proposed fourth RHC will involve a substantial amount of public expenditure, and rather lengthy planning and construction process, it will not be conducive to alleviating the traffic problem in the short-to-medium term. In view of the above considerations on various fronts, the Administration does not have any plan to construct a fourth RHC for the time being. However, we will continue to keep a close watch on the increase in cross-harbour traffic flow, and will conduct timely studies when the need arises, in order to meet the traffic demand in Hong Kong in the long run.

MR CHIM PUI-CHUNG (in Cantonese): *President, even if I include the word "President" in my main question, the number of words altogether is only 68, but the reply given by the Secretary is as long as 2 050 words. After listening to her reply, I cannot help but suspect that she is trying to tell the citizens that they have to bear with the traffic jams at the Cross-Harbour Tunnel (CHT) in Hung Hom and the arbitrary raising of tunnel tolls by the Western Harbour Crossing (WHC)? This is my supplementary question, simple as that.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, maybe my reply is much too detailed. But it precisely shows that we are serious about the question raised by Mr CHIM Pui-chung. After looking at the situation as a whole, we think that the charging of tolls by these tunnels Of course, we would also look into the technical issues and feasibility of constructing a fourth RHC, but we still think that tolls are an important consideration. We have received many views on the subject in the consultation process, especially suggestions made by professional bodies and the academia. They think that adjusting the tolls is an important tool to rationalize the streaming of vehicular traffic. The reason is, as we can see it, the problem does not lie in insufficient capacity but in the uneven utilization of the harbour crossings. Therefore, we will consider this important factor while on the other hand, with respect to the two tunnels constructed under the BOT mode, we think that their franchise under the law should be respected. We would try to find some room where circumstances permit to arrive at a point of balance acceptable to the public.

MR ANDREW CHENG (in Cantonese): *President, this reply of some 2 000 words still leaves us with an impression that there is a lack of long-term planning by the Government. The main reply states that the present capacity of the tunnels seems to be sufficient, but I believe there is certainly a need in future to plan a fourth RHC. On the one hand, we must undertake the planning and on the other, planning in this regard can increase the chips in the hands of the Government in buying back the WHC. The WHC knows clearly that its franchise will expire within some 10 years and when it knows that before the expiry of its franchise, the Government has begun studying the construction of a fourth RHC, then the chips in the hands of the Government in buying back the WHC will be greatly increased.*

Although the Government now thinks that building a fourth RHC will not solve the problem of traffic congestion in the short-to-medium term, I must point out that we are now talking about the situation 10, 20 or even 30 years from now and by that time there will certainly be a need to build this RHC, especially in the western part of Hong Kong. May I ask the Secretary, if the Government can start undertaking studies and planning, whether this would increase the chips in its hands to buy back the WHC and hence the public will not have to suffer from the expensive tolls charged by the WHC?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, we do have commitment for long-term planning and it is because of this that we think there is a need to build the SCL according to our long-term planning. As we cannot build roads endlessly, we hope that the SCL can play the role of a fourth RHC.

I have pointed out in the main reply that the case is not as simple as building one more RHC. This is because we have to think about the connecting roads. Of course, besides building an RHC, we have to design and build a network of connecting roads. In this respect, we have to be very careful. In the context of urban development as a whole, if we want to build an RHC in a place with a high population density, where should we build the exits at both ends of the tunnel? Should we carry out reclamation? What will be the impact on the traffic of the district concerned at the exits of the tunnel?

I agree that we should examine the traffic problem from the long-term perspective. But nonetheless, I also think that in the short and medium terms, and even in the long term, we must rely on railways as the backbone of public transport. Therefore, in building the SCL and the review we are carrying out on basis of the Railway Development Strategy 2000, we will study how the alignment of the fifth cross-harbour railway should be determined. However, and having said that, we also agree that we should keep a close watch on the increase in the number of vehicles and the traffic flow. By the year 2021, it is estimated that the daily throughput of the three RHCs is about 200 000 vehicle trips. However, as the connecting roads presently under construction will have been completed in 2021, so the total transport capacity at that time, that is, in 2021, and the traffic flow, would largely be similar. In other words, by 2021, the transport capacity and the traffic flow would be more or less equal.

In fact, by that time, the traffic congestion that we see now will be improved because of the Central-Wanchai Bypass and other connecting roads which will have been commissioned. But we have not given up the idea of studying the extension of our road networks or the construction of a fourth RHC. However, as I have said in the main reply, this is a challenging task because there are various factors to be considered. But I would expect that after we have completed the review we have at hand, we can certainly start to study how the road networks concerned can be extended.

MR WONG KWOK-KIN (in Cantonese): *President, the Secretary has mentioned in the main reply that the total capacity of the three existing RHCs is able to accommodate the vehicles currently using the three RHCs. But the practical question is, as the utilization rates of these three RHCs are uneven, so there is serious and localized traffic congestion. An example is the serious traffic congestion in Chatham Road, Kowloon.*

The Secretary has said in the main reply that connecting roads like the Central-Wanchai Bypass will only be commissioned in 2017, that is to say, we have to bear with this kind of gridlock for a very long time.

May I ask, if the Administration thinks that there is no need to build a fourth RHC, whether consideration will be given to buying back the existing three RHCs and adopting the method of adjusting the tolls in order to achieve a balanced utilization rate among these three RHCs, thus easing the serious and localized traffic congestion? Will the Administration place this idea of buying back the tunnels on its agenda?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): *President, the supplementary question raised by Mr WONG is correct and it is similar to what we have in mind. Surely, we need to adopt the method of adjusting the tolls in order to achieve a more rational distribution of vehicular flow. But what kind of means should we employ to adjust tunnel tolls? Do we necessarily have to resort to a buy-back and use a large amount of public money to acquire some tunnels? Or are there some other options?*

Actually, we have proposed some other methods in our consultation paper and consultancy report which may not have to use so much public money. An

example is rebates. Can the use of other means be able to achieve a streaming of the vehicular flow? So we are actively looking into various proposals. We will not assert that we will never consider the idea of a buy-back. But we need to be careful because, after all, this idea would mean a lot of public money. And what should we do after buying back the tunnels? What is the proper method? We cannot think that after making the buy-back, there will be no need for us to adjust the tolls. Actually, the charging of tolls is an essential tool to achieve a rational distribution of vehicular flow. Then what would be an appropriate level of tolls? If the tolls are too high, the people may not be able to afford them. But if the tolls are too low, it would encourage more people to drive. So this is a complicated problem.

At this stage, we remain open about this. However, before we use any public money, we have to make sure that public money is put to the best use and the price reasonable.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR WONG KWOK-KIN (in Cantonese): *No. I wish to clarify one point and that is, does the reply given by the Secretary just now mean that the Government is now considering or has considered the option of buying back the three RHCs?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I said very clearly that we would consider any proposal that is feasible. But I must point out that the buy-back option will incur a lot of public money while the use of other options like rebates may achieve the same effect of traffic streaming. Therefore, we need to weigh and balance different options, their advantages and costs, and so on. Having said that, we must understand that as public money is involved, the price must be very reasonable.

DR RAYMOND HO (in Cantonese): *President, I agree very much with the Secretary that she is very serious in discharging her duties. But I do not quite understand why she has talked at such great lengths in her main reply about the methods of constructing an RHC. Actually, we have more than 40 years of*

experience of building RHCs. In terms of engineering, there would not be any complications. Therefore, I think that this reply could have been shortened.

The Central-Wanchai Bypass will only be commissioned in 2017 and by that time the total capacity of the three RHCs will have increased by 15%. But President, the CHT in Hung Hom and the Eastern Harbour Crossing (EHC) have reached their full capacity now. In other words, the increase of 15% can only be found in the WHC. Does that mean that traffic would still be concentrated on one side? Will a fourth RHC become unnecessary? In this regard, if there is no support by any research data, the authorities should not have reached such a subjective conclusion.

In this regard, should the Secretary not undertake some more in-depth studies? The reason is that building an RHC would need more than 10 years of studies, public consultations, design and building. So should the Government not start looking into the issue now? Actually, on this 15% increase in capacity and any possible increase in capacity in future, the Government should promptly start the relevant studies and must not put that aside until sometime in the future.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, Dr HO has just said that the capacity of our RHCs can be increased by about 15% by 2017. At present, we know that the CHT in Hung Hom is very congested, but there is still some capacity in the EHC. Therefore, in terms of rational distribution, vehicles can certainly be diverted to the WHC while the EHC can absorb some vehicles. Of course, such room will be greater in 2017 because the Central-Wanchai Bypass would have been commissioned. In other words, and as a general assumption, a trip from Central to places like North Point can be completed in five minutes.

As to the question of whether we should start undertaking studies early, I have just said that insofar as the future capacity is concerned, the CSL can absorb about 85 000 cross-harbour passengers per hour and I have also mentioned that the capacity of all the RHCs would be increased by 15%. We would certainly keep a close watch on the situation and, if necessary, we will activate the plan to expand the road networks early, including building one more RHC.

MR LEE CHEUK-YAN (in Cantonese): *President, I am very disappointed with the reply given by the Secretary. She has talked about such matters for a countless number of years. But the problems remain unchanged. That is, the CHT in Hung Hom is dead jammed while the EHC is dead expensive. No solution has ever been found. The Secretary has said in her reply earlier that many options are being considered, but the Government has spent many years on such consideration. On this problem of traffic congestion, does the Government really want to delay the matter until the expiry of the current term of office of the Chief Executive and so leave the matter to the next Chief Executive? Is it true to say that the Secretary does not have the determination at all to solve the problem? I think that if she had the determination, she must have known that the most thorough solution is a buy-back. It is only when the EHC and the WHC are bought out by the Government that it will have the means to address the problem of uneven distribution of traffic.*

PRESIDENT (in Cantonese): What is your supplementary question?

MR LEE CHEUK-YAN (in Cantonese): *My supplementary question is: Can the Secretary provide us with a timetable to show that she really has a proposal to solve the problem? If the Government cannot provide such a timetable but will just delay the whole thing, then may I ask when the delay will end? May I ask the Secretary when the delay will end and if she has the determination to solve this problem?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, with respect to infrastructure or traffic and transport management, as well as the use of more new technology so that people will use less congested roads, we have actually adopted a multi-pronged approach.

As for the ideas put forward by Members just now, these form a topic that we have recognized a long time ago as the theme of our studies, that is, a more rational distribution of the cross-harbour vehicular flow. And we have undertaken a number of studies and consultations on it. Of course, Members may think that a buy-back is one such way and it means we can recover the power to adjust tunnel tolls. But we find after making some studies that a buy-back is not the only option. The rebate method which I have just mentioned can also

achieve streaming. So we have to think whether or not we should use a large amount of public money to buy back the RHCs. We have also to think about the price.

Previously when we negotiated with the tunnel companies, the price was an extremely difficult issue. This was because we had different views on the increase in the vehicular flow or costs. The price is certainly a big problem. For example, the WHC franchise will expire by 2023, so how much in price should we pay considering the period of time from now to 2023? This is a big issue indeed and it cannot be solved so easily. And the tunnel companies may not necessarily agree to our proposal when we talk with them. So we have to weigh and balance and find out a viable solution. We hope that some concrete work can be done.

Of course, when the connecting roads are complete, they will ease traffic congestion. Members can see that as an example, we will commission the roads by the seaside in sections. The commissioning of such roads will have a relief effect. At this stage, we will use a multi-pronged approach to address the problem.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has never suggested any timetable and she is making delays all the time. She should have said when a decision will be made, but she has not said anything*

PRESIDENT (in Cantonese): Mr LEE, I have listened very carefully to your supplementary question and the Secretary's reply. You said that the authorities had not been serious in addressing the problem and so you asked the Secretary to put forward a timetable for solving the problem. But the Secretary said that they were actually trying to solve the problem. So, she has actually answered your question.

The last oral question.

Hong Kong Marathon

6. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, before raising main question, I have to declare that I have participated in 10 of the past 14 marathons. I must make this declaration before all else.*

President, there have been comments that the duration of road closure for the Standard Chartered Hong Kong Marathon was too short, and the race routes lack attractive features and are boring. The event fell short of the standards of world class marathon races, and failed to promote Hong Kong's image as Asia's World City. Over the years, the Hong Kong Amateur Athletic Association (HKAAA), that is, the event organizer, has been subject to criticisms, including that it had not organized the wheelchair race on a trial basis until this year, its accounts lacked transparency, and it had awarded contracts to its former Chairman despite conflict of interest. In this connection, will the Government inform this Council:

- (a) *given that there are tens of thousands of runners for the 10-kilometre Challenge, Half Marathon Challenge and Full Marathon Challenge each year, and together with their friends and family members, there are many members of the public paying attention to the event, whether the Government will consider designating more road sections in the urban areas for inclusion in the race routes and extending the duration of road closure, so that the event will be more attractive to runners from foreign countries, runners will not have to set off in the early hours and more people may line along the routes to cheer on the runners;*
- (b) *given that it has been reported that the Hong Kong Marathon is making profits, but every year it is hosted by the HKAAA, whether the Government will consider introducing tendering or competition to grant the right to host the event, with a view to enhancing the standards in organizing the event; and*
- (c) *given that marathon races of most metropolises include the wheelchair category, whether the Government will request the organizer of next year's Hong Kong Marathon to introduce*

wheelchair races so as to highlight Hong Kong's international image as a city of pluralism and equality?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the Hong Kong Marathon is one of the most representative annual international sports events for the local sports community. It has been recognized as an "M" Mark major sports event for seven consecutive years, and attracted numerous local and overseas runners to take part in it. It also underlines Hong Kong's status for staging major sports events in Asia, and is conducive to the promotion of sports development in Hong Kong. The event has been organized by the HKAAA on a self-financing basis for 14 years.

Every year the Hong Kong Marathon attracts a huge turnout, breaking the record for number of participants year after year—from about 1 000 runners in 1997 to 65 000 this year, among which over 60 000 are local runners. This shows the effect of the event in promoting sport for all.

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

- (a) All along, the race routes of the Hong Kong Marathon are determined by the event organizer (that is, the HKAAA) based on its professional knowledge after consultation with government departments, District Councils and different parties concerned. In designing the race routes, the Government would provide assistance where possible, and would tender advice to the HKAAA on such areas as public safety, traffic diversion and the impact of the overall arrangements on the community.

Over the years, the HKAAA has adjusted the race routes as necessary and incorporated road sections with particular features. Examples include:

- the inaugural edition of the Hong Kong Marathon in 1997 was held along a cross-boundary route between Hong Kong and Shenzhen, commemorating the historic moment of the return of Hong Kong Special Administrative Region to the Mainland;

- In 1998, the event was held at the new airport at Chek Lap Kok; and
- In 2011, the race route covered "three tunnels and three bridges", namely the Nam Wan Tunnel, the Cheung Tsing Tunnel, the Western Harbour Tunnel, the Stonecutters Bridge, the Tsing Ma Bridge and the Ting Kau Bridge.

On the arrangements for road closure and traffic diversion, over the years, road closure usually began at midnight on the day of the event, and the closed roads were re-opened in phases around noon time as far as possible. This is to ensure that the HKAAA has enough time for preparation along the race routes, as well as to minimize the impact the road closure may have on other members of the public. According to previous experience, members of the public may watch the event in the morning at various locations in the urban area, and family and friends of the runners may also cheer them on along the course up to the finish.

- (b) As mentioned above, the staging of the Hong Kong Marathon does not involve government subvention. The HKAAA is the "national sports association" responsible for athletics events in Hong Kong, and is also a member of the International Association of Athletics Federations and the Asian Athletic Association. As such, it possesses the professional qualifications and experience to host the Hong Kong Marathon, which is now recognized as a high-level competition listed on the calendar of the Association of International Marathons and Road Races. In fact, in addition to the HKAAA, other sports organizations also host distance-running events of different levels in Hong Kong every year. The Government is pleased to consider providing appropriate assistance to these events.

Concerning the accounts of the Hong Kong Marathon, according to the information provided by the HKAAA, a large portion of the revenue generated from the Hong Kong Marathon is used for organizing the event and the remainder is allocated to the HKAAA for the purpose of developing and promoting athletics activities. In addition, runners may take part in the fund-raising for charity

activity through the Hong Kong Marathon — the funds so raised will go direct to the specified beneficiary organizations. In 2011, the beneficiary organizations were the ORBIS, the Hong Kong Paralympic Committee and Sports Association for the Physically Disabled and the Hong Kong Anti-Cancer Society.

- (c) The HKAAA had originally scheduled for a 10-km wheelchair race at the Hong Kong Marathon 2011. International referees had also been invited to Hong Kong for an assessment of the race route. However, in the end, only two entries were received for the race, far lower than the minimum requirement of 10 participants, and the HKAAA decided after careful consideration and assessment to cancel the 10-km wheelchair race in 2011.

It is a pity that the wheelchair race could not be held at the Hong Kong Marathon 2011. We have suggested to the HKAAA to stage a 10-km wheelchair race at the Hong Kong Marathon 2012 to promote integration of people with disabilities into the community, and to encourage runners from different sectors and backgrounds to participate in this major sports event. We have learnt that the HKAAA would discuss further the details with relevant government departments and parties concerned with a view to encouraging more people with disabilities to participate in the event.

MR LEUNG YIU-CHUNG (in Cantonese): *President, many countries in the world organize the marathon races as international sports events. It is a pity that I do not have time to participate in the races held in other countries, but many friends have told me that these host countries of marathon races would set the race routes in city centres so as to allow friends and relatives of the runners to cheer them on, rendering the event a carnival. For example, in Japan, a variety of cuisines would be prepared, and in France, fine alcoholic beverages and red wine would be served, so that the event would become not just one for the runners, but also an important one for the spectators or the cheering friends and relatives who may become part of it.*

Unfortunately, this is not the case in Hong Kong. While the initial section of our race route covers Nathan Road in Tsim Sha Tsui and the rear section

covers Causeway Bay, the entire section in between runs along only bridges and tunnels, making it impossible for the spectators to join in the cheering, and thus diluting the atmosphere.

Therefore, I have this question for the Secretary. In regard to next year's marathon races, will you enhance the ambience and atmosphere by enabling larger sideline participation, cheering for runners and even participation by people with disabilities? Insofar as last year's races are concerned, the publicity was so poor that many people were unaware of the wheelchair race at all, and hence only two wheelchair users were enrolled. In fact, many wheelchair users told me that despite being eager for participation, they were unaware of the race at all, so they were denied participation because of late application.

Therefore, may I ask the Secretary how such ambience and atmosphere should be enhanced to attract a larger turnout for this international event and widely promote the marathon races?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the Hong Kong Marathon has been organized for over a decade, and has created the atmosphere of a hallmark event. We can all see that a great sensation was created throughout the city during its course.

Certainly, this major event still has room for continuous improvement. Both the HKAAA and the relevant supporting government departments will continue to gauge views in order to make it better, thus deserving higher and better reputation in both Hong Kong and the international arena.

When we make these considerations and listen to views, there is a need to strike a balance between voices from various parties. At present, in order to organize the marathon races, certain measures must be taken to close some roads. In this regard, the Home Affairs Bureau has indeed heard some members of the public comment that the traffic has been compromised, so we have to strike a balance between different voices.

From the perspective of sports promotion, we hope that this marathon sports event will be organized even better.

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

MR LEUNG YIU-CHUNG (in Cantonese): *The Secretary has not answered me on how to enhance the atmosphere, how to let supporters cheer on the runners, and how to enable wheelchair users learn about the race earlier so that they can participate in it.*

PRESIDENT (in Cantonese): Secretary, the Member has made a series of improvement recommendations. Please reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Regarding the improvement recommendations, members of the public can now cheer on the runners along the route and at the finish point. In the past few years, as one of the improvement measures, we have set the finish point at the Victoria Park. In fact, members of the public can enjoy an ever more exciting atmosphere for cheering.

As for publicity, we will continue with such work. This marathon event has already been recognized by the Major Sports Events Committee as an "M" Mark sports event. In other words, it qualified as a hallmark sports event, for which the Government will subsequently step up its publicity effort.

MS CYD HO (in Cantonese): *The Government knows merely how to "control" but not quite how to "play". It has not much imagination, so it is incapable of organizing major events.*

In fact, Prague has also organized marathon races, but on the day before the races, carnivals were already held in squares, where sports goods and souvenirs were sold, meals were served and entertainment was offered, creating a very vibrant atmosphere. But we in Hong Kong start running way before dawn. May I ask who would come to cheer runners on?

President, we have organized the marathon races for 14 years, and gained international recognition, but has Hong Kong conducted any study on how to capitalize on the potential opportunities presented by the Marathon so as to promote tourism development and create jobs? Why is it that for more than a decade, we have not yet come up with activities to organize other than the races so that Hong Kong can benefit from the major sports events?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, in fact, the HKAAA and the relevant departments have been working on the promotion. Insofar as the marathon races are concerned, there are runners from more than 70 countries and regions this year, and the winning runners are all from Ethiopia or Kenya. In fact, thanks to the relevant departments in Hong Kong for promoting it overseas and internationally, the Hong Kong Marathon has gained international exposure. As for Hong Kong, the carnival atmosphere just mentioned by Members has gradually emerged right in Victoria Park since the finish point was relocated there.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MS CYD HO (in Cantonese): *No, my question raised just now is: Why is it that for more than a decade, we have not yet studied how to capitalize on the full potential of the opportunities presented by this sports event to promote tourism development?*

PRESIDENT (in Cantonese): Secretary, please answer the question on how to promote tourism development.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, with a turnout of more than 60 000 participants, the Marathon has in fact gained considerable reputation and offers a certain degree of appeal in Asia.

MR FREDERICK FUNG (in Cantonese): *I fully support the views expressed earlier by the two Honourable colleagues. Secretary, regarding my supplementary question, apart from the two cities just mentioned by me, I would like to mention a few more, such as London, Boston, Tokyo which is an Asian city as well as a world-class financial centre, and even Shanghai in the Mainland. In all of these cities, the marathon races are held in city centres. Although the Secretary keeps highlighting Victoria Park, the races in Hong Kong are most of the time conducted on highways. Why did it take so long for Hong Kong to consider organizing a wheelchair race? It was exactly because of the need to consider the problem of arranging for wheelchairs to access the highways that the wheelchair race was announced available at the last minute, resulting in giving not enough time for members of the public to prepare themselves, and now the government has still to make considerations. The Government should immediately announce the launch of a wheelchair race, so that members of the public have enough time to prepare themselves. What else should it consider? There are too many such considerations. I think the Government and the organizer are excessively cautious.*

President, my supplementary question is whether the Bureau will consider the current practices of other international cities, including setting major race routes in the urban area. Secondly, regarding the time for the race, previously the race started at 6 am, but later as more people took part in it, it started at 5 am instead, and now it even starts at 4 am. How dreadful! People are really deprived of sleep. If there are more runners in the future, it may have to start in the wee hours. In other cities, they all start at noon or 1 pm, that is, in the daytime, but we start in the wee hours as if we were ghosts.

President, these are precisely the problems. For more than a decade there has been no study, no reflection and no improvement, and we have even been heading for worse by starting the race at four something in the night instead of seven in the morning. President, my question is, firstly, whether the routes can be set mainly, with at least half of them, in the city centre; and secondly, the time should be pushed back rather than brought forward, which means to move towards the day rather than the night.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the supplementary question is about both the race routes and the time. As regards

the marathon race routes, we will always communicate with the HKAAA, which will first discuss with the Traffic Wing of the Police Force as well as all District Councils and consult various parties. In arranging the race routes, there are considerations based on professional expertise in sports. If there is a wheelchair race, it is necessary to consider how the route should be set, what the gradient should be, and whether there are hidden gradients. All these warrant careful consideration.

As regards the time, we have to also consider striking a balance between the public's views and the motional requirements for sports. For instance, a schedule for starting the run in the morning is not unique to Hong Kong. The Marathon in Singapore also starts early at 5 am.

MR FREDERICK FUNG (in Cantonese): *The Secretary has not answered whether he will consider my views.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, we will consider them. I believe the HKAAA is also most willing to consider the views of Members.

MR LEE CHEUK-YAN (in Cantonese): *President, I declare that I have never participated in the Marathon. (Laughter) However, I think that it has also been revealed just now to what extent matters are handled in a fossilized bureaucratic manner. After all, why has it ended up being so sneaky as to start at 4 am in the early morning, or being unable to start in the vibrant areas? The Secretary's reply pointed out that there is a need to strike a balance because, on the one hand, the HKAAA has to design the alignment of the race routes, while on the other, members of the public are dissatisfied with road closures, among other things. I do not know whether this is true, but I believe that had the HKAAA been free to make choices and punch its weight, it would not have opted to organize the races in the remote areas, so I guess the real consideration of the Secretary is his fear of complaints from the public. As such, he has indicated in his response the need to strike a balance.*

May I ask the Secretary whether the so-called balance point dictates that the event will not be organized for 364 of the 365 days, but will be organized in only one day instead? Is this the balance point? Can the whole city make room for this major event? I believe it is acceptable. I do not know why the Secretary would think that the public will not accept this balance point and there will certainly be complaints from individual members of the public. But has the Secretary conducted consultations and larger-scale surveys to gauge the true views of the public? I believe the majority view will support this major event. All of us will accept the arrangement of road closures or temporary inconveniences on that day. Will the Secretary conduct a larger-scale or more in-depth study, and then, in the context of a hallmark sports event, organize a diversified or relatively vibrant event in the form of a carnival for all the people to enjoy together?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I am very glad that Members support full-day or wider engagement in the Marathon. Certainly, I have also noted Members' remarks that in view of the potential majority support, we must make critical considerations. First of all, we should give weight to the views of the HKAAA, because it is the specialized sports organization which organizes this event. At the same time, we should also consider the views of the officials in charge of traffic arrangements.

MR PAUL TSE (in Cantonese): *President, I also agree with the reasons raised by Honourable colleagues earlier. However, as Hong Kong is a small place, and the weather is relatively hot and humid, there are certain difficulties in selecting a date or creating the carnival atmosphere. I have just returned from Vancouver. A marathon was also held there. They started cordoning off the downtown area very early. But with such a high density in Hong Kong, I am afraid doing so will cause certain nuisances to the public. Therefore, I agree with Mr LEE Cheuk-yan that if we develop it as a major event for all the people, there may be certain difficulties but it is definitely worth considering.*

May I further ask the Secretary whether sports events can be considered in tandem with tourism, for example, by engaging the Hong Kong Tourism Board or making reference to the practices of other organizations which are more well versed in organizing sports events, such as the Rugby Sevens, rather than just

taking the form of a sports carnival? Besides, in relation to the question raised just now, can the authorities consider holding the event in such area as Lantau Island? The public should be very glad about this arrangement, and the problem of difficulties in organizing the events in the urban area as mentioned just now can also be overcome.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I thank Mr TSE very much for his views. In considering the future marathon races, we will take into account the relevant views and explore the possibility of turning the races into carnival-like activities characterized as a hallmark tourist event.

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

WRITTEN ANSWERS TO QUESTIONS

Arrangements Regarding Additional or Substituted General Holidays

7. **MR WONG YUK-MAN** (in Chinese): *President, it has been reported that after visiting a lunar new year fair in Sha Tin on 13 February 2010, the Chief Executive indicated that as the Lunar New Year's Day (LNY's Day) of 2010 fell on a Sunday, which was a general holiday, the arrangement of designating the day immediately preceding that day (that is, Saturday), as the additional general holiday might result in some members of the public losing one day's holiday; and in order to keep the legislation abreast of the times, the Government was considering amending the legislation to allow greater flexibility for the substitution of holidays. Moreover, in his reply to my question on 27 October 2010, the Secretary for Labour and Welfare said, "Earlier this year, the Chief Executive undertook to review the present arrangement whereby in the event that LNY's Day falls on a Sunday, the day before, that is, Saturday, will be designated as the additional general holiday. As this scenario will not occur until 2013, the Labour Department will make use of this interval to conduct a thorough review and consult stakeholders in due course. Nevertheless, as Saturdays are not designated as general holidays under the General Holidays Ordinance (Cap. 149) (GHO), there is no question of making arrangements for additional*

general holiday when a general holiday falls on a Saturday." In this connection, will the Government inform this Council:

- (a) given that the Secretary for Labour and Welfare pointed out that there was no question of making arrangements for additional general holiday when a general holiday falls on a Saturday, of the reasons for the Chief Executive indicating that the Government was considering changing the current arrangement of designating a Saturday as the additional general holiday of LNY's Day in order to keep the legislation abreast of the times, and what the arrangement to keep abreast of the times referred to by the Chief Executive is;*
- (b) given that some members of the public believe, on the basis of the above remarks of the Chief Executive, that the Government will solve the problem that members of the public working five days a week are losing one day's holiday when Saturdays are designated as general holidays, whether the authorities will address the problem; if not, of the reasons for that;*
- (c) given that the Employment Ordinance (Cap. 57) (EO) provides that when LNY's Day, the second or third day of LNY falls on a Sunday, the day immediately preceding LNY's Day will be designated as an additional general holiday, and the GHO provides that if two general holidays fall on the same day, the next following day that is not itself a general holiday is to be observed as an additional general holiday, whether it has assessed if the two provisions contradict each other;*
- (d) given that the day following the Chinese Mid-Autumn Festival and the National Day fall on the same day in 2012, and the authorities have designated 2 October as an additional general holiday in accordance with the aforesaid provision on additional general holidays under the GHO, whether 2 October 2012 is the additional general holiday of the National Day or the day following the Chinese Mid-Autumn Festival; and*
- (e) given that 1 October 2011, which is a Saturday, is the National Day and the general holiday of that day, while no other day is designated*

as additional general holiday, thus resulting in some members of the public losing one day of holiday, whether the authorities have assessed if such an arrangement contravenes patriotism?

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

(a) and (b)

General holidays, as provided for by the GHO, are days on which all banks, educational establishments, public offices and government departments need not open. In addition to Sundays, there are currently 17 general holidays in a year. Usually, if a general holiday falls on a Sunday, the following day will be the holiday. Yet, if any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday, the day preceding LNY's Day or the day of the Chinese Mid-Autumn Festival will be the general holiday. As Saturdays are not general holidays under the GHO, there is no question of making arrangement for additional general holiday when a general holiday falls on a Saturday. On the other hand, the EO requires employers to grant statutory holidays to their employees. Except where a Lunar New Year holiday or the day following the Chinese Mid-Autumn Festival falls on a Sunday, in which case the day immediately preceding the holiday will be designated as a replacement holiday, for other statutory holidays falling on an employee's rest day, the day following the rest day is designated as a replacement holiday across the board.

With changes in Hong Kong's social circumstances and economic structure in recent years, the working day patterns of employees have undergone adjustments as well. A considerable proportion of employees now enjoy days off on Saturdays and Sundays. Besides, it has been common for many employers in the public and private sectors to release their employees earlier from duty on Lunar New Year's Eve and the day of the Chinese Mid-Autumn Festival. Under such circumstances, some members of the public have expressed concern over whether the arrangement of designating

replacement holidays for the Lunar New Year and Chinese Mid-Autumn Festival holidays ahead of the said holidays under the EO still suits the actual circumstances nowadays. Hence, there are calls in the community for the Government to review the relevant arrangement. Against this background, the Chief Executive undertook early last year to review the arrangement of designating the day before, that is, Saturday, as a replacement holiday in the event that LNY's Day falls on a Sunday.

Having regard to the recent development in the working day patterns of employees in Hong Kong and the views of the public, the Administration proposed to amend the EO such that the replacement holiday for any of the Lunar New Year holidays and the day following the Chinese Mid-Autumn Festival falling on a Sunday will be given after the holiday concerned. To enable corresponding alignments in the holidays of relevant institutions, we will in parallel introduce amendments to the GHO regarding the replacement holiday arrangement in the event that the Lunar New Year holidays or the day following the Chinese Mid-Autumn Festival fall on a Sunday. This proposal was unanimously supported by Members of the Panel of Manpower of the Legislative Council in March this year. We are currently embarking on the relevant work and our plan is to introduce a bill into the Legislative Council in the next legislative session.

As to the view that employees should also be granted a replacement holiday in the event of a statutory holiday or general holiday falling on a Saturday, we have to state clearly that discontinuing the arrangement of designating Saturday as a replacement holiday should LNY's Day fall on a Sunday and the suggestion of granting employees an additional holiday should a general holiday fall on a Saturday are completely different matters. It is thus inappropriate to treat the two together. Besides, as many establishments remain open on Saturdays and many employees are still required to work on Saturdays, the matter is very complicated. After all, the community has not come to a consensus on the issue. Before the impact of such arrangement on business operation and cost is fully studied, we are of the view that the suggestion should not be considered.

- (c) The current provisions under the EO and the GHO regarding the replacement holiday arrangement in the event of the Lunar New Year holidays falling on a Sunday are in line with each other: where any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday, both ordinances designate the day before the holiday as a replacement holiday. As for replacement holidays in respect of statutory holidays and general holidays other than the Lunar New Year and the Chinese Mid-Autumn Festival holidays, there is also a consistent arrangement: for other statutory holidays falling on a rest day or general holidays falling on a Sunday, the ensuing day will be designated as a replacement holiday.
- (d) The GHO stipulates that if in any year two general holidays fall on the same day, the next following day that is not itself a general holiday is to be observed as an additional general holiday in that year. Since the day of the Chinese Mid-Autumn Festival in 2012 is 30 September, 1 October is the day following the Festival and as this falls on the same day as National Day, the day following National Day will be observed as an additional general holiday.
- (e) As mentioned above, since Saturdays are not general holidays under the GHO, there is no arrangement for additional general holiday when a general holiday falls on a Saturday. Furthermore, employees are entitled to days off on statutory holidays under the EO. If an employer requires an employee to work on a statutory holiday, the employer has to grant the employee an alternative holiday or substituted holiday in accordance with the requirements under the Ordinance. The statutory holiday of the National Day in 2011 falls on a Saturday. Save for any alternative holiday arrangements made by individual employers according to the law, all employees are entitled to enjoy a holiday on that day.

Management of Public Open Spaces in Private Developments

8. **MISS TANYA CHAN** (in Chinese): *President, recently, some members of the public have relayed to me that the management right of the public open*

spaces outside Times Square in Causeway Bay belongs to a property management company under the developer of the Square (that is, the Wharf (Holdings) Limited (the Wharf Holdings)), and they are worried that such arrangement will hinder the use of the aforesaid public open spaces. Regarding the management of public open spaces in private developments (POSPD), will the Government inform this Council:

- (a) regarding the case in which the Wharf Holdings is suspected of making use of the said public open spaces to generate profits and contravening the deeds, of the latest follow-up actions taken by the Government;*
- (b) whether the Government had imposed special restrictions on the Wharf Holdings in respect of the management of the public open spaces outside the Square in the past three years, including new clauses to prevent the company from contravening the Deed of Dedication (the Deed); if it had, of the details; if not, whether the Government can explain the reasons and justifications for not imposing special restrictions on the company which is suspected of making use of the said public open spaces to generate profits and contravening the clauses of the Deed;*
- (c) of the details of the public open spaces managed by private organizations at present, including the parties responsible for their management, as well as the arrangements and restrictions for the loan of these open public spaces by members of the public; if it cannot provide such information, of the reasons for that; and*
- (d) in response to the aforesaid case, whether the Government will review the implementation of the guidelines issued in respect of the management of POSPD at present; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the case of the public open space on the ground level of Times Square (the said space) has attracted widespread public concern and discussion in 2008. At the Legislative Council Panel for Development (the Panel) meetings in April and December

2008, as well as in May 2009 and January 2010, we have discussed in detail the subjects of the provision, management and use of POSPD with Members of the Panel. We have also collected views from deputations at the Special Meetings of the Panel in May 2008 and February 2009. In addition, I reported the status of the ownership and management responsibilities of the said space in my response to an oral question raised by a Member on 5 March 2008.

The said space is located on private land. The title of the land belongs to the owner of Times Square (that is, Times Square Limited). The owner shall manage the said space within the boundary of land under its ownership. His rights and responsibilities are governed by the Deed. Salient points of the Deed include:

- The owner dedicates the said space unto the public for the purposes of pedestrian passage and passive recreation, and shall at its own expense keep and maintain the said space in a clean and tidy condition and free from any obstruction for ensuring effective management;
- Subject to the prior approval of the Buildings Department (BD), the owner has the right to place (or permit the placing of) temporary structures on the said space for temporary exhibitions or displays, provided that the same shall not impede the use of pedestrian passage; and
- The owner may charge the organizations of the exhibitions or displays for their use of electricity, water or related facilities and other services provided by the owner, but no person shall sell or offer or let to hire any commodity or article, and so on.

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

- (a) Regarding the case in which the owner of Times Square is suspected of acting in breach of the Deed, the Government took civil action against the owner of Times Square in 2008. As the relevant legal proceedings are in progress, we are not in a position to reveal details.
- (b) As mentioned above, the rights and responsibilities of the owner of Times Square in respect of the said space is governed by the Deed.

Being one party of the Deed, the owner of Times Square must act in accordance with the requirements as set out in the Deed. If the owner of Times Square acts in breach of the Deed, the Government may take appropriate action in accordance with the clauses of the Deed, including taking civil action. As a matter of fact, the Government is taking civil action against the owner of Times Square for its suspected breach of the Deed in previous years as a follow-up action.

- (c) The management of POSPD is the responsibility of the relevant owners. As such, the Government does not collect information on the management agencies employed by POSPD owners. However, to ensure that the public can enjoy these POSPD, we have taken steps to enhance the transparency of such public facilities. Since March 2008, the Government has been compiling information on private developments containing public open space, and making it available through the websites of the Lands Department and BD. The information released includes the location, area, the level at which it is located, opening hours, as well as the location plans of the public open space, and so on.
- (d) While releasing information on existing public open space, the Government undertook an in-depth policy review of the subject matter. As mentioned above, we have, for a number of times, consulted the views of the Panel during the review. Moreover, to enhance design quality and public accessibility of POSPD, we commissioned a consultancy study in 2009 to draw up a set of clear and practicable design and management guidelines for POSPD for owners, management agencies and the general public to make reference to. Subsequent to a series of consultation and refinement, we promulgated the "Design and Management Guidelines for Public Open Space in Private Developments" (the Guidelines) in January this year with a view to striking the right balance between the rights of the owners and the public enjoyment of these POSPD. We submitted the Guidelines to the Panel for Members' reference vide Information Paper No. CB(1)1085/10-11(01). The Guidelines, together with the consultancy report, have also been uploaded onto the website of the Development Bureau.

According to the Guidelines, the management agencies should compile and release information such as the rules and specification with respect to the use, permissible activities and management issues in POSPD, procedures for applying activities in POSPD, contacts of management agencies, and so on. Apart from making reference to the Guidelines, owners of POSPD shall act in accordance with the requirements as set out in the leases or deeds.

The abovementioned policy review and the drawing up of the Guidelines involved substantial work as well as professional and public discussions. We are of the view that at this juncture, we should focus on implementing these arrangements and encouraging public monitoring, instead of initiating yet another review exercise.

Scope of Consumer Transactions to be Covered by Proposed Mandatory Cooling-off Arrangements

9. **MR ANDREW LEUNG** (in Chinese): *President, in July 2010, the Government published a consultation paper on enhancing protection for consumers against unfair trade practices, and the proposal of providing mandatory cooling-off periods for consumer transactions of timeshare rights or long-term holiday products and those concluded during unsolicited visits to consumers' homes or places of work is made in the paper. In January this year, the Government proposed to expand the scope of mandatory cooling-off arrangements to cover consumer transactions involving goods and/or services with a contract duration of not less than six months, and some members of the trade have expressed grave concern about this modification. In this connection, will the Government inform this Council:*

- (a) *given that as revealed by the information provided by the authorities, 131 written submissions were received during the consultation period, among them, of the number of submissions which made the request for expanding the scope of mandatory cooling-off arrangements;*
- (b) *of the Government's rationale for the proposed expansion of the scope to be covered by mandatory cooling-off arrangements; whether it has consulted the trade on the new scope to be covered;*

- (c) whether it knows the number of complaints involving the use of pre-payment mode of consumer transactions in the following types of goods/services in the past two years and in the first quarter of this year (set out in the table below); and

Year	Beauty care	Fitness and/or yoga centre	Travel club membership	Telecommunications	General merchandise	Catering (including cake/soup coupons)	Wedding/banquet	Others
2009								
2010								
2011 (the first quarter)								

- (d) whether it knows the prepaid amounts involved in the complaints in part (c) (set out in the table below)?

Year	Beauty care	Fitness and/or yoga centre	Travel club membership	Telecommunications	General merchandise	Catering (including cake/soup coupons)	Wedding/banquet	Others
2009								
2010								
2011 (the first quarter)								

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

- (a) Among the 131 public submissions received by the Government, 25 suggested that the scope of transactions to be covered by a cooling-off arrangement be expanded, details as follows:

<i>Proposed Scope</i>	<i>Number of Submissions</i>
All transactions	2
Contracts for the supply of services	3
Contracts with pre-paid arrangements (including goods or services)	6
Contracts for the supply of services of a long duration or involving pre-paid arrangements	4

<i>Proposed Scope</i>	<i>Number of Submissions</i>
Contracts of a duration longer than a certain period or worth above a certain amount	1
Transactions concluded in specified sectors (for example, beauty care services, fitness training and yoga, and so on)	4
Transactions concluded over the phone or those entered into as a result of unsolicited emails, or not at the premises of the supplier	4
Others	1
Total	25

- (b) Views are polarized on whether there should be a mandatory cooling-off period and on the scope of application, if any. There are views that cooling-off will induce moral hazards, encourage risk-taking by consumers and as a result mean additional costs for business, which may translate into higher prices for consumers. On the other hand, there is an overwhelming call for expansion of the scope of coverage. A cooling-off period allows consumers to reconsider their decisions, after consulting third parties where necessary, and free from any undue influence that may have been exerted during the course of the transaction. Moreover, the availability of a cooling-off period can also add to deter unscrupulous acts like aggressive practices in the first place.

After carefully examined the views of different sectors of the community, we consider that an expansion of the scope of a mandatory cooling-off arrangement is suitable. We propose that a mandatory cooling-off period be imposed on contracts involving goods and/or services with a duration of not less than six months. As regards consumer transactions concluded during unsolicited visits to consumers' homes and places of work covered by our original proposal, we maintain that these transactions should be subject to a cooling-off arrangement irrespective of their contract duration. On 20 January this year, we put forth the above revised proposals.

In preparation of drafting the legal provisions, we are liaising with business associations and industry and trade organizations, and so on, so as to gauge their views on the details of the proposals. From what we have gathered so far, we understand that there are concerns about the operational arrangements under the revised proposals, including the financial and refund arrangements involved, administration fees, and arrangements for waiving or curtailing the cooling-off period. We will consider the views of different sectors and examine the details of the arrangements carefully.

- (c) The complaints received by the Consumer Council are generally categorized by major industries. The Council does not keep separate categories on "general merchandise" and "catering (including cake/soup coupons)". The complaint figures categorized by "beauty care", "fitness and/or yoga centre", "travel club membership", "telecommunications" and "wedding/banquet" are as follows:

<i>Year</i>	<i>Beauty care</i>	<i>Fitness and/or yoga centre</i>	<i>Travel club membership</i>	<i>Telecommunications</i>	<i>Wedding/banquet</i>
2009	1 480	514	251	9 166	19
2010	791	862	76	9 054	33
2011 (the first quarter)	174	297	20	1 667	6

To reply to the Member's question, the Consumer Council has examined the case files categorized by the industries set out in the above table. The number of complaint cases involving matters under the pre-payment mode of consumer transactions is as follows:

<i>Year</i>	<i>Beauty care</i>	<i>Fitness and/or yoga centre</i>	<i>Travel club membership</i>	<i>Telecommunications</i>	<i>Wedding/banquet</i>
2009	1 195	385	246	6 486	8
2010	568	775	74	6 477	15
2011 (the first quarter)	100	272	17	1 051	2

- (d) The prepaid amounts (in \$'000) involved in the complaints referred to in the second table of part (c) of the reply are as follows:

<i>Year</i>	<i>Beauty care</i>	<i>Fitness and/or yoga centre</i>	<i>Travel club membership</i>	<i>Telecommunications</i>	<i>Wedding/banquet</i>
2009	26,090	3,930	6,530	36,760	70
2010	15,650	10,340	2,860	9,380	120
2011 (the first quarter)	4,070	4,090	1,080	1,920	10

Special Schools in Islands District

10. **MR WONG KWOK-HING** (in Chinese): *President, it has been learnt that in recent years, quite a number of parents of students with special educational needs (SEN students) and concern groups have expressed concern and dissatisfaction about the lack of special schools in Islands District. In this connection, will the Government inform this Council:*

- (a) *of the current numbers of the various types of special schools and the numbers of places provided by them, broken down by school nets;*
- (b) *of the current numbers of the various types of SEN students; among them, whether it knows the total number of students living in Islands District (with a breakdown by areas, for example, Cheung Chau, Lamma Island, Ping Chau, Tung Chung, Discovery Bay and Lantau Island);*
- (c) *whether it knows the current number of SEN students living in Islands District who attend schools in other districts (broken down by areas of residence, together with a breakdown of the number of students in each area of residence by the areas in which their schools are situated); of the measures taken by the authorities to assist such students (especially in respect of the burden of travelling expenses and safety of students attending schools not in the districts*

of their residence), so as to relieve the pressure and worries of parents;

- (d) of the reasons why the construction of the school for children with intellectual disability in Tung Chung, which was proposed by the authorities back in 2004, has not yet been completed; the current progress of the project and the anticipated commissioning date;*
- (e) whether it has planned to construct special schools in areas of Islands District other than Tung Chung to meet the local demand; if it has, of the details; if not, the reasons for that; and*
- (f) whether it has planned to conduct a comprehensive review of the various policies relating to special education, including the integrated education approach, the school places allocation system, distribution of school places and schools, amount of subsidies and teaching facilities, and so on, with a view to providing a better learning environment and equal learning opportunities to SEN students; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

(a), (b) and (c)

The numbers of various types of special schools, places provided and students studying in them are as follows:

<i>Types of Schools</i>	<i>Number of Schools</i>	<i>Number of Places provided in the 2010-2011 School Year</i>	<i>Number of Students in the 2010-2011 School Year (As at September 2010)</i>
School for children with visual impairment (VI school)	2	190	143
School for children with hearing impairment (HI school)	2	180	136

<i>Types of Schools</i>	<i>Number of Schools</i>	<i>Number of Places provided in the 2010-2011 School Year</i>	<i>Number of Students in the 2010-2011 School Year (As at September 2010)</i>
School for children with physical disability (PD school)	7	940	877
School for children with mild intellectual disability (MiID school)	10	2 005	1 841
School for children with moderate intellectual disability (MoID school)	14	1 270	1 158
School for children with Mild and MoID	7	1 890	1 770
School for children with severe intellectual disability (SID school)	10	840	749

Note:

- * The above table does not include the hospital school that operates classes in 18 hospitals, and seven schools for social development that admit students with moderate to severe emotional and behavioural difficulties.

Apart from the four VI and HI schools in the above table that admit students with the relevant special educational needs from all over the territory, for children with physical disability and children with intellectual disability, the Education Bureau will arrange for them to study in special schools in the region to which their places of residence belong. These schools are distributed as follows:

<i>Region</i>	<i>Hong Kong Island and Outlying Islands</i>	<i>Kowloon Peninsula (including Tseung Kwan O and Sai Kung East)</i>	<i>New Territories East (including Sai Kung West)</i>	<i>New Territories West A (Tsuen Wan, Kwai Chung, Tsing Yi and Tung Chung)</i>	<i>New Territories West B (Tuen Mun and Yuen Long)</i>
PD school	1	2	2	1	1
ID school	6	14	9	4	8

In the 2010-2011 school year, there are a total of about 6 700 students in the above types of special schools, and 95 of them live in different areas of Islands District. Their distribution and a breakdown of the number of students attending schools in other districts are as follows:

<i>Area</i>	<i>Cheung Chau</i>	<i>Lamma Island</i>	<i>Peng Chau</i>	<i>Discovery Bay</i>	<i>Lantau Island</i>	<i>Tung Chung</i>	<i>Total</i>
Number of students	15	1	2	2	3	72	95
Number of students attending schools in other districts	1	0	1	0	1	10	13

Notes:

- (1) Students living in Cheung Chau, Lamma Island, Peng Chau, Discovery Bay and Lantau Island who do not study in schools on Hong Kong Island are classified as students attending schools in other districts.
- (2) Students living in Tung Chung who do not study in schools in New Territories West A are classified as students attending schools in other districts.
- (3) In the above table, the area of Lantau Island does not include Discovery Bay and Tung Chung.

In general, students living in Islands District will be arranged to study in special schools on Hong Kong Island. When going to school, they will normally travel to Central by ferry, and will be picked up by school buses provided by their schools at the pier. Students living in Tung Chung will be referred to special schools in New Territories West A region. School bus service is usually provided by their schools, too. There are also parents who choose to take their children to and from school by themselves. For VI, PD, MoID or SID students assessed as having a need for school boarding service, the Education Bureau will arrange boarding placement for them. If parents have financial difficulties in meeting their children's travelling expenses, they may apply for allowances from relevant departments. Some school sponsoring bodies also provide financial support for students in need. Of the

13 students attending schools in other areas as shown in the above table, 11 are receiving boarding service at their schools.

- (d) The Education Bureau recognizes the need to build a special school in Tung Chung. We have preliminarily selected a suitable site for this purpose, and are actively studying with the departments concerned the feasibility of the related land use. We are also conducting technical studies. Once the studies are completed, we will work out the detailed arrangements for the special school so that the school building project can be implemented as early as possible.
- (e) Having regard to the numbers of students living in different areas of Islands District who need to attend various types of special schools, and the supply and demand of special school places across the territory, the Education Bureau considers that at present there is no need to build special schools in other areas of Islands District.
- (f) The Education Bureau has been reviewing the implementation of special education from time to time. For example, the Education Bureau will plan for the building and/or reprovisioning of special schools or arrange for conversion works as necessary in the light of the projected change in the number of students, supply and demand of special school places in each district, as well as the physical facilities of special schools, and so on. In addition, the Education Bureau keeps in close contact with the special schools. Annually, it determines the number of classes to be operated in each special school according to demand, and reviews the student referral procedures, making improvements where necessary. The Education Bureau has introduced a number of improvement measures in recent years, including implementing the new senior secondary academic structure in special schools, increasing the ratio of graduate teachers in special schools, reducing the class size in MiID schools to 15 students per class progressively by grade level and implementing the improvement measure on extension of years of study in special schools, and so on.

As for the implementation of integrated education, the Education Bureau set up a Task Force on Integrated Education in Mainstream

Schools in 2005 to discuss, through regular meetings with the sector, other government departments, non-governmental organizations and parents, improvement measures that are practicable and relevant to the development of integrated education. In recent years, the Education Bureau has launched a number of improvement measures for integrated education, including the provision of Learning Support Grant for public sector primary and secondary schools, formulation of a Teacher Professional Development Framework, gradual extension of school-based educational psychology service, regularization of trial measures that are proved to be effective, such as the Enhanced Speech Therapy Grant, and the development of resource schools and special schools cum resource centres, and so on. The Education Bureau has also enhanced the professional support for ordinary schools, including developing assessment tools and resource kits and strengthening on-site support services, and so on.

We will continue to listen to the views of the sector and review the implementation of the measures with a view to improving the effectiveness of the support services.

Demand for Neonatal Intensive Care Services

11. **MR CHAN HAK-KAN** (in Chinese): *President, at present, most of the babies born in private hospitals who are in need of intensive care will be transferred to neonatal intensive care units (NICUs) of public hospitals, bringing workload and pressure on these units. In this connection, will the Government inform this Council whether:*

- (a) *it knows the number and percentage of newborn babies in each private hospital who were transferred to NICUs of public hospitals for treatment in the past three years, and provide the breakdown in table form by the names of the private hospitals;*
- (b) *it knows the wastage and turnover rate of healthcare staff in the NICU of each public hospital in the past three years, and provide the breakdown in table form by the names of the public hospitals;*

- (c) *it has assessed the impact of capping the total number of deliveries in this and next year in Hong Kong at last year's level of around 88 000 on the demand for neonatal intensive care services, and if there is a need to increase the number of beds and healthcare staff in NICUs; of the impact on the demand for beds and healthcare manpower when the total number of deliveries exceeds the aforesaid level; and whether it knows the measures public hospitals have put in place to cope with such circumstances;*
- (d) *the Department of Health (DH), which is responsible for monitoring private hospitals, has assessed the current capacity of various private hospitals to treat babies with health problems; whether the DH will introduce a requirement for private hospitals to strengthen the services of their high dependency units as a condition for re-registration; if it will, of the details; if not, the reasons for that; and*
- (e) *it has considered requiring Mainland pregnant women giving birth in Hong Kong to undergo more antenatal checks, so as to reduce the risk of their newborn babies having health problems; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, it is the Government's policy to ensure that Hong Kong residents are given proper and adequate obstetric services. The Government is very concerned about the surge in demand for obstetric services in Hong Kong by non-local women (including Mainland women) in recent years, which has caused tremendous pressure on the overall obstetric service and manpower in Hong Kong. To ensure that local pregnant women are given proper obstetric services and the priority to use such services, the Hospital Authority (HA) would reserve sufficient places in public hospitals for delivery by local pregnant women and would only accept booking from non-local pregnant women when spare service capacity is available. The private hospitals have also agreed not to expand their maternity services in the short term. The HA and the private hospitals will also review their respective training programmes for nurses at obstetric and neonatal services to ensure they can cope with the demand of our community in the medium and long term.

Our replies to various parts of the question are as follows:

- (a) The numbers of referrals from private hospitals to NICUs of public hospitals for in-patient treatment in the past three years are as follows:

<i>Year</i>	<i>Total</i>
2008	281
2009	312
2010*	354

Note:

* Provisional figure

The HA does not keep statistical breakdown of the number of referrals of newborns to NICUs of public hospitals for treatment by each of the private hospitals.

- (b) The turnover figures and turnover rates of paediatricians and paediatric nurses in public hospitals in the past three years are as follows:

	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Doctors	17 (5.8%)	20 (6.6%)	11 (3.5%)
Nurses	64 (5.7%)	73 (6.5%)	66 (6.0%)

Note:

The figures include retirees and other departed staff.

- (c) The capacity of obstetric service in public hospitals has already been fully reached in 2010. If the total number of deliveries in the territory in 2011 and 2012 stays at the level of 88 000 cases as in 2010, the demand for obstetric beds and manpower will continue to be tense. The HA will monitor the local birth rate and trend, the number of non-local pregnant women giving birth in Hong Kong in 2011 and 2012, as well as the demand and supply of healthcare professionals and the supporting hardware, to adjust the capacity of obstetric services of public hospitals when necessary.

- (d) The DH registers private hospitals which have met the requirements relating to accommodation, staffing and equipment in accordance with the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165). The DH requires all private hospitals providing obstetric services to have in place arrangements for provision of neonatal clinical service, including appropriate staffing (for example, having paediatricians on duty) and equipment, as well as availability of special care units, intensive care units or arrangements for referral to public hospitals, and so on. In processing applications from private hospitals for registration, re-registration or expansion of obstetric services, the DH will take into account whether the hospitals concerned are provided with the necessary supporting facilities, services and staffing as described above.
- (e) The Administration has all along encouraged all pregnant women, local or otherwise, to receive regular antenatal checkups and reminded them to seek medical attention promptly if any abnormal condition or discomfort occurs. As for antenatal checkups required to be received by pregnant women (including the type and number of checkups), it should be a matter of clinical judgment for doctors who will make such arrangements according to prevailing medical evidence or relevant clinical protocols having regard to the clinical conditions of the pregnant women.

As regards the non-local pregnant women who intend to have deliveries in Hong Kong, they should undergo antenatal checks by obstetricians in Hong Kong at an appropriate stage. Non-local pregnant women having normal pregnancy condition are allowed to have deliveries in Hong Kong. For high-risk pregnancies, the pregnant women in question are not suitable to give birth in Hong Kong as the health of themselves and their fetuses may be affected due to travels and other factors. Currently, the HA's obstetric service package for non-local pregnant women includes one antenatal checkup at the HA's specialist out-patient clinics. This serves to reduce the risk of difficult labour, unrecognized congenital anomalies for the babies and infection for healthcare workers and to deter dangerous behaviour by non-local pregnant women who have

not received any antenatal checkup in public hospitals in seeking last-minute hospital admission before delivery through the Accident & Emergency Departments. Non-local pregnant women can receive more than one antenatal checkup at their own expense in public hospitals as appropriate to their conditions. They are required to pay the charges applicable to non-local people (that is, non-eligible persons).

Besides, an antenatal shared-care programme is provided by the Maternal and Child Health Centres (MCHCs) under the DH in collaboration with obstetrics departments of public hospitals to cater for the needs of pregnant women during their pregnancy and delivery process. Under this antenatal care programme, pregnant women are provided with services such as routine checkups, blood tests and health education related to pregnancy, delivery and care for newborn babies. MCHCs will accept bookings for antenatal services from non-local pregnant women only if they have already made their first antenatal service registration with a public hospital and can present a Certificate on Confirmed Antenatal and Delivery Booking issued by the HA. Non-local pregnant women have to pay for the charges applicable to non-local persons (that is, non-eligible persons) before receiving antenatal services provided by MCHCs.

Impact of Statutory Minimum Wage on Subsidized Residential Care Services for Elderly

12. **DR PAN PEY-CHYOU** (in Chinese): *President, at present, the Government has sought to shorten the waiting time for subsidized places in residential care homes for the elderly (RCHEs) through implementing the Enhanced Bought Place Scheme (EBPS) and contract RCHEs. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of RCHEs under EBPS (broken down by EA1 and EA2 categories) and contract RCHEs in the past three years; the numbers of subsidized places provided by each of these types of RCHEs, as well as the average annual amounts of*

government subsidies provided for each place; the criteria for determining the level of subsidies;

- (b) *whether the Social Welfare Department (SWD) knows the respective wage levels of all health workers, care workers and ancillary workers employed in the aforesaid RCHEs; if it knows, of the current maximum and minimum hourly wages for these positions; if it does not know, the reasons for that, as well as whether the authorities will consider collecting relevant information;*
- (c) *whether, in response to the implementation of the Minimum Wage Ordinance (Cap. 608) (the Ordinance), the authorities will consider disbursing an additional one-off grant to the aforesaid RCHEs to alleviate the pressure on their operation; if they will, of the details; if not, the reasons for that; and*
- (d) *whether the authorities have any new monitoring measures to ensure that RCHEs have sufficient manpower and the wage levels of their staff comply with the requirements under the Ordinance; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Dr PAN Pey-chyou's question is as follows:

- (a) The number of private RCHEs participating in the EBPS and that of government contract RCHEs, as well as the number of subsidized places provided by these RCHEs in the past three years are set out below:

2008-2009	Private RCHEs participating in EBPS		Contract RCHEs
	EA1	EA2	
Number of RCHEs	35	94	14
Number of places	2 772	3 849	1 064

2009-2010	Private RCHEs participating in EBPS		Contract RCHEs
	EA1	EA2	
Number of RCHEs	36	105	16
Number of places	2 807	4 116	1 218

2010-2011	Private RCHEs participating in EBPS		Contract RCHEs
	EAI	EA2	
Number of RCHEs	36	104	18
Number of places	2 840	4 360	1 355

The Government provides subsidies for the abovementioned places, and the amount (per place per month) is as follows:

Government subsidies Year	Private RCHEs participating in EBPS				Contract RCHE places ^{Note}
	EAI places (Urban)	EAI places (New Territories)	EA2 places (Urban)	EA2 places (New Territories)	
2008-2009	\$6,614	\$5,998	\$5,598	\$5,079	\$6,265
2009-2010	\$6,773	\$6,142	\$5,732	\$5,201	\$7,193
2010-2011	\$6,878	\$6,237	\$5,821	\$5,282	\$7,198
2011-2012 (coming year)	\$7,016	\$6,362	\$5,937	\$5,388	\$8,682

Note:

At present, most of the contract RCHEs provide both subsidized nursing home places and care-and-attention (C&A) places. The amount listed in this column is the average amount of subsidies of these two types of places.

Under EBPS, the Government purchases C&A places from qualified private RCHEs, and sets the purchase prices for these places. The price is made up of two components: government subsidy and the fee payable by the residents. In calculating the amount of government subsidies, the SWD has already taken into account the operating expenditure of RCHEs in providing such places, including items such as emoluments and rentals. Regarding contract RCHEs, the Government will select suitable operators through competitive bidding after the construction of the RCHE premises. In determining the service fee of contract RCHEs, the SWD has also considered their operating expenditure (including emoluments). The SWD will review and adjust the amount of EBPS subsidies and service fee of contract RCHEs annually according to the established mechanism.

- (b) Operators of private RCHEs participating in EBPS and contract RCHEs should sign employment contracts with their employees,

setting out the mutually agreed employment terms, and comply with all laws and regulations relating to the employment of staff, including the Minimum Wage Ordinance (MWO). As the salary level is an employment term agreed between the RCHE operators as employers and their employees, the SWD does not have the information in this respect.

- (c) The SWD has all along maintained communication with the sector to keep abreast of their latest business situation. The SWD has recently met with the representatives of RCHEs participating in EBPS. Attendees have also mentioned the implementation of statutory minimum wage and its impact on RCHEs.

The SWD is exploring possible support measures for EBPS homes, and will set up a working group inviting representatives from the sector and professionals to join and discuss how to further enhance EBPS.

- (d) At present, all RCHEs in Hong Kong have to comply with the minimum staffing requirement under the Residential Care Homes (Elderly Persons) Ordinance and its subsidiary legislation. The Licensing Office of Residential Care Homes for the Elderly (LORCHE) of the SWD conducts inspections on RCHEs to ensure compliance of the licensing requirements. If irregularities (for example, understaffing) are detected during the inspections, the LORCHE will require the RCHEs concerned to rectify the situation. It will issue advisory or warning letters to non-compliant RCHEs, or even initiate prosecution actions.

If RCHEs are suspected to have violated MWO, the LORCHE will refer the cases to the Labour Department (LD) for follow-up. Besides, the LD will proactively inspect the workplaces of various trades and take targeted enforcement action for low-paying sectors (including RCHEs) with a view to safeguarding employees' statutory benefits. During the inspections, labour inspectors will explain to employers and employees the requirements of MWO. Should irregularities be detected, the LD will require the employers to take appropriate measures to comply with MWO, including making

payment to employees of any wages falling short of the statutory minimum wage. The LD will also enhance the publicity of the relevant complaint hotline (2815 2200) to encourage employees to report suspected breaches. The LD will follow up and investigate all complaints received, and take strict enforcement action against willful breaches of the law. If RCHE staff have any questions on statutory minimum wage, they can make enquiries through the LD's 24-hour hotline (2717 1771), or obtain more information at the district offices of the LD's Labour Relations Branch.

Lost and Delayed Trips of Franchised Buses

13. **MR JAMES TO** (in Chinese): *President, in recent years, I have received from time to time complaints from members of the public about the worsening situation of scheduled trips of franchised buses being cancelled without notice (hereinafter as "lost trips") or delayed. In this regard, I have repeatedly requested the Transport Department (TD) to follow up the issue, but there is no improvement to the situation. It has been reported that, apart from bus captains taking sick leave, one of the reasons why certain trips were cancelled without notice or delayed is the increase in staff turnover due to the unsatisfactory pay package offered to the bus captains who were recruited in recent years. In this connection, will the Government inform this Council:*

- (a) *whether it knows the respective numbers of complaints received by franchised bus companies, the TD and the 1823 Call Centre about lost or delayed bus trips in each of the past three years; among such complaints, the number of substantiated cases; the 10 bus routes with the largest number of complaints and substantiated complaints each year;*
- (b) *whether the TD, after receiving complaints about lost or delayed bus trips, sent its staff to the bus stops to check the bus frequency on site; if it did, how long the TD usually took to conduct such on-site checks after receiving the complaints; whether the TD will take the initiative to send its staff to check the bus frequency of those routes regarding which complaints about lost or delayed trips are particularly numerous; if it will, of the number of such on-site checks conducted*

in each of the past three years; whether the franchised bus companies will be penalized for lost or delayed trips, and of the current penalties;

- (c) *whether it knows, in each of the past three years and for each franchised bus company, the respective numbers of full-time and part-time bus captains who joined the company, the turnover rate of its bus captains, the percentage of those with less than two years of service in the total number of bus captains who left the service in the year, the number of bus captains, the average daily number of trips made for the bus routes it operates, and how the ratio of the number of bus captains to the number of trips made each day varied over the years;*
- (d) *whether it has discussed with the franchised bus companies in the past three years ways to improve bus services and the pay packages of bus captains; and*
- (e) *whether it will introduce intelligent technologies to obtain real-time information about the franchised bus operations, so as to monitor the service and minimize the inconvenience caused to passengers by lost or delayed bus trips?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

- (a) Over the past three years, the patronage of franchised buses was about 1.4 billion passenger journeys each year. The numbers of complaints received by the TD through the Transport Complaints Unit (TCU) under the Transport Advisory Committee (TAC) involving frequencies of franchised buses in the past three years are as follows:

<i>Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number of Complaints ^{Note}	722	751	1 103

Note:

As there is a lot of duplication of complaints lodged with different complaint channels, the figures of the TCU under the TAC are provided for reference.

The franchised bus companies do not have the breakdown of complaints involving bus frequencies.

Bus frequencies may be affected by factors such as bus captains' taking leave, sudden mechanical failures of the vehicles, or some external factors (such as road traffic conditions or other traffic incidents) leading to service irregularities. Since road traffic conditions and traffic incidents are beyond the control of the bus companies or are unexpected, the bus companies can only follow up and implement improvement measures for complaints concerning bus frequencies under their control.

- (b) Upon receipt of complaints about bus frequencies, the TD will first analyse the case, seek explanations and operational details of the bus routes concerned from the franchised bus companies to ascertain if the bus frequencies follow the timetables of the service schedule issued by the TD.

Depending on the circumstances of the complaints, the TD would conduct site investigations at the location concerned as and when necessary. These investigations will be prioritized according to the nature of complaints, traffic situation in the district concerned, and the resources available.

The numbers of on-site checks on bus frequencies conducted by the TD in the past three years are as follows:

<i>Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number of on-site checks	995	884	1 144

The TD also conducts large-scale annual surveys to monitor the overall service level of franchised buses.

In case a franchised bus company fails to make improvement or provide reasonable explanations, the TD will issue letters to the relevant bus company regarding the complaint, requesting the bus company to maintain a satisfactory and efficient public bus service, and to implement improvement measures within a certain period of time. If the franchised bus companies are unable to make

improvements within a certain period of time, the TD will issue a warning letter to the relevant bus company.

- (c) The table below shows the total number of bus captains at year-end, the number of bus captains joining the companies each year, the turnover rate of bus captains, the average daily number of bus trips made, and the ratio of the number of bus captains to the number of trips made each day of the franchised bus companies in the past three years:

<i>Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Total number of bus captains at year-end	12 510	12 510	12 470
Number of bus captains joining the companies each year (full-time and part-time)	810	750	980
Overall turnover rate of bus captains	6.4%	6.0%	7.8%
Turnover rate of bus captains with less than two years of service	2.2%	1.9%	2.4%
Average daily number of bus trips made	83 870	82 830	80 810
Ratio of number of bus captains to number of trips made	1:6.7	1:6.6	1:6.5

- (d) The TD often meets with the bus companies and bus captain unions to exchange views on ways to improve bus services. The management of the bus companies also holds discussions with its staff on bus services and remuneration packages of bus captains from time to time.
- (e) The TD monitors the performance of the bus companies through passenger satisfaction surveys, field surveys and inspections, vehicle examination, review of regular reports submitted by the bus companies, regular meetings with the bus companies, and collation of public opinions.

The Government will also continue to liaise with the relevant organizations to keep abreast of the latest applications of technology and encourage the franchised bus companies to try out and adopt technological systems that can enhance their services.

Consideration of Concentration Risk by Banks when Assessing Suitability of Equity Linked Structured Notes Issued by Lehman Brothers for Customers

14. **MR LAU KONG-WAH** (in Chinese): *President, in relation to the equity linked structured notes issued and guaranteed by Lehman Brothers (LB ELNs), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) reached an agreement with Standard Chartered Bank (Hong Kong) Limited (Standard Chartered) in March this year, under which Standard Chartered agreed to repurchase the products from eligible customers holding an outstanding LB ELN distributed by Standard Chartered. The authorities indicated in the relevant announcement that, following an investigation by the SFC and the HKMA, both regulators were concerned that Standard Chartered might have exposed LB ELN customers to higher levels of risk than were suitable for them by not adequately considering the risk that a customer's available assets for investment were overly-exposed to the same set of risks (hereinafter as "concentration risk") when assessing the suitability of LB ELNs for customers. In this connection, will the Government inform this Council:*

- (a) *given that the SFC and the HKMA also reached similar agreements with Dah Sing Bank Ltd and Mevas Bank Ltd in December 2009 and DBS Bank (Hong Kong) Limited in July 2010 respectively, whether it knows if the SFC and the HKMA have identified any issue relating to concentration risk in their investigations; if such issues have been identified, whether the cases were similar to those involving Standard Chartered, and whether such factor has been taken into account in determining the repurchase rate; if not, the reasons for that;*
- (b) *whether it knows if the SFC and the HKMA have hitherto identified any issue relating to concentration risk in cases involving banks which have not yet reached any collective repurchase agreement (such as Citibank (Hong Kong) Limited); given that under the collective repurchase agreement in relation to the Lehman Brothers Minibonds announced on 22 July 2009, the banks concerned are required to implement special enhanced complaints handling procedures to handle the remaining complaint cases involving customers not eligible for taking part in the repurchase scheme,*

whether the authorities have identified any issue relating to concentration risk in such cases;

- (c) *whether it knows if the SFC and the HKMA have examined whether Standard Chartered had overlooked the concentration risk in its sale and distribution of LB ELNs because there were inadequacies in the risk assessment procedures in the bank's sale and distribution process, resulting in the failure of the bank or its front-line staff to carefully consider the level of concentration risk of their customers' investments; whether there were other major inadequacies, and whether they have identified any systemic issue within the bank with regard to the sale and distribution of financial products; and*
- (d) *given that the SFC and the HKMA have reached the relevant agreements with individual banks without the banks' admission of liability in order to facilitate repurchase of LB products by the banks, whether it knows if the SFC and the HKMA will adopt similar arrangements to handle systemic errors of banks in the sale and distribution of their products; if such arrangements will not be adopted, how the authorities will handle such problems?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the Administration has consulted the SFC and the HKMA on the above questions. The reply is as follows:

- (a) The SFC and the HKMA have entered into agreements under section 201 of the Securities and Futures Ordinance (SFO) with 18 banks (that is, 16 Minibond distributing banks, DBS Bank (Hong Kong) Limited and Standard Chartered Bank (Hong Kong) Limited (Standard Chartered Bank)). The SFC has also entered into such agreements with several brokerage firms.

Other than the section 201 agreement with the 16 Minibond distributing banks (Minibond Agreement), each case was dealing with different situations and was responding to different regulatory concerns based on the evidence collected. While there are common

elements in each agreement, the foundation for each agreement is different.

The issue of concentration risk was the principal concern that arose in the investigation into the sale of Lehman Brothers-related products by the Standard Chartered Bank. Concentration risk is an aspect of suitability. In short, the Code of Conduct for Persons Licensed by or Registered with the SFC requires intermediaries to ensure that any advice or recommendation concerning a securities product is suitable for a customer given the customer's circumstances. If concentration risk is relevant to the acquisition of the product, then concentration risk will be a necessary element to be considered when suitability is being addressed. A large number of other elements are also relevant to the way in which suitability needs to be addressed. They include the extent to which the intermediary has understood the customer's relevant circumstances, such as the person's risk tolerance, present and future plans, income needs and investment experience.

The Standard Chartered Bank case is the only one in which concentration risk was the key issue raising regulatory concerns. For this reason, the section 201 agreement in this case was designed to provide financial re-dress for the concerns that concentration risk was not properly addressed by the Standard Chartered Bank. This meant the resolution in this case is different from the ones that were applied in the other section 201 cases.

The resolution in the Standard Chartered Bank case was designed to cap each eligible customer's loss to no more than 5% or 10% of their available assets held at or with the Standard Chartered Bank. The formula uses a very customer friendly assessment of concentration risk which would normally be calculated on the basis of all assets and investments held by the customer, not just those held at or with the Standard Chartered Bank. Moreover, the relevant concentration risk percentage (which implies that a person who spent more than 5% of their available assets in a Lehman Brothers equity linked structured note (ELN) would be over-exposing their available assets

to the risks presented by Lehman Brothers ELNs) is a reasonable arrangement.

As regards the scheme of Dah Sing Bank and Mevas Bank, it arose from the Enhanced Complaint Handling Procedures (ECHP) under the Minibond Agreement. Under the scheme, whether a customer is eligible for the repurchase offer is formulated on the basis of the date of purchase of the notes. The factor of concentration risk was not mentioned in the press release of 23 December 2009 in respect of the resolution reached between the SFC, the HKMA, Dah Sing Bank and Mevas Bank concerning the sale of certain Equity Index-linked Fixed Coupon Principal Protected Notes issued by Lehman Brothers.

- (b) Neither the SFC nor the HKMA can comment on the details of their ongoing investigations under the constraint of the secrecy provisions in the SFO and Banking Ordinance respectively.

In respect of Minibond customers who did not receive a repurchase offer under the Minibond Agreement, they have been entitled to submit their complaints to their respective banks under the ECHP designed to require each bank to undertake a merit based inquiry into each complaint and to resolve them accordingly. Over \$161 million (out of a total of over \$600 million paid out under the ECHP to date) has been paid to these customers. Moreover, the announcement made on 27 March 2011 by the 16 Minibond distributing banks the receivers of the Minibond collateral about the repatriation of the Minibond collateral proceeds will benefit all Minibond customers including those who did not receive a repurchase offer (subject to the completion of the conditions). The repatriation of the collateral proceeds is another consequence of the Minibond Agreement.

- (c) The issue of "concentration risk" mentioned in the joint press release of the SFC and the HKMA dated 1 March 2011 was the principal concern identified in the regulators' investigation of the Standard Chartered Bank. Neither the SFC nor the HKMA has further comments.

- (d) Given the uniqueness of each individual case, direct comparison is not appropriate and for the same reason, there is no simple answer to the question of whether systemic failure of banks in relation to the sale of investment products should be handled by broad-based settlement schemes.

In relation to enforcement actions and resolutions, the SFC and the HKMA will continue to work closely with each other to combat any systemic deficiencies in the banks' selling process.

Disruptions to Banks' Online Trading System

15. **MR PAUL CHAN** (in Chinese): *President, it has been reported that on 11 April this year, due to a serious disruption to its online trading system, a bank in Hong Kong sold stocks on behalf of its customers at severely diminished prices, causing quite a number of customers to suffer losses. Furthermore, different compensation packages were offered to the affected customers afterwards by the staff of different branches of the bank. In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of incidents of disruptions to the online trading systems of financial institutions in the past five years, the number of customers affected and the amount of money involved, as well as the percentages of such amounts in the average daily turnover handled by the systems concerned;*
- (b) *whether the financial institutions involved had, immediately after the occurrence of the incidents in part (a), reported them to the Hong Kong Monetary Authority (HKMA); if they had, of the causes of the incidents, and the follow-up actions taken and improvement measures implemented by the institutions concerned; if not, under what circumstances the financial institutions involved are required to report such incidents to the HKMA; whether the HKMA has looked into why the staff of different branches of the aforesaid bank had offered different compensation packages to the affected customers, and whether it has assessed if the explanation given by the bank is acceptable; and*

- (c) *given that the General Principles for Technology Risk Management (the Principles) are set out in the Supervisory Policy Manual (SPM) issued by the HKMA to financial institutions, when the Principles were last reviewed by the authorities, what improvement measures were recommended after the review, as well as how the authorities monitor whether or not financial institutions observe the Principles when managing technology-related risks?*

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

- (a) Based on the information provided by the bank concerned, the transactions affected by the online securities trading system incident in early April mentioned in the question accounted for about 3% of the bank's transaction volume of securities trading on that day. According to the information for the past five years available to the HKMA, this is the first reported incident of disruption to online securities trading services that involves selling of shares on behalf of customers at a price lower than that instructed by the customers.

In addition to the abovementioned incident, the HKMA had received 18 reports in the past five years on failure of online securities trading systems that had resulted in disruptions to banks' online securities trading services. For these cases, the customers concerned could still conduct securities trading through other channels (such as banks' service hotlines or bank branches). The HKMA had also received 28 reports on slow system response or other system disruptions that had affected online securities trading services provided to the customers. As these incidents had mainly resulted in customers not being able to log in the system or conduct securities trading, the number of customers who had originally intended to use such services could not be ascertained. Hence, the HKMA does not have the information on the number of customers affected or transaction amount involved in such incidents.

Regarding incidents related to banks' online securities trading systems, the bank concerned should bear the direct loss suffered by a

customer in the incident if, after investigation, the customer's loss is shown to be caused by the failure of the bank's system.

- (b) According to the SPM module on "Supervision of E-banking" issued by the HKMA, banks should report promptly to the HKMA on any material service interruptions or other significant incidents related to their e-banking services. In the above incidents reported for the past five years, almost all the banks involved had reported to the HKMA promptly after they had become aware of the occurrence of the incidents. As regards the causes of these incidents, they can be broadly categorized into hardware failure, operational errors and disruptions caused by system modifications. The HKMA had followed up these incidents and required the banks concerned to make the necessary system improvements.

As mentioned in part (a) above, the principle required by the HKMA to be adopted by banks in relation to compensation to customers is that banks should bear the direct loss suffered by the customers concerned in the incident if the loss is shown to be caused by the failure of the banks' systems. In the incident referred to in the question, the detailed arrangements for the compensation to customers may vary depending on the circumstances of individual cases. Notwithstanding this, bank staff at different branches should observe the same compensation principle when handling customers' cases.

- (c) In addition to the SPM module on "General Principles for Technology Risk Management" issued in 2003, the HKMA issued the SPM module on "Supervision of E-banking" in 2004 to provide banks with guidance on the risk management of e-banking, including relevant measures on incident response and management. The HKMA also issued a circular on incident response and management procedures on 22 June 2010 to remind banks of the need to put in place effective response and management procedures for dealing with significant incidents and set out the relevant principles governing the announcements to customers in respect of such incidents. The circular also reminded banks that they should notify the HKMA immediately once they became aware of any significant

incidents. The HKMA will review banks' compliance with these supervisory requirements from time to time and require banks to make improvement where appropriate.

Provision of Dog Parks

16. **MR ALBERT CHAN** (in Chinese): *President, I understand that dog keeping has become an important part of living for quite a number of members of the public. Yet, the number of dog parks in Hong Kong remains limited, causing much inconvenience to those members of the public who walk their dogs. In this connection, will the Government inform this Council:*

- (a) *of the respective areas of the dog parks in each District Council district at present (set out in a table); and*
- (b) *whether it will consider amending the relevant planning guidelines to require the construction of a dog park or the opening up of an existing park to provide a dog park, once the population in a community has reached a certain size; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, in the 2010-2011 Policy Address delivered by the Chief Executive last year, it was mentioned that to cater for the needs of dog owners, the Leisure and Cultural Services Department (LCSD) planned to make available more venues which allow them to bring in their dogs. Also, the LCSD would identify suitable sites for building new pet gardens.

The LCSD plans to make available more suitable venues to allow members of the public to bring in their dogs. At present, the LCSD provides pet gardens at 23 leisure venues or sites. A list of the relevant leisure venues or sites by district and the respective areas of the pet gardens are set out at Annex. The LCSD will continue to identify suitable venues in existing or planned parks for the provision of additional pet gardens. It will also liaise with the Lands Department to identify suitable vacant Government lands for providing more pet gardens.

Given the diverse views held by members of the public on whether pets should be allowed in the LCSD venues (some people are concerned that dogs may cause nuisance to users of the LCSD venues, especially to the elderly and children), it is not suitable to introduce a mandatory requirement for the provision of dog parks at the moment. In considering the provision of pet gardens, the LCSD will continue to strike a balance between the needs of pet owners and those of other venue users, and will take into careful account issues relating to environmental hygiene, public health, facility management, and so on. The LCSD will consult the concerned District Councils and local communities before implementation of the proposal.

Annex

The 23 LCSD leisure venues/sites that are provided with pet gardens

<i>District</i>	<i>Name of Leisure Venue</i>	<i>Area of Pet Garden (sq m)</i>
Central and Western	1. Victoria Peak Garden	107 000
	2. Central and Western District Promenade — Sheung Wan Section	1 500
Wan Chai	3. Tai Hang Drive Sitting-out Area	96
Southern	4. Sitting-out Area at Aberdeen Tennis and Squash Centre	400
Eastern	5. North Point Promenade	576
Yau Tsim Mong	6. Yau Tsim Mong Pet Garden	2 300
Kowloon City	7. Kowloon Tsai Park	390
Kwun Tong	8. Kwun Tong Ferry Pier Square	1 200
Sham Shui Po	9. Lai Chi Kok Park	370
Islands	10. Tung Chung North Park	2 180
Kwai Tsing	11. Cheung Wan Street Rest Garden	2 400
	12. Kwai Chung Castle Peak Road Sitting-out Area	2 546
	13. Jockey Club Hing Shing Road Playground	1 290
	14. Tsing Yu Street Garden	10 200

<i>District</i>	<i>Name of Leisure Venue</i>	<i>Area of Pet Garden (sq m)</i>
Tsuen Wan	15. Sham Tsz Street Playground	160
	16. Tsuen Wan Park	290
	17. Wo Yi Hop Road Garden	106
Tuen Mun	18. Hoi Wong Road Garden	3 480
Yuen Long	19. Town Park North Children's Playground	438
Sha Tin	20. Sai Sha Road Pet Garden, Ma On Shan	2 360
Tai Po	21. Kwong Fuk Park	2 000
North	22. Po Wing Road Sitting-out Area	3 165
Sai Kung	23. Open space adjacent to Sheung Ning Playground — in the pilot stage and currently jointly managed by various departments	1 250

Taxis not Charging Wheelchair Users According to Taximeter

17. **MR LEUNG KWOK-HUNG** (in Chinese): *President, quite a number of elderly people, persons with disabilities and concern groups for these people have complained to me that recently, several taxis (commonly known as "diamond cabs") which boast their special design for wheelchair users, do not charge fares according to taximeters (meters) but bargain the fares with passengers according to the distance of their trips, and the fares so charged are very often higher than those charged according to meters. The complainants also considered that these diamond cabs had violated the Road Traffic Ordinance (Cap. 374) for not charging fares according to meters, while the practice of adopting a charging method for wheelchair users which is different from that for other passengers has contravened the Disability Discrimination Ordinance (Cap. 487). In this connection, will the Government inform this Council:*

- (a) *whether taxis are required to charge fares according to meters under the existing legislation; if so, of the penalties for contravening such legislation;*

- (b) *whether it has granted approval for diamond cabs or other taxis not to charge fares according to meters from passengers picked up on the streets or through telephone bookings; if so, in respect of diamond cabs and other taxis, when such approval was granted, of the number of taxis granted such approval and the terms and conditions for granting approval; if only diamond cabs are granted such approval, of the reasons for that; if diamond cabs are not granted such approval, of the reasons for them not charging fares according to meters blatantly;*
- (c) *whether it will request the Equal Opportunities Commission to investigate immediately if diamond cabs' practice of adopting a charging method for wheelchair users which is different from that for other passengers has contravened the Disability Discrimination Ordinance; if so, when it will make such request; if not, of the reasons for that;*
- (d) *whether it will institute prosecution immediately against taxi drivers who do not charge fares according to meters; if so, when it will do so; if not, of the reasons for that; and*
- (e) *of the number of cases in which taxi drivers were prosecuted in the past five years for not charging fares according to meters?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

(a) to (c)

At present, the scale of fares for the hiring of taxis is specified in Schedule 5 of the Road Traffic (Public Service Vehicles) Regulations (the Regulations). Meters are installed in taxis to show the legal fares for hiring the taxis so that passengers and drivers can pay and charge according to meters. The Regulations 47 and 48 stipulate respectively that a taxi driver shall not charge a fare exceeding the legal fare and a passenger shall pay the legal fare for hiring a taxi. Currently, taxi services generally operate on the basis of charging according to meters.

On the other hand, the Regulation 38 provides for the hiring of a taxi as a whole. The registered owner of a taxi may hire the taxi to any person at a rate of hire based on the time during which the taxi is hired, or on such other terms as may be agreed with the hirer. According to this provision, before a taxi is hired, the registered owner and hirer concerned shall complete and sign two copies of a document which shall contain the following particulars:

- (i) the charges applicable to the hiring of the taxi;
- (ii) details of the third party risks insurance held in respect of the concerned taxi; and
- (iii) the names, addresses, and the numbers of the driving licences of the drivers of the concerned taxi.

Under this hiring model, the registered owner of the taxi shall retain one copy of the document and shall produce it on demand by a police officer made within three months after the commencement of the hiring. The hirer shall retain one copy of the document and shall produce it on demand by a police officer made during the hiring period.

Taxis are required to operate either by charging according to meters under the Regulations 47 and 48 or by hiring the taxi as a whole in accordance with the requirements under the Regulation 38.

Any taxi driver who contravenes the Regulation 47 is liable on conviction to a fine of \$10,000 and imprisonment for six months. Any person who contravenes any requirement under the Regulations 38 or 48 is liable on conviction to a fine of \$3,000 and imprisonment for six months.

We note that a social enterprise, in collaboration with taxi companies, has launched a trial service with a fleet of five wheelchair accessible vehicles, known as "diamond cabs", to provide 24-hour taxi hiring services for wheelchair users for point-to-point single trips or by hourly rates since the latter half of January this

year. Patrons of these diamond cabs have to make reservations in advance and agree with the operator on the service details. As with other taxis, these "diamond cabs" have to comply with the above Regulations in their operation. The Transport Department has reminded the operator of the "diamond cabs" to comply with the relevant regulations, both at the planning stage and after the service launch.

(d) and (e)

It is an offence for a taxi driver to charge above metered fares. The police is committed to combating the practice of not charging according to meters by taxi drivers. The number of prosecution cases on overcharging of taxi fares in the past five years is as follows:

<i>Year</i>	<i>Number of prosecution cases on overcharging of taxi fares</i>
2006	9
2007	16
2008	19
2009	35
2010	16

Measures to Alleviate Inflation Problem

18. **MR FREDERICK FUNG** (in Chinese): *President, according to the latest statistics released by the National Bureau of Statistics of China, consumer prices on the Mainland in March this year rose by 5.4% year-on-year, which is a record high in 32 months and even exceeds the 4% price control target set by the Central Government. Among the consumer items, food prices have surged the most, by 11.7%. It has been reported that when responding to the questions raised by Hong Kong reporters, a spokesman of the National Bureau of Statistics of China said that the rise in the prices of commodities on the Mainland, such as agricultural products and daily necessities, would certainly have some impact on Hong Kong. Some Hong Kong economists have even anticipated that inflation on the Mainland may push up this year's inflation rate in Hong Kong to 6%. Moreover, as the exchange rate of Renminbi against the US Dollar has hit new*

high several times recently, imported inflation in Hong Kong has accelerated significantly and prices of imported food in Hong Kong have been escalating, for example, the price of cooking oil increased by nearly 40% in the past four months. The costs of clothing, food, accommodation and transport are generally on the rise, for example, bus and railway fares have increased recently. In this connection, will the Government inform this Council:

- (a) whether it has assessed the impact of the latest situation of inflation in the Mainland and the increase in various living expenses on the local economy and community, including the impact of the surge in food prices, and so on, on the livelihood of the middle and lower classes; if it has, of the results; moreover, whether it will adjust upward the inflation forecast for this year; and*
- (b) given that the authorities are planning to introduce a number of measures to assist the public in coping with inflation (including issuing inflation-linked retail bond (iBond), granting subsidy on electricity charges, paying two months' rent for public housing tenants, increasing the funding for food banks, and providing a one-off sum of \$6,000 to each Hong Kong permanent resident aged 18 or above), of the timetable for implementing those measures; whether they will be implemented as expeditiously as possible in response to the recent trend of accelerated inflation; whether it has drawn up further measures to cope with possible aggravation of the inflation problem in the future; if it has, of the measures; if not, the reasons for that?*

FINANCIAL SECRETARY (in Chinese): President,

- (a) Consumer price inflation in the Mainland rose to 5.0% year-on-year in the first quarter of 2011. The major driving force was the increase in food prices which was 11.0% year-on-year in the first quarter.

The Government is highly concerned about the impact of inflation on our citizens. By reference to the newly-announced 2009-2010-based series, the Consumer Price Index (A) (CPI(A))

rose by 4.1% year-on-year in the first quarter of this year, indicating that the upward pressure on the living cost of the lower and middle classes has indeed increased.

The year-on-year increase of the basic foodstuff component of the CPI(A) (that is, food (excluding meals bought away from home)) was 6.8% in the first quarter of this year. Among the subcategories under this component, prices of edible oils climbed by 6.9% over a four-month period from November 2010 to March 2011. In addition, the year-on-year increases in prices of a few other components in the first quarter were 4.1% for "meals bought away from home", 4.2% "housing", 9.1% "electricity, gas and water", 4.0% "clothing and footwear" and 2.0% "transport". On the other hand, prices for "durable goods" declined by 5.0% year on year in the first quarter.

The Government would remain vigilant on the inflation situation, particularly its impact on the low-income citizens. The Government regularly conducts reviews and updates its economic forecasts, including the inflation forecast for 2011. The results of the next round of review and update will be announced on 13 May.

- (b) When preparing the 2011-2012 Budget, we have anticipated the accelerating trend in inflation this year and have proposed a series of measures in the Budget to help ease the pressure of inflation on our citizens. Apart from leaving wealth with the people, our adjustments to the Budget will also help ease our citizens' burden by increasing their disposable money.

On the revenue side, the rates waiver for 2011-2012 has already been implemented. The Government will introduce an amendment bill into the Legislative Council today (4 May) to implement the proposals to reduce salaries tax and tax under personal assessment for 2010-2011, and to increase the parent/grandparent allowance, the child allowance, and the deduction ceiling for elderly residential care expenses for salaries tax and tax under personal assessment.

On the expenditure side, relevant bureaux will consult panels concerned in accordance with established procedures. On 4 April, the Transport and Housing Bureau consulted the Panel on Housing on the proposal to pay two months' rent for public housing tenants, and received its support. As for the proposals to provide electricity charges subsidy and to provide extra allowances to the Comprehensive Social Security Assistance, Old Age Allowance and Disability Allowance recipients, the Financial Services and the Treasury Bureau and the Labour and Welfare Bureau will respectively consult the Panel on Financial Affairs on 5 May and the Panel on Welfare Services on 9 May. Subject to the views of the relevant Panels, bureaux concerned plan to seek funding approval from the Finance Committee in June. If the funding approval is obtained, it is expected that the electricity charges subsidy will be credited starting from 1 July and the rent payment proposal will be implemented in August and September. The Social Welfare Department (SWD) will also arrange payment of extra allowances in the second half of this year.

The Financial Services and the Treasury Bureau is formulating the details of the proposal to give a sum of \$6,000 each to Hong Kong permanent identity card holders aged 18 or above. When the details are finalized, it will present the proposal to the Panel on Financial Affairs for discussion, and then seek funding approval from the Finance Committee. Once the funding approval is obtained, we will immediately take forward the proposal so that the registration will start as soon as possible.

In addition, although the funding allocated to short-term food assistance service projects should be sufficient for financing the operation of the services until 2013, the SWD will closely monitor service demand and, where necessary, seek the Finance Committee's approval for injecting the \$100 million earmarked for the continuation of the services.

The Government also plans to initiate the retail part of the Government Bond Programme through the launch of the iBond. The issuance of iBond would help enhance retail investors'

awareness and interest in bond investment, thereby achieving the objective of promoting the development of the retail bond market in Hong Kong. It would also provide investors with another investment option for maintaining their purchasing power against the backdrop of low-interest rate and rising inflation. The Administration is formulating the implementation details and the sales arrangements for the iBond with a view to launching it as soon as possible.

We have taken into account this year's inflation when drawing up the above measures. The Government will continue to closely monitor the inflation movement and introduce measures, where appropriate, in the light of prevailing circumstances to ease the impact of inflation on people's livelihood.

Control of Post-service Employment of Senior Government Officials

19. **MR WONG SING-CHI** (in Chinese): *President, according to recent media reports, a consultancy company owned by Mr LEUNG Chin-man, former Permanent Secretary for Housing, Planning and Lands (Housing), has been hired by Chow Tai Fook Enterprises Limited, the parent company of the New World Group, since last month. It was also reported that the incident had caused a public outcry because quite a number of people considered that the incident was obviously a suspected case of "deferred reward" and seriously undermined public confidence in the control of post-service employment of directorate civil servants. In this connection, will the executive authorities inform this Council:*

- (a) *of the stance taken by the authorities on the aforesaid incident, and whether they will invite Mr LEUNG to meet with them so as to understand the details of the appointment; if so, of the details; if not, the reasons for that;*
- (b) *whether, in response to the expectations of some members of the public, they will consider ordering the law-enforcement agency concerned to initiate an investigation into whether the problem of "deferred reward" has arisen from the fact that Mr LEUNG took up employment indirectly with the New World Group through the*

consultancy company he operates; if they will, of the details; if not, the reasons for that; and

- (c) *as there have been comments that what Mr LEUNG did was a blatant challenge to the credibility of the executive authorities and the Legislature of the SAR, whether the authorities will expeditiously decide whether or not the control of post-service employment of senior officials in the private sector should be tightened up, and use action to convince the public that directorate civil servants serve Hong Kong impartially during their service in government departments; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, with regard to part (a) of the question, according to the control regime governing the taking up of post-service outside work by directorate civil servants implemented since 1 January 2006, directorate civil servants at Directorate Pay Scale D8 (or equivalent) who leave the Government on retirement are subject to a three-year control period. This period counts from the date of departure from the Government (that is, on exhaustion of final leave if any) of the civil servants concerned. During the control period, a former directorate civil servant is required to apply and obtain prior permission from the authorities before taking up post-service outside work. Mr LEUNG Chin-man was a D8 directorate civil servant before retirement. He ceased active government duty on 10 January 2006 and retired on 10 January 2007. The control period applicable to him ended on 9 January 2010. Thereafter, Mr LEUNG is not required to apply for prior permission to work from the authorities.

With regard to part (b) of the question, under Hong Kong laws, any person can report any crime to the law-enforcement agencies, and the relevant agencies will independently consider whether or not to take any action on the alleged crime. The relevant law-enforcement agencies are also empowered by law to decide on their own whether or not to conduct investigations in those law-enforcement areas for which they are responsible. We should not interfere with the independent exercise of the enforcement powers by the law-enforcement agencies under the law.

With regard to part (c) of the question, the independent Committee on Review of Post-service Outside Work for Directorate Civil Servants appointed by the Chief Executive and the Legislative Council Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man published their Reports in July 2009 and December 2010 respectively. Both Committees recommended many modifications to the existing control regime governing the taking up of post-service outside work by directorate civil servants. The Civil Service Bureau is carefully and thoroughly studying these recommendations, their legal implications, and the views of various stakeholders. The Civil Service Bureau will submit the recommendations to the Chief Executive-in-Council for consideration as soon as possible.

Impact of Land (Compulsory Sale for Redevelopment) Ordinance on Residential Flat Supply

20. **MRS REGINA IP** (in Chinese): *President, the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice) specifies, in respect of three classes of lot, a lower threshold for application for compulsory sale of land, that is, from owning not less than 90% of undivided shares in the lot to not less than 80%. It is learnt that since the commencement of the Notice on 1 April 2010, the number of applications for compulsory land sale orders made under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the Ordinance) received by the Lands Tribunal (the Tribunal) has increased significantly: There were only 64 cases in the decade from 1999 to January 2010, but there were 21 cases last year, and 12 applications have been received so far this year. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the impact on the housing supply on redevelopment projects using land secured by invoking the Ordinance, including the number of residential flats supplied by these projects in the past five years, and among them, the respective numbers of residential flats with areas ranging from 35 to 40 sq m and 40 to 60 sq m;*
- (b) *in view of the keen demand for small and medium residential flats, whether the authorities have any measure to encourage the*

developers to build more small and medium residential flats under their redevelopment projects on land secured by invoking the Ordinance; and

- (c) *whether it has market data on the number of residential flats which may be supplied in the next five years under the redevelopment projects on land secured by invoking the Ordinance; if it has, of the number?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, since the Ordinance came into operation in June 1999 and up till 31 March 2010, the Tribunal received a total of 65 applications for compulsory sale, whereas since the Notice took effect on 1 April 2010 and up till 31 March 2011, the Tribunal received a total of 32 applications. It is to be noted that among these 32 applications, only eight involve classes of lot specified in the Notice to which the 80% threshold apply, while over 70% of the applications are based on the 90% threshold.

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

- (a) According to the methodology adopted by the Government in monitoring housing supply and the statistics to hand, we treat urban renewal projects on sites not subject to lease modification or land exchange as a separate category. This type of private urban redevelopment projects as a source of residential housing land supply has provided land for developing an annual average of about 1 300 residential flats over the past five years. On an annual basis, in the year 2010, residential housing land supply from the aforementioned private redevelopment projects can provide about 2 000 flats. This figure is higher than the annual average of about 830 flats in the period from 2003 to 2009. It is therefore our preliminary view that urban redevelopment of old districts as a source of residential flat supply is more important now than before. However, based on available statistics, we cannot provide a separate analysis on how many of the residential flats from private redevelopments as mentioned above are flats produced on land secured by invoking the Ordinance. As such, it is difficult for us to

accurately assess the impact of the Ordinance on the housing supply, including the size of flats from these redevelopments.

- (b) It is entirely up to the market to seek to invoke the Ordinance to secure land for redevelopment. Hence it is a decision of the market whether to build small and medium residential flats on land so secured. Nevertheless, the Government has taken note of the public demand for small and medium flats. We have positively responded to this through the Government's Land Sale Programme and the development projects of the MTR Corporation Limited (MTRCL) and the Urban Renewal Authority (URA). This includes specifying flat size restrictions in the sale of Government land. For example, for a site at the former Yuen Long Estate which was sold by tender some time ago, the development would provide at least 960 flats of saleable area not exceeding 60 sq m. In addition, in this year's Land Sale Programme, we have designated five sites with flat size restrictions which are estimated to provide a total of about 3 000 small and medium flats. We commenced the tender invitation for two sites with flat size restrictions in Hung Hom on 29 April and will tender another site with flat size restrictions at Tung Chung Area 55A in June.

On another front, the Government has discussed with the MTRCL and the URA on speeding up the launch of residential sites and increasing the supply of small and medium flats. As pointed out by the Financial Secretary in the 2011-2012 Budget Speech, the MTRCL will invite tender for the development at the Nam Cheong Station and the two developments at the Tsuen Wan West Station TW5 in 2011-2012. According to the preliminary design of the MTRCL, the number of flats of saleable area not exceeding 50 sq m to be provided in these three projects will double to about 4 000. As regards the URA, a majority of the residential flats provided under its urban renewal projects are small to medium-sized, which normally account for about 60% to 70% of the total number of flats provided.

- (c) Since the Ordinance came into effect in 1999, we have been monitoring the redevelopment of land secured by invoking the

Ordinance. According to data available to the Government, up till 31 March 2011, a total of 24 compulsory sale applications were granted compulsory sale orders by the Tribunal and with the subject lots successfully sold. Of these cases, the lots in 19 have been/will be redeveloped for residential use (involving 17 residential development projects). The remaining five cases involve lots that have been/will be redeveloped for commercial use (one of which is for hotel development). The 17 residential development projects are now under different stage of redevelopment (that is, completed/under construction/construction works has yet to commence). According to a preliminary estimate, these 17 projects will provide about 2 600 residential flats. As the construction of some of these development projects has yet to commence, the number of flats to be provided is subject to further adjustment.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

ELECTORAL LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2011

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2011

CLERK (in Cantonese): Electoral Legislation (Miscellaneous Amendments) Bill 2011
Inland Revenue (Amendment) (No. 3) Bill 2011.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

**ELECTORAL LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL 2011**

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I move the Second Reading of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 (the Bill).

The Bill amends various pieces of legislation to introduce changes to electoral and related arrangements for returning the Chief Executive and the Village Representatives and the formation of the Legislative Council and District Councils (DC), which includes mainly the appeal mechanism for election petitions, the arrangements for candidates to send promotional letters free of postage and the financial assistance scheme for the DC election. The Bill also makes technical adjustments as regards election expenses, and makes related and incidental amendments.

Regarding election petition appeals, the Court of Final Appeal and the Court of Appeal declared in December last year and March this year respectively the "finality provision" in the Legislative Council Ordinance and the District Councils Ordinance to be unconstitutional and invalid. In response to the relevant judgments, the Bill proposes to amend the appeal mechanism in relation to an election petition arising from the Legislative Council, DC and Village Representative elections in order to introduce a leap-frog mechanism similar to that contained in the Chief Executive Election Ordinance.

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

Under the proposed mechanism, an appeal against the decision of the Court of First Instance in relation to an election petition arising from a Legislative Council, DC, and Village Representative election, including a by-election, may be lodged to the Court of Final Appeal direct, subject to leave being granted by the Appeal Committee of the Court of Final Appeal. This arrangement will facilitate the speedy resolution of disputes in relation to the constitution of the Legislative Council and DC as well as the office of a Village Representative.

Regarding promotional letters sent by candidates free of postage to electors, the existing legislation specifies that the letters must contain materials relating only to the candidature of the candidate at the election concerned.

Some Legislative Council Members have proposed that candidates of different constituencies should be allowed to print their campaign materials in the same promotional letter to be sent free of postage. Having regard to their views, the Government proposes to introduce legislative amendments to allow candidates to send promotional letters to the same elector/voter under the following three situations:

- (a) a list of candidates in a Legislative Council geographical constituency and a list of candidates in the DC (second) functional constituency;
- (b) candidates in the Legislative Council Labour functional constituency which has three seats; and
- (c) candidates standing for election in the same Election Committee subsector which has multiple number of seats.

We believe that this would enable different parties and groupings to enhance the campaign publicity for their candidates at the same election and would also save paper.

For the Chief Executive election, the Bill proposes to increase the election expenses limit from \$9.5 million (which has been applicable since 2001) to \$13 million. The increase has taken into account the cumulative inflation rate of 12.8% from 2000 to 2012; the impact on the mode of canvassing as a result of the expansion of the Election Committee and the revised voting system of the Chief Executive election; and the need for additional expense items in light of the experience in the previous Chief Executive elections.

For the DC election, the Bill proposes that the subsidy rate for the financial assistance scheme for candidates will be revised from the lower of \$10 per vote or 50 per cent of the declared election expenses to the lower of \$12 per vote or 50 per cent of the election expenses limit, provided that the subsidy amount does not exceed the amount of the declared election expenses of the candidates. The

revised financial assistance scheme for the 2011 DC election will be the same as that for the 2012 Legislative Council election.

The Bill also proposes to increase the election expenses limit of the DC election from \$48,000 to \$53,800. The amendment has taken into consideration the cumulative inflation rate of 12% from 2008 to 2011.

Deputy President, following the passage of the Chief Executive Election (Amendment) Bill 2010 and the Legislative Council (Amendment) Bill 2010 by the Legislative Council on 3 March and 5 March respectively, the Administration has been making preparations actively for the four elections to be held in 2011 and 2012. The proposed Bill seeks to amend the related electoral arrangements for the elections. I hope that Members will support the passage of the Bill as soon as possible so that the revised electoral arrangements can be implemented for the 2011 DC election in November and the other elections afterwards.

I so submit, Deputy President. Thank you.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Electoral Legislation (Miscellaneous Amendments) Bill 2011 be read the Second time.

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

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2011

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I move the Second Reading of the Inland Revenue (Amendment) (No. 3) Bill 2011 (the Bill).

The aim of the Bill is to make amendments to the Inland Revenue Ordinance (IRO) to implement the concessionary revenue measures proposed in the 2011-2012 Budget.

First, the Bill proposes that starting from the year of assessment 2011-2012, the child allowances and the dependent parent/grandparent

allowances for salaries tax and tax under personal assessment be increased by 20% separately. In other words, the child allowance will be increased from the current \$50,000 to \$60,000 for each child and the additional one-off child allowance in the assessment year in which a child is born will also be increased from the current \$50,000 to \$60,000 for each child.

On the allowances for maintaining dependent parents/grandparents, the dependent parent/grandparent allowance and the additional dependent parent/grandparent allowance for each parent/grandparent aged 60 or above living with the taxpayer concerned will both be increased from the current \$30,000 to \$36,000. If a dependent parent/grandparent is aged 55 or above but below 60, the relevant allowance and the additional allowance will be increased from the current \$15,000 to \$18,000.

For taxpayers whose parents/grandparents are admitted to a residential care home, the deduction ceiling for elderly residential care expenses will be raised from the current \$60,000 to \$72,000 for each parent/grandparent. According to the existing IRO, should the deduction for elderly residential care expenses be allowed to a person, he/she or any other person is not entitled to dependent parent/grandparent allowances for the same parent/grandparent for the same year of assessment.

The above proposals can alleviate taxpayers' burden of raising children and maintaining parents/grandparents. A net total of about 710 000 taxpayers would benefit from the above proposals. It is estimated that under the relevant proposals, the Government will forgo a total of about \$1.2 billion each year.

In addition, given our better than expected fiscal position and to share wealth with taxpayers, the Bill also proposes a one-off reduction of salaries tax and tax under personal assessment for 2010-2011 by 75%, subject to a ceiling of \$6,000 per case. The reduction will be reflected in the taxpayer's final tax payable for 2010-2011. About 1.5 million taxpayers will benefit from this proposal and the Government will forgo about \$5 billion in tax revenue as a result.

We presented the aforementioned proposed amendments to the Legislative Council in the Legislative Council Brief issued on 19 April.

Deputy President, I hope Members can support and pass the Bill as soon as possible to enable us to implement the relevant measures at an early date.

I so submit.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Inland Revenue (Amendment) (No. 3) Bill 2011 be read the Second time.

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Mandatory Provident Fund Schemes (Amendment) Bill 2011.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2011

Resumption of debate on Second Reading which was moved on 2 March 2011

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2011 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2011.

Council went into Committee.

Committee Stage

DEPUTY CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2011

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mandatory Provident Fund Schemes (Amendment) Bill 2011.

CLERK (in Cantonese): Clauses 1 to 4.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 to 4 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2011

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

Mandatory Provident Fund Schemes (Amendment) Bill 2011

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2011.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

**SECURITIES AND FUTURES AND COMPANIES LEGISLATION
(STRUCTURED PRODUCTS AMENDMENT) BILL 2010****Resumption of debate on Second Reading which was moved on 14 July 2010**

DEPUTY PRESIDENT (in Cantonese): Ms Starry LEE, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS STARRY LEE (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 (the Bills Committee), I shall now submit the report of the Bills Committee and brief the Council on its major deliberations.

The object of the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 (the Bill) is to transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the Companies Ordinance (CO) to the offers of investments regime of the Securities and Futures Ordinance (SFO) and to make consequential and related amendments.

The Bills Committee has held eight meetings to discuss with the Administration and the public (including relevant trade and professional organizations) have been invited to give views on the Bill.

The Bill proposes that offer documents made in respect of the issue of a currency-linked instrument, interest rate-linked instrument or currency and interest rate-linked instrument (ILCL instruments) by an authorized financial institution are exempted from the authorization requirement under section 103(1) of the SFO. That is to say, relevant ILCL instruments are exempted from the Securities and Futures Commission (SFC)'s authorization.

Many members have raised concerns about this proposed arrangement. A member pointed out that ILCL instruments could be very complex products and could cause great losses to the investors holding the instruments. A member also pointed out that although the Hong Kong Monetary Authority (HKMA) also exercises supervision over sale of ILCL instruments by Authorized Institutions

(AIs), the HKMA's regulatory functions focus on the prudential regulation of banks rather than investor protection.

The Administration has advised that the proposed arrangement is in line with the practices in other major markets such as the United Kingdom, the United States and Singapore. ILCL instruments are products of the foreign exchange or treasury desks of banks and issuers of these products are typically AIs (for example, banks and restricted licence banks). Investors of ILCL instruments are only exposed to interest rate risk, foreign currency exchange rate risk and credit risk of the issuing AI only. In this aspect, these instruments are similar to ordinary banking deposit products and different from other structured investment products such as equity-linked instruments. The SFO regulatory framework is designed primarily for regulating the securities and futures market; it is not intended for the regulation of banking activities. Besides, AIs are subject to the HKMA's prudential supervision which regulates the safety, soundness and risk management systems of AIs, and through these, an AI's fulfilment of obligation to its customers. The HKMA also exercises supervision over AIs' sale of ILCL instruments through its day-to-day supervision. The sale conduct requirements are similar to those for other investment products. In view of the above reasons and with reference to the practices in other major markets, the Administration considers that the interests of investors in ILCL instruments are protected properly under the HKMA's current regulatory regime.

In response to the Bills Committee's request, the Administration has provided further information in respect of the common types and quantities of ILCL instruments in the Hong Kong market, as well as the regulatory approach and actions taken by the HKMA on the sale of unlisted ILCL instruments by AIs. Members considered that it is of great importance to afford the same protection to investors regardless of whether the sale of such products is regulated under the Banking Ordinance (BO) or the SFO. The HKMA has noted members' views and also assured the Bills Committee that it will review the adequacy of its regulatory actions on the sale of unlisted investment products by AIs having regard to its regulatory experience and market development, and identify any need for amending the BO to enhance investor protection.

The Bill also proposes to extend certain exemptions in section 103 of the SFO that currently apply in relation to securities to apply also to structured products, which include offers targeted at professional investors. The

Administration and the SFC have explained the definition of "professional investor" as prescribed in the SFO PI Rules as well as the requirements under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) as an intermediary in serving clients classified as professional investors. These requirements include: Prior to treating a client as a professional investor, an intermediary should assess and be reasonably satisfied that the individual is knowledgeable and has sufficient expertise in the relevant products and markets; an intermediary should also obtain a written and signed declaration from that client that the consequences of consenting to being treated as a professional investor and the right to withdraw from being treated as such have been explained to him.

In relation to high net worth individual professional investors, the Bills Committee has requested the SFC to include a standard statement to explain the risks of agreeing to be treated as a "professional investor" in the relevant declaration form to be signed by investors. The Bills Committee also requests the SFC to instruct intermediaries to remind the "professional investors" at regular intervals, such as on an annual basis, of the protection not available to them by virtue of their being treated as a "professional investor", and the option of opting out from being treated as a "professional investor".

The SFC has advised that in addition to the abovementioned written declaration, for the purpose of the Code of Conduct, prior to treating a client as a professional investor, intermediaries are also required to provide the client with a written explanation in relation to the risks and consequences of being treated as a professional investor. Intermediaries are also required to put in place procedures to enable them to carry out a confirmation exercise annually, so as to ensure that the relevant clients who have elected to be treated as "professional investors" continued to fulfil the requisite requirements under the Securities and Futures (Professional Investor) Rules. In view of members' comments, the SFC has reminded intermediaries that when they carry out the annual confirmation envisaged under the Code of Conduct, they have to remind the clients of the consequences of being treated as a "professional investor" and the option for them to opt out as a "professional investor".

Another important proposal in the Bill is to empower the SFC to authorize a structured product. The Bills Committee has sought clarification on whether the proposed authorization regime is a result of a change in regulatory policy, as

the "disclosure based" principle has been adopted in the past in the regulation of the public offers of structured products.

The Administration has advised that under the existing CO prospectus regime, the disclosure requirements regarding the prospectuses of shares and debentures focus on the financial performance and prospects of the company concerned as the offers are considered to be for the purposes of equity or debt capital-raising. However, for structured products, investors would also need to know the issuers' creditworthiness, the reference assets, and other relevant information including the structural features and risks of the products. The policy intent of the Administration is that structured products offered to the public in Hong Kong should be subject to the prior authorization of the SFC unless an exemption applies to their offering documents or advertisements. The SFC's authorization will be based on the requirements set out in the Code on unlisted structured investment products, including requirements on some of the features of the product, such as issuer and collateral eligibility requirements. Nonetheless, in line with the practice in other major financial centres, the regulatory regime will continue to be disclosure-based, supported by intermediary conduct regulation, to assist investors in making informed investment decisions.

Noting that the scope of application of the offers of investment regime under the SFO is confined to financial products offered to the public and offering documents containing an invitation to the public to invest in financial products, members have sought clarification on the notion of "invitation to the public" in the SFO. Members have expressed concern that the lack of clear delineation between private placement and public offer of investment products in law may cause confusion to investors and create loopholes for abuse. Members have also express concern about the scenario where an intermediary solicits selected clients to invest in an investment product, which is not widely publicized and the relevant offer documents are not on public display, and queried whether such scenario would constitute an offer to the public.

The SFC has advised that the notion of "invitation to the public" has existed for a long time under the SFO for regulation of public offer of products. The Bills Committee on the Securities and Futures Bill had discussed the matter at that time. It was then agreed that a broad notion of "invitation to the public" was necessary in order to protect the interests of investors and the Court should be the ultimate authority to interpret and decide whether an advertisement or a

document contains an invitation to the public, based on the facts of individual cases. Research conducted by the SFC shows that there is no case law in Hong Kong regarding the interpretation of "invitation/offer to the public". In the United Kingdom and Australia, case law broadly suggests that there is no numerical bright-line test for defining "public"; and that an invitation does not have to be "universal" but has to be general in its nature. In the United States, there is case law which suggests that certain considerations have to be taken into account in deciding whether an offer is made to the public. The factors that would be taken into account include the number of offerees, their relationship with one another and the issuer, the nature of the offerees, the offerees' ability to have access to information, and the manner and the size of the offer, and so on. Hence there can be no simplistic bright-line test for defining "invitation/offer to the public".

The SFC has also explained that in accordance with the authorization regime for offer documents of investment products in the SFO, the information given by an intermediary to an investor should be based on the offer documents authorized by the SFC. The behaviour of an intermediary during the sales process is subject to regulation as stipulated in the Code of Conduct. The financial institution concerned is required to ensure that the sales staff are properly briefed and would provide appropriate information to investors to enable the latter to make informed investment decisions.

Apart from the foregoing major deliberations, the Bills Committee has also studied the following matters:

- (i) The definition of "structured product" and the curve-out provision;
- (ii) the principles for the authorization of structured products by the SFC and whether or not the principles should be specified in the legislation;
- (iii) investigatory powers of the SFC in relation to structured products and the scope of application;
- (iv) how will the exemptions that currently apply in relation to securities be extended to apply also to structured products under the offers of investments regime;

- (v) whether or not the safe harbours in the prospectus regime of the CO should be introduced into the SFO; and
- (vi) whether the existing regulatory arrangements are adequate to deal with situations where intermediaries have a potential or actual conflict of interests in providing services to investors

The Bills Committee agrees to the Administration's proposed Committee stage amendments and supports the resumption of the Second Reading debate on the Bill.

Deputy President, next, I will on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) present our views on the Bill.

The DAB supports the Bill and hopes that it can be implemented as soon as possible to transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the CO to the offers of investments regime of the SFO, so as to rationalize the existing legal framework and address the existing undesirable situation of structured products being able to enter the market through these two different laws.

Under the existing legal framework, the public offer of structured products, depending on their legal form, may be subject to different regimes, even though such structured products may have similar risk and return profiles. The loopholes arising from this system have been fully exposed in the Lehman Brothers minibonds incident.

The amendments also represent a measure introduced by the authorities to step up the regulation of financial products after the Lehman Brothers minibonds incident. Here, the DAB is going to raise several concerns and calls on the HKMA and SFC to consider them, so as to further improve the relevant guidelines and boost the protection for investors.

The Bill proposes that certain exemptions in section 103 of the SFO that currently apply in relation to securities be extended to apply also to structured products, including offering documents of investment products regulated under the SFO, which are only targeted at professional investors. We believe that after the occurrence of the Lehman Brothers minibonds incident, the complaints

involving professional investors have yet to be resolved to date. For this reason, the SFC must step up its regulation of intermediaries, including requiring intermediaries to carry out a confirmation exercise on professional investors at regular intervals, at least on an annual basis, as we must not think that once these people have become professional investors, they can be treated as such for life. In addition, intermediaries must remind them clearly of the protection not available to them by virtue of their being treated as a "professional investor" as well as other consequences and require them to agree to them and sign in confirmation, so as to pre-empt unnecessary disputes in the future.

Deputy President, the Bill cannot resolve the issue of "two regulatory authorities for one industry", which society has all along been concerned about. Although we understand that the amendments this time around are specifically drawn up for a specific area, at the stage of scrutiny, members could see some of the problems arising from the arrangement of "two regulatory authorities for one industry" clearly. After the occurrence of the Lehman Brothers minibonds incident, the HKMA and the SFC also required intermediaries to strengthen their protection for investors and make greater efforts in regard to the sale procedure. However, regarding the audio-recording arrangement, the two regulators have different requirements (the HKMA requires banks to make audio-recordings in the process of sale but the SFC has not imposed the audio-recording requirement on intermediaries). This causes confusion among investors and may also give rise to loopholes that will lead to instances of misleading sale practices in the future. This is also another problem caused by the "two regulatory authorities for one industry" arrangement.

Another issue requiring greater attention from the authorities is the definition of "public offer" because at present, a lot of private placement products can circumvent the purposes of public offer, enter the market and be marketed to consumers. Therefore, I hope the authorities can take into consideration the actual situation of the market and make corresponding arrangements relating to the administrative requirements in this regard.

Deputy President, it is also mentioned in the report that there is no case law in Hong Kong regarding the interpretation of "invitation/offer to the public". This situation indirectly reflects the inadequacy in the protection regime for small investors in Hong Kong. Financial institutions have great financial might and influence and they are superior to investors in terms of the financial power,

manpower and information at their disposal. At present, investors can only rely on their own resources when representative action has yet to be introduced. Therefore, when this kind of cases occur, small investors can only rely on the HKMA and the SFC to exercise their power of investigation on their behalf and make justice prevail for them. Therefore, I hope that when the authorities revise the system and legislation in the future, they will consider matters from the investors' perspective more often.

Deputy President, I so submit.

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

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, yesterday, I had nothing to do during the flight, so I read a newspaper and found that the *Hong Kong Economic Journal* had published an article entitled "The OBAMA administration has frustrated many people with its too-lenient attitude toward Wall Street", written by the well-known American economist, Mr Paul KRUGMAN.

I think this Mr KRUGMAN is no stranger to many people. When he commented on the dictatorial regimes in Southeast Asia, he advanced the view of "crony capitalism", meaning that only people with close connections are appointed and there is inbreeding. I have also said many times that political inbreeding can be seen through private financial transactions. In saying that the OBAMA Administration was too lenient with Wall Street, what did he mean? He pointed out that President OBAMA had spent a great deal of money on bank bailouts. However, there is one problem, that is, after spending the money, no effective measures were taken to regulate those tycoons in Wall Street, that is, those investment banks, or I-Banks.

He also predicted that if this situation continued, since too much leniency was shown to Wall Street and too much indulgence is showered on people in those financial institutions, future bailouts with the hard-earned money or public money of Americans similar to the one in 2008 will happen and they will be bigger, more frequent and more expensive. Of course, the conclusion of this piece of article is very frightening, but it also pointed out that the key lies in the

fact that if the government does not regulate those "big crocodiles" and let these "big crocodiles" attack other people, when they have no more people to prey on and have nothing to eat, like a cornered beast, they will attack other "big crocodiles", thus causing carnage and the collapse of the whole economy.

Our Government did not follow the approach adopted by President OBAMA because we did not spend public money on bailouts. However, who will bear the consequences? Hong Kong people will bear the consequences. This Mr KRUGMAN also pointed out one fact, that is, "Remember, from the 1930s until the 1980s the United States managed to avoid large bailouts of financial institutions" and what he meant was the measures taken in 2008. "The modern era of bailouts only began in the Reagan years, when politicians started dismantling 1930s-vintage regulation." In other words, in the United States, from the Great Depression in 1929 to the New Deal in 1932, that Wall Street was considered to have really gone too far and needed regulation. It was not until the 1980s, when the movie star Ronald REAGAN came to power that he, together with Margaret THATCHER, introduced deregulation, that is, the liberalization of markets and all those regulations were lifted.

The existing "two regulatory authorities for one industry" arrangement is tantamount to the Government coaxing the Legislative Council into going along with it, that is, the latter was deceived by the Government into issuing a blank cheque in the Securities and Futures Bill. The Government only had to say to this legislature, "The Hong Kong economy is in the doldrums now and we must try to get some business. The banks do not have enough business to do. If we still do nothing, we will fall behind others. Moreover, even Singapore is doing this now." Under Secretary Julia LEUNG knows about this most clearly, does she not? She often says, "Even Singapore is doing this now, so if we still do not do this, we will perish." Therefore, as the saying goes, it is worse to miss an advantage than to ruin a family, or to use a figure of speech, it is better to be the head of an ass than the tail of a horse. For this reason, the authorities demanded that this legislature pass the framework, but what were the details? Members all had no idea.

I have never been interested in the Lehman Brothers Minibonds Incident because I do not make investments but subsequently, I also read some documents. I remember that on that day, Dr Margaret NG spoke in English and she kept asking to this effect, "Did you mean it when you told me to do so? When are

you going to give us the documents?" They then said to this effect, "A year later then." A year later, that incident would have been forgotten because this legislature is so busy, the SAR Government is so busy and bankers are also so busy. I learnt that Michael SUEN would attend social functions three times a week. Those officials are just like social butterflies, so how possibly do they have the time to read documents? How possibly do they have the time to listen to what the public have to say? In the end, there was trouble.

In fact, as early as 2003, the International Monetary Fund already told the Hong Kong Government, "After you have enacted the legislation in 2010, there will be a lot of risk in the market." Can Members guess what the Government said? The Government said that there would not be any problem because the authorities would establish two committees, one led by the Financial Secretary and the other by the Financial and Monetary I am not sure which Secretary that is. That post title is long and tedious. It is perhaps under the charge of Prof KC CHAN. This committee meets every month and the other one under the charge of John TSANG meets every three months to fully monitor the market situation. Should anything happen, the interests of investors will be taken care of and financial stability in Hong Kong will definitely be assured.

In this way, a "twin-peak approach of subjecting one industry to two regulatory authorities" was created, as Ms Starry LEE pointed out just now, and the problem was not solved. This "twin-peak approach of subjecting one industry to two regulatory authorities" is really a kind of flu. Moreover, it is even "tetanus", which is contagious and lethal. Under the "two regulatory authorities for one industry" regime, the Securities and Futures Commission (SFC) is responsible for overseeing the brochures. It is just responsible for looking at those brochures but not examining the relevant products and in this way, banks are allowed to sell the products. How did the banks sell them? It was the Hong Kong Monetary Authority (HKMA) — at that time, its Chief Executive was Joseph YAM and now, it is Norman CHAN — that oversees how banks sell them. This "twin-peak approach of subjecting one industry to two regulatory authorities" means that both of these institutions can pay no attention, does it not? When a product is launched on the market, the SFC will carry out checks in accordance with the Companies Ordinance to see if there are any false claims about the product, for example, if it is claimed that the business includes two coal mines in Guang Xi but it turns out that there is only one, this is lying and if the reserve does not answer the fact, it would not do either. If the SFC does

not discharge its proper line of duty or regulate this area and only looks at the brochures, this is also tantamount to not performing its regulatory duties. Then, these "poisons" were delivered to an institution, which is called "the government pharmacy" for sale and it was guaranteed that one definitely would not die after taking them. This institution was the HKMA. How were they sold? Again, there is no regulation.

The many investigation findings show that the senior management of the bank involved knew full well that there were problems with the products, so it did not sell them itself but acted as the guarantor instead, and this bank is the Hong Kong and Shanghai Banking Corporation. One bank knew full well that problems had arisen as early as 2006 but it still continued to market the products vigorously before the collapse of the Lehman Brothers Holdings Inc and that is the Dah Sing Bank. How did the HKMA impose regulation then? A large body of evidence shows that bank employees told some illiterate people, people who were 85 years old and people who did not know English to come and receive their gifts or a diary, then coaxed them into turning their time deposits into high-risk structured financial products. Those products were called CTS or ELN and these English terms are downright lethal.

Deputy President, this is the result of failed regulation of the banks. This is because if the Government does not regulate them, indeed, it does not have to spend money on bailouts, as the United States Government had to, but still, it must help the victims, right? Has the Government fulfilled its responsibilities? Since the authorities gave these "big crocodiles" a free hand in preying on people, after these "big crocodiles" have caused trouble, do the authorities have the responsibility to punish these "big crocodiles"? The HKMA said that it had to work in accordance with the Banking Ordinance in carrying out investigations on banks. Of course, this is lying. How can one investigate the structured financial products sold by banks by invoking the Banking Ordinance? The Banking Ordinance can be invoked to look into such areas as the accounts of banks, the capital adequacy ratio, and so on. So, the HKMA is not going to impose any regulation.

At the same time, the SFC said that it was not responsible for regulation and that it had authorized Joseph YAM to do so. However, Joseph YAM did not impose any regulation, investigate or deal with this matter, thus making those people wander in the streets. Every day, those people wander in Central. I

believe Honourable colleagues must have also seen those victims when passing by, but I wonder if they have ever talked to them. Now some people accuse this group of victims of being insatiable, saying that those people in their eighties who had their retirement funds cheated were insatiable and that those people who lied and cheated had done nothing wrong. Why do they do so? Because they want to defend those regulators who did not do their job properly and of course, those regulators said that they had already imposed regulation. Therefore, the present problem is that when the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 is going to be read the Second time in this solemn legislature, the victims are still wandering in the streets.

Recently, PricewaterhouseCoopers said that an agreement had been reached in connection with the Lehman Brothers minibonds but it did not give any reason. If the Lehman Brothers minibonds still have any worth, why is the money not fully refunded to the victims other than only saying that bearing in mind their best interests, the best deal had been reached? By coincidence, the same applies to the piece of legislation that will be dealt with later, that is, "It is for your good that the tobacco duty has to be raised."

Members, this Council was deceived once in 2000 and in 2001, it put its rubber stamp on the securities and futures law. In 2008, things went bust and this year, it was introduced again for amendments. I think the Government has really gone too far. Certainly, some fundamental issues are also involved, that is, this legislature has no power to enact legislation and is bound by Article 74 of the Basic Law, so the written consent of the Chief Executive shall be required before Bills relating to public expenditure, government policies and the operation of the Government are introduced. This is to ask a Buddhist monk for a comb. Of course, he would not give you any and if we want to make amendments and the Government disagrees, nothing can be achieved because the Government has secured enough votes. The authorities can also restrain us through the "long title". This was the case with the legislation on the merger of the two railway corporations, in which matters relating to the fares or screen doors could not be discussed. The Government can go so far as to do so and we Members, particularly those Members in the royalist camp, are willing to put up with this. Each time, the Government can enact legislation without letting the legislature conduct any debate or telling Hong Kong people the truth. Rather, through such means as lobbying, coercion, inducements and the replacement or exchange of interests behind closed doors, it enacts legislation, thus forcing the Legislative

Council to become an accomplice. I am "raped", but some people are the accomplices. In this way, what dignity do we have?

Members, OBAMA was too lenient with Wall Street and our Government is too lenient with capitalists and real estate capitalists. The royalist camp in our legislature is too lenient with the Government. This is the conclusion. Our Government did not foot the bill, but it is ordinary members of the public who paid the price in the form of high property prices and deception by banks. What kind of world is this?

Deputy President, I so submit.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I thank Ms Starry LEE, Chairman of the Bills Committee on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 (the Bills Committee), and all Bills Committee members for their careful scrutiny of the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 (the Bill). The object of the Bill is to rationalize and further improve the existing regulation of public offers of structured products through amendments to the Securities and Futures Ordinance (SFO) and the Companies Ordinance (CO). The Bills Committee has offered many valuable views on the regulatory regime with a view to improving the Bill. Having adopted the views of the Bills Committee, we have drafted some amendments and would move them at the Committee stage.

At present, there are two regimes under which the Securities and Futures Commission (SFC) authorizes the offer documents and marketing materials of

investment products for sale to the public. These two regimes are the CO prospectus regime and the offers of investments regime of the SFO respectively.

The CO and the SFO currently differentiate shares, debentures and other securities but do not differentiate structured products. Public offers of share and debentures are conducted in accordance with the CO. Therefore, the public offer of various structured products, depending on their legal form, may be subject to different regimes, even though such structured products may have similar economic risk and return profiles. For example, equity-linked notes (ELN) and equity-linked instruments are structured products that have similar risk and return profiles. As ELNs are in the legal form of a debenture, the prospectuses of ELNs are regulated under the CO prospectus regime. On the other hand, offer documents of equity-linked instruments are regulated under the SFO offers of investments regime since they are not in the legal form of debentures but securities.

The objective of the Bill is to rationalize the above legislative framework by introducing the concept of "structured product" in the CO and the SFO and transferring the regulation of public offers of structured products to the offers of investments regime of the SFO.

The CO prospectus regime and the offers of investments regime of the SFO have different focuses. The CO prospectus regime mainly caters for fund raising activities by companies, hence the information to be disclosed focuses on the companies and the overall disclosure requirement: sufficient particulars and information to enable investors to form a valid and justifiable opinion on the shares or debentures and financial condition and profitability of the company. For structured products, investors also need to know information about the product issuer and information of the reference assets. The Bill proposes to disapply the prospectus provisions in the CO with respect to structured products. The Bill proposes that apart from authorizing the issue of advertisements, invitations or documents relating to structured products, the SFC is also empowered to authorize structured products. The SFC authorization process will depend on compliance with codes and guidelines to be published by the SFC. The SFC has issued a Code on Unlisted Structured Investment Products (Code) on 25 June 2010 to set out the bases for the authorizations for more unlisted structured investment products, including disclosure requirements and structural features of products, for example, eligibility of issuers and guarantors, obligations

and responsibilities of product arranger, requirements on collateral, and so on. In response to Mr LEUNG Kwok-hung's comments just now, I stress that the framework proposed in the Bill today is intended to bring structured products under the regulation of the SFO and impose greater regulation on these structured products. This is because, as I said just now, the eligibility of issuers and guarantors will have to be set out clearly.

At present, the CO provides certain safe harbours with respect to the provision that the prospectuses of shares and debentures are required to obtain authorization from the SFC, including the one for "an offer to not more than 50 persons" and the one on "an offer in respect of which the minimum denomination of the shares or debentures is not less than \$500,000". The objective of these two safe harbours, introduced in 2004, is to improve the prospectus regime to facilitate market development. From the perspective of investor protection and in the light of development of the structured products market in the past few years, we do not advise offering these safe harbours to structured products. Nevertheless, the public offers of the shares and debentures issued for equity or debt capital-raising purpose will continue to be regulated under the CO and the relevant safety harbours will remain applicable to these products.

Currently, the majority of the most common structured products that are publicly offered are securities-based and already subject to the regulatory requirements on "securities" in the SFO, including the licensing or registration requirements for persons that sell securities products to the public, and the conduct requirements on these licensed or registered persons. To pre-empt the possibility of the market devising non-securities-based structured products to avoid such regulatory requirements in future, the Bill proposes to add structured products the offering documents for which SFC authorization is required to the definition of "securities", so that these structured products will be subject to the regulatory requirements on "securities".

At the meetings of the Bills Committee, members had discussed in detail certain existing exemptions in the offers of investments regime under the SFO. At the Bills Committee's request, we have examined the exemption in section 103(2)(i) of the SFO and new section 103(11A) proposed in the Bill. We consider that it is really not necessary to add section 103(11A) to retain the intent of section 103(2)(i), that is, to restrict the exemption to public offer

documents issued by non-securities or non-structured product property businesses in the ordinary course of that business. The Administration will move amendments accordingly.

Moreover, the Bills Committee also met with organizations of the trade, which also voiced many views. Having considered these views and discussed with the Bills Committee, we will move amendments to enhance the clarity of "securities" and "structured products" and to restrict the exemption in relation to employee incentive schemes and make the existing exemption for offers of securities to existing shareholders and creditors of a corporation, and agents acting in a professional capacity on behalf of the corporation not applicable to structured products.

To enable early implementation of the proposals in the Bill, we will amend the Securities and Futures (Fees) Rules (the Fees Rules) at the same time by moving amendments to the Bill, in order to prescribe the fees to be charged by the SFC for the authorization of structured products. This will enable the amended provisions of the Fees Rules and the Bill to come into operation at the same time on passage and gazettal.

Just now, Ms Starry LEE mentioned that the Bills Committee is concerned about the regulation imposed by the SFC on sales to professional investors. I repeat that under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, an intermediary, prior to treating a client as a "professional investor", must provide the client with a written explanation on the risks and consequences of being treated as a Professional Investor. The written explanation should also inform the client of the right to withdraw from being treated as such.

In a nutshell, the Bill can standardize the public offers of structured products regime. In future, all products, irrespective of their legal form, will be regulated by the offers of investments regime in the SFO. I trust that the codes and guidelines for the relevant structured products formulated by the SFC and the practice to authorize the relevant structured products and their advertisements, invitations and documents pursuant to such codes and guidelines will enhance the transparency and flexibility of regulation. The structured products the offering documents for which SFC authorization is required must also comply with the

regulatory requirements on "securities" in the SFO. I believe that this can further improve the regulation of public offers of structured products at present.

With these remarks, Deputy President, I hope Members will support this Bill and the amendments to be moved by me later on. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

Council went into Committee.

Committee Stage

DEPUTY CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

**SECURITIES AND FUTURES AND COMPANIES LEGISLATION
(STRUCTURED PRODUCTS AMENDMENT) BILL 2010**

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

CLERK (in Cantonese): Clauses 1, 3, 5 to 14 and 16 to 29.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 3, 5 to 14 and 16 to 29 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4 and 15.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the deletion of clause 2 and the amendments to clauses 4 and 15 as set out in the paper circularized to Members.

As I mentioned just now in the resumed Second Reading debate, the Bill proposes the authorization of structured products by the SFC under a new section 104A to the SFO, an empowering provision endorsed by Members just now, that is, clause 5 of the Bill. With respect to the new power to authorize structured products set out in section 104A, the SFC has proposed a corresponding product authorization fee — \$2,000 for application and \$1,000 for authorization, whereas the existing fees for authorization of offer documents, that is, \$20,000 for application and \$10,000 for authorization, will remain unchanged. The SFC has also proposed that an incidental fee of \$3,000 be charged for modification of a previous authorization.

The SFC has conducted an informal consultation with the key market players on the fees level and received no objection from them.

Our original plan was to amend the Securities and Futures (Fees) Rules (Fees Rules) by way of negative vetting after the passage of the Bill in order to provide for new fees related to the authorization of structured products. In this connection, clause 2 of the Bill currently provides that the enacted Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. To enable the early implementation of the proposals in the Bill, I will move the Second Reading of clause 30 later for the purpose of amending the Fees Rules to prescribe the relevant fees. I will also move the deletion of the commencement clause for the Bill (clause 2) so that the amendments in the Bill will come into operation upon gazettal of the Ordinance.

The existing section 103(2)(e) of the SFO provides an exemption to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document made by or on behalf of a corporation in respect of securities of the corporation, or of a related corporation of the corporation, to:

- (i) holders of securities of the corporation or related corporation;
- (ii) creditors of the corporation or related corporation;
- (iii) employees employed by the corporation or related corporation; or

- (iv) agents acting in a professional capacity on behalf of the corporation or related corporation.

There was a view during the public consultation conducted by the SFC between October and December 2009 that the scope of exemption provided for in section 103(2)(e) should be expanded to include employee incentive schemes in line with the proposed definition of "structured product". We agree to provide facilitation to employee incentive schemes and, hence, add references to "structured products" to section 103(2)(e) in the Bill.

During the deliberation of the Bill by the Bills Committee, we reviewed section 103(2)(e) having regard to the views expressed by deputation representatives. Since employee incentive schemes would be excluded from the definition of "structured product" under the Bill, it would not be necessary to again provide an exemption for employee incentive schemes in the form of structured products in section 103(2)(e).

We have also reviewed the existing exemption in section 103(2)(e) in respect of holders of securities and creditors of a corporation. This provision allows a corporation to issue a document not authorized by the SFC to offer securities to its existing shareholders and creditors.

Consequent to our proposed introduction of the definition of "structured product" in the revised definition of "securities" in the SFO as well as the transfer of the public offering regime for structured products (be they in the form of shares and debentures) to the SFO, this exemption should not apply to structured products (be they in the form of securities or not), including those issued by a corporation to its shareholders or creditors. This exemption should also not cover offers to holders of structured products issued by a corporation.

As regards the existing exemption for the issuance of documents to agents acting in a professional capacity on behalf of a corporation, we are similarly of the view that this exemption should not apply to structured products because the scope of such exemption under section 103(2)(e) is already quite extensive. Moreover, we have not received any request for expanding the exemption.

The purpose of the amendment to clause 4(3) of the Bill is to clearly define and narrow down the scope of exemption under section 103(2)(e) of the Ordinance.

Section 103(2)(i) of the SFO exempts public offer documents issued by non-securities property businesses in the ordinary course of that business from the SFC's authorization. With the introduction of the concept of and definition of "structured product" in the SFO, references to "structured products" are added to section 103(2)(i) through the Bill to prevent its scope of exemption from being affected.

After discussing with the Bills Committee and re-examining the scope of exemption under section 103(2)(i), we consider it only necessary to add references to "structured products" to section 103(2)(i) to reflect the policy intent of exempting public offer documents issued by non-securities or non-structured product property businesses in the ordinary course of that business. As new section 103(11A) originally proposed in clause 4(9) is unnecessary, we will move a CSA to delete clause 4(9) from the Bill.

We also move CSAs to clauses 15(5), 15(6), 15(7) and 15(8) and amend certain definitions, including amending the definition of "securities" in paragraph (vi). Our policy intent is to provide that non-negotiable/non-transferable debenture-type structured products only become securities, hence subject to the regulatory requirements for securities, if they are publicly offered. The proposed CSA will therefore make our policy intent clearer. Furthermore, we propose to amend the Chinese text of new paragraph (g) of the definition of "securities" so as to align the Chinese wording used in paragraphs (vi) and (g) of the definition.

We move CSAs to, among others, the Chinese text of the definition of "currency and interest rate-linked instrument" in order to more explicitly spell out the concept of "combination".

Moreover, as I mentioned earlier, employee incentive schemes are already excluded from the definition of "structured products" in the Bill. In the light of the view expressed by a deputation that the exclusion may be too wide, I will move a CSA to the effect that the exclusion will only apply to employee incentive schemes issued by a corporation and referenced to securities of the corporation itself or a related corporation.

The Bills Committee has discussed and agreed to these various CSAs. I hope Members can support and endorse them. Thank you, Deputy Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 4 (see Annex I)

Clause 15 (see Annex I)

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): As the amendment to delete clause 2 has been passed, clause 2 has therefore been deleted from the Bill.

CLERK (in Cantonese): Clauses 4 and 15 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 4 and 15 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New heading before new clause 30	Securities and Futures (Fees) Rules
	New clause 30	Schedule 1 amended (Fees).

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the Second Reading of the new heading before new clause 30 and new clause 30.

As I mentioned just now, the SFC has proposed a corresponding product authorization fee with respect to the new power to authorize structured products under new section 104A of the SFO. The SFC has informally consulted the key market players on the proposed fees level, and they have no objection. Amending the Fees Rules through new clause 30 and thereby revising the fees can enable the amendments in the Bill to come into operation earlier. Given that the deletion of the commencement provision in clause 2 of the Bill was passed by Members just now, the amendments in the Bill can then come into operation upon the Bill's gazettal.

The Bills Committee has discussed and agreed to the addition of clause 30. I hope Members can support and endorse the addition of the clause.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading before new clause 30 and new clause 30 be read the Second time.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the new heading before new clause 30 and new clause 30 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New heading before new clause 30 and new clause 30.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move that the new heading before new clause 30 and new clause 30 be added to the Bill.

Proposed additions

New heading before new clause 30 (see Annex I)

New clause 30 (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading before new clause 30 and new clause 30 be added to the Bill.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

SECURITIES AND FUTURES AND COMPANIES LEGISLATION (STRUCTURED PRODUCTS AMENDMENT) BILL 2010

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

Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

MR RONNY TONG (in Cantonese): Deputy President, the main purpose of the Bill is to regulate structured products, which were previously not regulated by legislation. Hence, the amendments introduced this time are extremely technical. Just now, some colleagues complained that there were serious problems with the Bill.

I would like to point out that it was probably a mission impossible to amend the relevant legislation before products are launched. But actually, after the products are launched onto the market, we do need to wait for the occurrence of unfortunate events before introducing legislative amendments. Hence, the SAR Government and the regulatory authorities should be prepared psychologically in a more forward-looking manner and pay more attention to the regulation in law with a view to remedying expeditiously the institutional defects.

The second point I wish to make is that although the technical amendments introduced this time around will bring structured products under the regulatory regime, foreign exchange-linked structured products are still not regulated by the relevant regime. Although the Government's explanation that a consensus on this has yet to be reached in the international community may be true, I still hope the Government can continue to pay more attention to it, because according to our understanding, the financial market nowadays is practically flooded by an endless stream of new products. Many new products we have never imagined can become an instant hit. However, quite a number of ordinary investors actually have an extremely poor idea of these complex and technical products. The Government is indeed obliged to bring these new products under the regulatory regime expeditiously.

Deputy President, the Civic Party and I absolutely support the passage of this piece of legislation. However, we also wish to remind the Government and the regulatory authorities again here to double the effort in regulating the sale of financial products.

Thank you, Deputy President.

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

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, although my speech just now was very long, I think the key now is that the information provided by the Government to this Council is very limited. For instance, as I pointed out in my speech just now, the Government had informed the International Monetary Fund (IMF) that Hong Kong would not have any problems, and even if it began enacting legislation to permit the sale of structured investment products, because we have two committees.

I cannot recall the names of these two committees. I only remember that one of them is taken charge of by Financial Secretary John TSANG and the other by Secretary Prof K C CHAN. While one of them is responsible for financial stability, the other one is responsible for something I cannot recall. The SFC, the Hong Kong Monetary Authority (HKMA) and the Commissioner of Insurance also sit on the committee headed by Financial Secretary John TSANG.

I have no idea of the role played by the Commissioner of Insurance, but the insurance industry will probably have some involvement in some investment products. During the inquiry, I had asked questions about these two government officials, or senior officials. How did they participate in the meetings of these two committees? What were discussed? For instance, in 2003, the IMF issued them a warning, to which they had replied, and then in 2006, another warning of the possibility of a new crisis. After that, Joseph YAM had even expressed his views frequently in the press, reminding members of the public that the market was unreliable. They seemed to have made a lot of efforts, but what had they discussed during the meetings?

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, please speak on the Bill. It is now time for the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 to be read the Third time and pass.

MR LEUNG KWOK-HUNG (in Cantonese): Fine.

What is the problem? The problem is, as I have mentioned before, under the executive-led principle of government, the Legislative Council is often required to provide a legal framework by way of legislation.

I believe even the Deputy President gave her stamp of approval to the so-called "securities law" years ago, only to find out later the existence of such arrangement as the "twin-peak approach" — Joseph YAM was found to have shared powers with his good friend, Andrew SHENG. This explains why I find myself in a dilemma in casting the vote today. First, the Lehman Brothers minibonds as well as other structural financial products have made many innocent people suffer, but the inquiry conducted by this Council is still not completed. Has the Administration learnt any lesson?

For instance, is the term "professional investors" clearly defined? Can these products be sold to non-professional investors in the future? Even this question alone has baffled me because this is disallowed in Australia. Therefore, such people as Lehman Brothers victims cannot be found there.

What do I mean? What I mean is: However complicated the structure of these products is and no matter how far the virus has mutated, such products cannot be sold to people who walk into the banks, with full faith in the latter. Neither should these people be enticed to invest their lifelong savings in these products, as if they are just opening a time deposit account. Approving these products to be named minibonds is already a scam.

Despite the Government's tabling of the Bill before this Council today, the problem is that several issues remain unresolved. First, regarding the sale targets, is there stringent control and a clear definition? Second, it is the issue of "two regulatory authorities for one industry" or twin-peak approach. While the SFC has all the powers, only some of the powers are conferred on the HKMA

which can only investigate the practices of bankers and their subordinates but not regulate the products.

Regarding these products, I asked the SFC during the Lehman Brothers inquiry this question: What method is used in approving stock products in general, though it is only approving the prospectuses submitted, not the products themselves? According to the SFC, approval will be given in accordance with company law. Admittedly, company law can ensure that vetting is carried out more meticulously.

There is no need for the investment products under discussion to be vetted according to company law like stocks in general. The authorities concerned would only examine the contents of the prospectuses. So, has there been any improvement? I think no improvement whatsoever has been made. This is the question I raised the other day: How can vetting be carried out if company law is not used as reference? I remember they gave me this reply: Would it be even better to relax everything, that is, do away with the vetting?

I must reiterate here that, first of all, the Legislative Council enjoys little right to know. I have requested the Financial Secretary and the Secretary to provide me with their emails over the past year to give us an idea of how meetings were held by these committees, whether the relevant matters had been discussed, whether the issues raised by this Council had been discussed, and so on. But as of today, they have still not provided me with the emails. In addition to the fact that we have no right to know, the Government is barbaric because of our constitutional problems. Thanks to the requirements of Article 74 of the Basic Law, we cannot introduce Bills. Even amendments are disallowed if they are ruled to have an impact on the administration of the Government, public expenditure or policies. So, what can we do here? The result will be the same on every occasion.

Deputy President, although you may think that I have strayed from the question, I cannot but air my grievances here. You can see how disconsolate Mrs IP, who is sitting here, is. There are no other options for us except to accept or reject the Bills tabled by the Government before this Council. However, if half or more than 70% of a Bill is cyanide and a mere 30% of it is rice, should we accept it? If we say that we cannot accept it because 70% of it is cyanide, some people will say, "Long Hair, LEUNG Kwok-hung, given that 30% of the Bill is

rice, does it mean that Hong Kong people should not be given the rice at all?" This is the dilemma faced by us when we scrutinized Bills in the past, including the one on the merger of the two railway corporations. Other examples also include the Bill on minimum wage and the Appropriation Bill. The Government has all along been using this approach — 30% is rice but 70% is cyanide. However, the Legislative Council cannot separate the two. Neither can it remove the cyanide and add more rice.

A year ago, the Legislative Council was deceived by the Government and the former gave the latter a blank cheque. But later, the Government filled in the cheque indiscriminately, thus bringing sufferings to Hong Kong people. Today, history may repeat itself, right? Now the Government is saying that it has introduced amendments in response to requests. However, if the amendments are not good enough I have no idea whether the Under Secretary has responded to several issues, such as the one caused by "two regulatory authorities for one industry". According to Joseph YAM, he has no power with respect to the banking industry. Despite the fact that the SFC has devolved the power to the HKMA, the latter says that it cannot conduct any investigation, so how can investors be protected? This is the first issue. Second, the SFC only deals with the prospectuses but it cannot look into the content of the products. So, can protection be provided? Third, what protection do investors enjoy? Fourth, should the power of the SFC be expanded so that it can, as stated by Mr Paul KRUGMAN, deal with financial alligators?

In the face of the frequent calls by Lehman Brothers victims for expediting the award of compensations, both the Government and people working in the SFC maintain that they do not have the power to do so, saying that the securities and futures legislation has not given them any power to require the banks to make compensations. So, on the law enforcement front, is there a need to enhance the legislation? What are the justifications if they think that there is no need to do so?

The second point I wish to make concerns protection for investors. During the sales process, can fairness and impartiality be maintained and can transparency for both parties as well as proof of transaction be ensured? For instance, in flat purchases, signatures are required for confirmation. Alternatively, the presence of other people or audio-recording is required.

However, there is absolutely no such proof in the sales of these products. Insofar as eligibility is concerned, can illiterate or semi-illiterate people buy these products? Even I myself find my own speech too tedious. Without such reform, a vast majority of Honourable colleagues may give their stamp of approval to this Bill, as they did in 2001, considering that the Legislative Council is just a daughter-in-law of the Government. So, what we can do if another incident occurs three months later? In that eventuality, the Government will definitely come to us again, saying that the legislation has already been baptized by this cathedral, the Legislative Council?

Deputy President, I know that you may have grown very impatient. However, if the Government does not change, if our political system does not change, that is, the Legislative Council cannot have the *bona fide* power possessed by a lawmaking body as well as relevant resources, there is simply no way for us to monitor the Government and enact law on behalf of the people.

Hence, Deputy President, I can not help this. Just now, Mr Ronny TONY said that he could not help either, but this was better than not having this enactment. This was roughly what he meant. In fact, I want to leave it at that, too, but I cannot but make this clear first. I have looked up the speech delivered by Dr Margaret NG in 2001, in which she asked the Government when it would give a reply. It now turns out that the Government has not replied. Under such circumstances, I think I can only cast an opposition vote today.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I think it was due to the past regulation of some structured products that Mr LEUNG made those remarks just now. Our tabling of this Bill today precisely seeks to plug some loopholes by putting the relevant

products under the SFO for enhanced regulation. As pointed out by Mr Ronny TONG just now, it was not envisaged at that time that placing these products under the Companies Ordinance, which only emphasizes the financial situations of companies, would lead to companies not being required to disclose more information. The present transfer to put these products under the SFO for regulation precisely addresses some of the problems which might have possibly occurred in the past. Therefore, I disagree with Mr LEUNG's remark that the Bill contains cyanide, that is, 70% of it is cyanide and 30% rice. In fact, it consists entirely of rice. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions. Three proposed resolutions under the Interpretation and General Clauses Ordinance. First and second motions: Repealing the Public Revenue Protection (Dutiable Commodities) Order 2011.

DEPUTY PRESIDENT (in Cantonese): Mr Albert CHAN and Mr Vincent FANG have respectively given notices to each move a motion to repeal the above Order. As the two motions are identical, I will only call upon Mr Albert CHAN to move his motion. After Mr Albert CHAN's motion has been voted upon, irrespective of whether it is passed or not, Mr Vincent FANG may not move his motion.

DEPUTY PRESIDENT (in Cantonese): This Council will now proceed to a joint debate on the two motions proposed by Mr Albert CHAN and Mr Vincent FANG. I will first call upon Mr Albert CHAN to speak and move the motion, and will then call upon Mr Vincent FANG to speak.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR ALBERT CHAN (in Cantonese): Deputy President, I move the motion under my name.

Deputy President, a similar motion on tobacco duty was passed by the Legislative Council in 2009.

Insofar as the relevant debates are concerned, Deputy President, I crossed swords with the Secretary a number of times in 2009. In fact, over the past half a year, I have crossed swords with the Secretary in this Chamber numerous times. However, when I put a very simple question on the divergence in tobacco and wine duties to the Under Secretary on four different occasions in this Chamber, he refused to respond to my question on every occasion. Deputy President, it is a pity that the Under Secretary refused to respond when I asked him very explicitly whether he supported the policy of waiving wine duty proposed by Secretary John TSANG and Chief Secretary Henry TANG. According to the fundamental spirit of the Government's collective responsibility system, never has any Policy Secretary, even if he or she personally disagrees, refused to respond in support of a policy already implemented when the Government's established policy is being discussed in this Chamber. Hence, to my personal understanding, Under Secretary Prof Gabriel Matthew LEUNG disagreed with

the policy. Moreover, he disapproved of the Government's policy of waiving wine duty due to his own conscience and on professional grounds.

During a debate in 2009 on the Government's hefty increase of tobacco duty, I chanted a slogan pointing out that "the rich can drink cheap wine whereas the poor have to smoke expensive cigarettes". When I met with some Netizens during a recent visit to the United States and Canada, one of them revised the slogan. He said, "It is not right to say "the rich can drink cheap wine", for you should say "the rich can enjoy cheap wine". Although it is not wrong to say "the poor have to smoke expensive cigarettes", the word used is not strong enough. You should say "the poor have to bear with expensive cigarettes" instead." According to the Government's policy, the rich, including Chief Secretary Henry TANG and Financial Secretary John TSANG, can drink cheap wine. To "enjoy" cheap wine is indeed an expression of luxury in daily life. However, the poor has to bear with expensive cigarettes.

Deputy President, the Government has actually seen the relevant figures. It has substantially increased tobacco duty numerous times on the grounds that smoking is hazardous to health. Deputy President, no one will object to this principle. I have repeatedly suggested that the Government should most preferably impose a smoking ban and prohibit the sale of cigarettes, as if they are drugs, such as cannabis, ketamine, and so on. As the Government believes that cigarettes are poisonous and seeks to combat smoking by frequent publicity and in many other ways, it had better ban the sale of cigarettes, as if they were drugs. However, the Government does not have the guts to do so.

Furthermore, the Government fears the strong and bullies the weak in implementing this policy. It dares not prohibit smoking in prisons because the "big brothers" there are extremely fierce. As a result, even prison guards cannot avoid passive smoking. This policy has exposed completely the Government's attitude of fearing the strong and bullying the weak as well as its ugly face. The Government dares not offend tourists, too. As a result, there are special smoking rooms in the airport. As "uncles" from the Mainland take smoking as seriously as their lives, tourists definitely feel that the Hong Kong Government has no sympathy for its Mainland compatriots if smoking rooms are not provided. Hence, special smoking rooms are provided in the airport.

With respect to the proposal of allowing special smoking rooms to be provided in restaurants and mahjong parlors, both Mr Tommy CHEUNG and I have argued with the Government in this Chamber for years. For the sake of the compatriots of our great Motherland, however, smoking rooms can be provided in the airport. In order to allow the "big brothers" in prisons to continue smoking, the Government also allows smoking in prisons because it fears the strong and bullies the weak. Deputy President, these examples have amply revealed the inconsistency of the Government's policy.

Concerning my remark that "the poor have to bear with expensive cigarettes", Deputy President, these two copies of information provided by the Government are very interesting. One of them contains statistics of a survey on smokers conducted by the Census and Statistics Department, and the other one is a document provided by the Food and Health Bureau in April 2011. Although the two sets of figures are at variance, this is unimportant. Judging from the overall tendency, older people have not ceased smoking because of the Government's increase in tobacco duty. Let us look at the figures provided by the Government. In Annex A, the daily number of smokers aged 50 to 59 in 2007 and 2008 was 133 300. During the period between November 2009 and February 2010, however, the number rose to 155 000. Generally speaking, the number of smokers of older age has continued to rise. For instance, for smokers aged above 60, the number was 102 500 in 2007 and 2008 but rose to 108 000 during the period between November 2009 and February 2010. In other words, the percentage of increase ranged from nearly 10% to more than 10%, showing that the overall figure of elderly smokers has risen, thereby reflecting that the chances of elderly people quitting smoking decrease with age.

Why do the poor suffer as a result of the substantial increase in tobacco duty? Deputy President, the reason is that many elderly people earn a very low income. This is what we frequently see in housing estates. Nowadays, a space measuring six feet by 12 feet can be found in almost every housing estate to allow elderly people to smoke there. In fact, this is an excellent design which allows illegal cigarette peddlers to gather its customers more easily without the need to look for them everywhere. Basically, every housing estate has a contracting system, whereby some people habitually anchor in certain housing estates to arrange for "regular customers" to purchase illicit cigarettes, whereas "strangers" will definitely not be entertained. This explains why the Government definitely finds it even harder to combat illicit cigarette activities. Later, I will make

criticisms of the effectiveness of the Government's ridiculous effort to combat the sale of illicit cigarettes.

Many elderly people, even Comprehensive Social Security Assistance (CSSA) recipients, have been smoking for more than 40 years. For them, to quit smoking is like killing them. Of course, I absolutely encourage and hope elderly people can quit smoking. I do not smoke; neither do I approve of smoking. When I was a member of a certain organization, I hated some members who smoked during the meetings because it was bad to do so.

As a result of the Government's implementation of the no-smoking arrangement in 2009, smoking is prohibited in many restaurants and other places. This will bring some improvement to the air and the environment in general. However, the introduction of a hefty increase in tobacco duty will only make life even more difficult for low-income elderly people, because their income is very low. Some of them may even be relying on CSSA. For them, to pay \$10 to \$20 more for cigarettes is tantamount to substantially slashing their food, clothing or medical expenses. Deputy President, regarding the Government's saying that these people may quit smoking, we have indeed been entangled over this issue for a very long time. These people can simply not quit smoking. Moreover, they will definitely slash expenses in other areas in order to satisfy their addiction. Despite my emphasis that smoking is not healthy behaviour, this is something out of their control. Such being the case, the Government's increase in tobacco duty will only make their miserable lives even more miserable. I asked the Under Secretary these questions when I met him in the Ante-Chamber just now. Why does the Government frequently target the grassroots? Could these people have killed the whole family of the Under Secretary? The Government has continued to pressurize, abuse, oppress these people and force them into labour, as if they are its enemies.

In fact, drinking also affects health. In 2009, I submitted a very detailed document of 10 pages to the Government to list the reports of different places, including the United Nations, Canada, the United States, Germany, and so on. It is unanimously pointed out in the studies conducted by many countries, scholars, health organizations and the World Health Organization that the impacts or perils of excessive drinking are by no way less serious than those of smoking. On the contrary, excessive drinking may even be more serious. Not only is the impact of excessive drinking on health similar to that of smoking, excessive drinking

may also cause dangerous driving and deaths and injuries. Furthermore, drunken fighting affects law and order, too. When I was a student, I once committed drunken fighting. There is evidence in general medical studies that drunkenness can cause sudden behavioural change. This is also a factor affecting law and order.

Furthermore, excessive drinking also affects productivity. Such problems as people failing to get out of bed for work occur frequently. Even if they can go to work, their productivity will decrease. Although I already submitted the relevant report to the Government in 2009, the Government is still turning a blind eye to these problems and making its dream of turning Hong Kong into a hub of red wine. Recently, many Secretaries of Departments and Bureau Directors have fallen ill probably because they have drunk too much red wine. I suspect they have drunk excessive red wine because it is duty-free. Several Secretaries of Departments and Bureau Directors who have physical problems are red wine lovers. Except for Secretary Rita LAU, who might have worked too hard, the Secretaries of Departments and Bureau Directors seem to have consumed excessive premium red wine, thus resulting in poor health. Secretary, drinking affects governance, too. Of course, the Government and the other Secretaries of Departments and Bureau Directors will certainly not admit it. But, Deputy President, my suspicion is absolutely justifiable.

Deputy President, despite the Government's repeated emphasis of its enhanced efforts to suppress the sale of illicit cigarettes, such efforts have proved to be ineffective. Given its existing manpower, it is impossible for C&ED to suppress the illicit cigarette activities in two or three housing estates, not to mention such activities throughout the territory. Years ago, I complained to the authorities concerned that the sale of illicit cigarettes could be found in a housing estate in Tin Shui Wai and pointed out clearly where such activities took place. However, the Government could still not arrest the relevant persons after three years of investigation. This illustrates that illicit cigarette traders will definitely not entertain "strangers". So, it is impossible for the Government to crack down on their activities. The universality, pervasiveness and organization of the sale of illicit cigarettes have become so sound that it would be just a waste of time for the Government to combat the relevant activities. This is because, owing to the extreme price disparity, the profits of selling illicit cigarettes are extremely lucrative. As a result, there are more and more people who are willing to run the risk of breaking the law. Even if this group of people is arrested today, another

group of people selling illicit cigarettes will appear tomorrow. They are even more powerful than terrorism. This is why I think that the Government is talking nonsense when it says that it will combat the sale of illicit cigarettes.

The continuous increase in tobacco duty by the Government has, firstly, amply demonstrated the unfairness of its policy in that it is invariably tilted to consortia, tycoons and senior officials (with wine duty as one of the examples) and seeks to add to the misery of the poor smokers. Secondly, the effectiveness has been open to question. The entire policy can absolutely not convince Members and the public that the Government is capable of combating illicit cigarette activities. Thirdly, insofar as the impact on people's livelihood is concerned, not only does smoking affect elderly people, it also affects newspaper vendors, as I have emphasized repeatedly. The Secretary is indifferent to the interest of the ordinary masses. I have also repeatedly suggested in this Chamber that, in introducing any public policies, the Government we also urge members of the Civic Party to conduct studies. All public policies must have regard for the disadvantaged and ensure that they will not become innocent victims of public policies. The Government can absolutely describe any policy as very great and promising good prospects. But now, some people are sacrificed in order to realize such good prospects. Why does the Government not consider in the course of policymaking that a group of people will be sacrificed? This is just civic responsibility. Why can the Government not consider, when a policy is being formulated, such a basic factor that the income of that group of people will be indirectly reduced by 30% to 50% should such a policy be drawn up? They too have to care for their families and children. They get out of bed at 3 am or 4 am and work until 12 pm. However, their income is below the minimum wage. Secretary, please stop making sarcastic remarks! If a policy can make you or a barrister earn 30% or 40% less, will you not "overturn the table"? Do you think that newspaper vendors can be sacrificed?

Deputy President, this issue has been discussed for years. I repeat this argument (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MR ALBERT CHAN (in Cantonese): This Government seems to be very stubborn.

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

Mr Albert CHAN moved the following motion:

"RESOLVED that the Public Revenue Protection (Dutiable Commodities) Order 2011, published in the Gazette as Legal Notice No. 32 of 2011 and laid on the table of the Legislative Council on 2 March 2011, be repealed."

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

MR VINCENT FANG (in Cantonese): Deputy President, I propose to repeal the Public Revenue Protection (Dutiable Commodities) Order 2011 mainly because of the following four reasons. First, the Government hopes that by raising the tobacco duty substantially, young people who are more sensitive to the price of cigarettes will be deterred from smoking because of the high price. But on the other hand, the Government cannot eliminate the existence of illicit cigarettes which are sold at a much cheaper price. The result is that smokers may choose to buy illicit cigarettes which are more harmful to their health. This move of the Government cannot achieve the good intention that it has, on the contrary, it will encourage more people to break the law and sell illicit cigarettes which will bring more profits, hence further damaging the health of the smokers.

(THE PRESIDENT resumed the Chair)

I wish to quote from a paragraph of the speech made by then Financial Secretary in his Budget speech in 1999. Now I quote: "This year I will not be proposing any increases in excise duties, but I wish to draw attention to the increased flouting of the law by many smokers. For many years, the

Government has been pursuing an anti-smoking policy in the interests of public health. However, statistics reveal that the sale of duty-paid cigarettes has been on a falling trend since 1992 without a corresponding decline in the total number of smokers. The smuggling and illegal sale of contraband cigarettes accounts for this gap. Fuelled by the economic downturn, such illegal activities have become even more widespread. I believe that increasing tobacco duty will only enhance the attractiveness of contraband cigarettes and provide further impetus to smuggling and illegal sale. It would be counter-productive in revenue terms and would contribute little to furthering our anti-smoking policy. Worst of all, it would further erode public respect for the rule of law." (End of quote)

Despite the "ostrich" policy adopted by the SAR Government which is reluctant to project the market share of illicit cigarettes after the hefty rise in tobacco duty by 70% in 2009, C&ED officials said at the end of last month in a meeting of the Bills Committee to deliberate on the Bill seeking a rise in tobacco duty that the amount of illicit cigarettes seized this March had gone up by about 130% as compared to last year. Facts therefore demonstrate the current situation. I concur with the view expressed by the then Financial Secretary in 1999, that provided that illicit activities in smuggling cigarettes are rampant, raising the tobacco duty would not be an effective means of tobacco control.

Second, this practice of the Government in raising the tobacco duty repeatedly has actually caused division among the smokers. It is a discrimination against grass-roots smokers because the Government has made cigarettes an expensive commodity. The result is that grass-roots smokers are made unable to afford buying cigarettes and they are advised to quit smoking. This move by the Government is like saying, "If you can afford expensive, duty-paid and authentic cigarettes, then just keep smoking. But if you cannot afford them, then just quit smoking." No wonder smokers who have not voiced any discontent before are so overwhelmed by grievances this year.

Third, the Government says that the move this time can make more smokers quit smoking. But the measure taken is inappropriate. The approach taken by the Government is consistent and, that is, to resort to some punitive means whereby smokers are punished severely and the price of cigarettes is made terribly expensive. Those smokers who cannot afford to buy cigarettes will quit smoking naturally. They do not change this habit out of their own free will. Such is the case with green policies and it is the same with tobacco control

policies. There is no measure from the Government which encourages smoker to try to quit smoking voluntarily.

The Under Secretary for the Food and Environmental Health Bureau — he is in attendance today — emphasized repeatedly in the Subcommittee to deliberate on this Order that the Government had set aside about \$19 million for the Hospital Authority to enhance its smoking cessation service. But when smokers want to use such a service, smokers will have to pay a registration fee of \$100 or \$60 first. When I raised the idea that the Government should waive all the fees for smoking cessation service, the Under Secretary said that a pack of cigarettes cost \$50, there was no reason why smokers could not afford a registration fee of \$60. President, please do not forget that these people would rather buy illicit cigarettes instead of quitting smoking and in the absence of any incentive or special reason, how can they be persuaded to kick the habit? Last week I took part in a radio programme and the host mentioned a point, saying that there were many ways used in the United Kingdom to encourage people to quit smoking. One was that if someone succeeded in doing so, he would be given a cash reward. Why does the SAR Government not learn from the good ideas of other people and adopt some positive measures?

Fourth, all the Government knows is to enact laws, but it never considers how to solve the problems brought about by the enactment of such laws. Some media people asked me why I would oppose the increase in tobacco duty and whether it was for the interests of the sector. They were referring to the tobacco companies. I admit that I oppose the measure for the sake of the interests of the sector. But I am concerned about the interests of the local newspaper vendors, not the multinational tobacco companies. The Directors of Bureaux may never have patronized any news-stands and they will never know how important smokers are to their income. When smokers buy a pack of cigarettes, they would usually buy some chewing gum and they would take a look at the magazines on sale at the stand. Many of them would buy a magazine at the same time. The result is three items are bought at one time. If the smokers do not patronize these news-stands, how much would their income be affected? The answer is simple and obvious enough.

When the Government decides to raise the tobacco duty, it should also study the impact of the new measure on the economic and social spheres. Then when a new law is to come into force, the Government should also announce the

measures it will take to solve these problems. It must not come out and ask what problems people have got after they have voiced their strong opposition in the streets.

President, ever since I have joined the Legislative Council and taken part in the enactment of laws and in the formulation of policies, I notice that when the Government is to draft a piece of legislation or formulate some policy, it will only care about its aims and it will never look macroscopically into the question of whether the new law would cause other problems. It will not consider any matching measures to ease problems in doing business, social stability and public discontent. When the business of the newspaper vendors is threatened, the Under Secretary is still putting up such a cliché response, saying that the Government remains open on the issue and newspaper vendors may put forward any demand they like and the Government will be glad to discuss with them. Such an approach taken by the Government is really unacceptable.

In 2009 when the tobacco duty was raised, the Government spent more than nine months negotiating with the newspaper vendors and in the end restrictions were lifted so that they could sell some other goods. What were these? Red packets for the Chinese New Year and such like stuff. President, these newspaper vendors are licensed to sell cigarettes — goods that are legal and both recognized in Hong Kong and internationally. Now the Government is eliminating their room of doing business and driving them out of existence. Given such an ill-considered policy, I cannot convince myself that this is the brainchild of civil servants in the SAR Government who were previously recognized for their quality and excellence.

President, there are media reports which wrongly say that I have been a smoker for more than 30 years. I wish to use this opportunity to make a clarification. I am not a smoker and I support tobacco control. More so do I support the protection of non-smokers from the impact of second-hand smoke. So I have been urging the Government to permit the setting up of smoking rooms. Had the Secretary accepted this suggestion from Mr Tommy CHEUNG and me, there would be no such ungainly sights on the street as people crowded in front of a litter bin to smoke. This adds to the impact of second-hand smoke while also causes discrimination against smokers. Furthermore, this adds to the chance of children coming into contact with cigarettes. This is because they have more chances of seeing other people smoke on the streets. So in view of the

long-term well-being of Hong Kong, I have to call upon the Government again to consider a practice adopted in many international cities, that is, to permit the setting up of smoking rooms.

No matter how convincing my arguments may sound, I know that against this lofty moral ground of health I only belong to the pitiful minority. I therefore do not harbour much hope that the motion today can be passed. But I hope very much that Honourable colleagues can seriously and carefully consider the arguments presented by me. Holding onto my conviction, even if this attempt to repeal the Order fails, I will continue to propose amendments in the Bills Committee concerned to demand that the Government should allocate the revenue from tobacco duty to specifically encouraging smokers to quit smoking, providing support to the C&ED to combat illicit cigarettes and launching efforts in tobacco control and health. The Government has said that it has never adopted the practice of using specific funds for specific purposes. President, provided if something is good for Hong Kong and will not cause any adverse impact, why should we not do it?

With these remarks, I hope Honourable colleagues can seriously consider my arguments and support the repeal of the Order concerned. This is because repealing the Order does not mean that we do not support tobacco control. Thank you.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the Financial Secretary has, in his 2011-2012 Budget, proposed to increase the tobacco duty on cigarettes by \$0.5 per stick, representing an increase of 41.5%. The duties on other tobacco products will also be increased by the same percentage. The increase in tobacco duty is proposed for the protection of public health in line with the tobacco control policy by further reducing the number of smokers, especially among the young people. Mr Albert CHAN and Mr Vincent FANG have proposed resolutions on the Public Revenue Protection (Dutiable Commodities) Order 2011 (the Order). Let me first explain the purpose of the Order.

The Order was made by the Chief Executive pursuant to the powers vested in him under the Public Revenue Protection Ordinance (Cap. 120). The purpose is to prevent the hoarding of large quantities of tobacco products at the former

duty rates for tax avoidance purpose for the period between the announcement of the proposed tax increase and the formal enactment of the relevant Ordinance. The Order is a time-limited measure to enable the new tobacco duty rates to immediately come into force from 11.00 am on 23 February this year when the Budget was released. The Order, with a four-month temporary effect in law, serves to allow time for the Legislative Council to scrutinize the Dutiable Commodities (Amendment) Bill 2011 introduced to the Legislative Council by the Administration to formally propose an increase in the duty rates of various tobacco products.

President, as a usual practice, the Government introduces the Order to guard against acts of tax avoidance which could otherwise undermine public revenue during the transitional period before the new duty rates come into effect. This practice has all along been accepted by the community and the Legislative Council. It has been the practice of the Legislative Council to debate taxation measures during the deliberations on the amendment bill to the Dutiable Commodities Ordinance. If the bill is ultimately negated by the Legislative Council or if the duty rates endorsed are lower than those proposed by the Administration, the Government is required to refund the excess duties collected during the period when the Order is in force under the Public Revenue Protection Ordinance. As such, the Order is purely a temporary measure to guard against tax avoidance which could otherwise undermine public revenue. It will not reduce or restrict the power of the Legislative Council to scrutinize the tax proposals. Even in the absence of this temporary Order, the Legislative Council still has to proceed to scrutinize and debate the bill on increasing the tobacco duty.

On the contrary, if the Order is repealed in the Legislative Council today, the tobacco duty will revert to the former rates with effect from the day the repeal of the Order is gazetted, and if the Legislative Council ultimately passes the bill on increasing the tobacco duty, the Administration would need to recover the shortfall in duties collected during the period between the repeal of the Order and the passage of the bill. This would only cause unnecessary confusion, making the public feel at a loss. The repeal of the temporary Order which aims to guard against tax avoidance will also jeopardize the overall public interest, making it impossible for the Order to perform the function of protecting public revenue, which runs counter to the original intent of the Public Revenue Protection

Ordinance. For this reason, the Administration considers that the repeal of the Order is not justified and absolutely unnecessary.

Next, I would like to explain the reasons for the Administration increasing the tobacco duty.

President, the harmful effects of tobacco products have been universally recognized. All places in the world have implemented measures to minimize the hazards caused by tobacco to public health. The endorsement of Framework Convention on Tobacco Control (FCTC) of the World Health Organization (WHO) means that all countries are duty-bound to step up tobacco control, and the FCTC also applies to Hong Kong. According to studies conducted by academics in Hong Kong, the annual economic loss caused by active and passive smoking is as much as \$5.3 billion, and the damage done to human health and lives is even inestimable. It is the established tobacco control policy of the Government to discourage smoking, contain the proliferation of tobacco use and protect the public from second-hand smoke as far as possible with a step-by-step approach. To achieve this, the Administration adopts multi-pronged tobacco control measures comprising legislation, taxation, publicity, education, enforcement and promotion of smoking cessation, with a view to achieving the objective of protecting public health.

Progressive enhancement of tobacco control has been a policy direction widely supported by the community. On this premise, Hong Kong has been taking forward the work of tobacco control steadily over the years. Since the Smoking (Public Health) Ordinance was first enacted in 1982, the Administration has continuously enhanced the work of tobacco control in various aspects in collaboration with various sectors of the community. The initiatives taken include:

- conducting publicity on the harmful effects of smoking and in particular, stepping up education targeting youngsters;
- enacting legislation to impose restrictions on tobacco advertisements, sponsorship, packaging and sales;
- gradually extending the smoking ban to cover more public places in line with public expectation;

- taking forward publicity on smoking cessation and providing cessation services; and
- increasing the tobacco duty to reduce tobacco consumption and smoking prevalence.

The ongoing tobacco control strategy of the Government over the past three decades has no doubt achieved certain results. According to the household surveys conducted by the Census and Statistics Department, the percentage of daily cigarette smokers has continuously declined from 23.3% in 1982 to 12%. The results of tobacco control have been encouraging, and our efforts have earned the recognition and commendation from many other places internationally. However, we should not rest on our laurels and in particular, it is necessary for us to continuously step up efforts to curb smoking among young people. A lot of studies and statistics have clearly shown that a great majority of smokers became addicted to smoking during adolescence and few people started smoking after the age of 30. In this connection, a most important objective of tobacco control is to reduce and prevent smoking among young people, in order to bar at source the entry of new blood into the smoking population. The proposed increase in tobacco duty of \$0.5 per stick of cigarette this year precisely aims to further step up tobacco control and reduce smoking, especially to curb youth smoking, with a view to safeguarding public health. Let me cite some specific statistics for illustration.

According to the statistics obtained from surveys conducted in 2008 and 2010, in the population above the age of 15, the percentages of people with a smoking habit were 13.1% and 13% respectively, and the percentages of daily smokers were 11.8% and 12% respectively. There were no significant changes in the overall percentage of smokers between the two surveys but if we analyse the results by age groups, we will find that compared with a similar survey conducted in early 2008, the percentage of youth smokers aged 15 to 29 dropped significantly by over 10% in the 2010 survey (from 8.9% to 8%), whereas the average daily consumption of cigarettes among daily smokers dropped slightly from 13.9 sticks in the last survey to 13.7 sticks. There was a more notable drop in the consumption of cigarettes among heavy smokers (from an average of 33.9 sticks to 28.5 sticks daily).

President, the School of Public Health of the University of Hong Kong (HKU) published just last week the results of a survey on the trend of smoking prevalence among young people. The HKU conducted five large-scale anonymous surveys from 2003 to 2010 among some 54 000 Secondary One to Five students in up to 85 randomly selected schools. The purpose was to monitor the current smoking prevalence among secondary students in the territory. The HKU survey shows that a vast majority of smokers became addicted to smoking during adolescence, and the enactment of legislation on a total ban on smoking has helped reduce the youth smoking rate. The findings of the survey also point out that the smoking rate of Secondary One to Five students remained at 9.5% in 2006 but drastically dropped to 6.9% in 2008 after the legislation came into force in 2007, representing a decrease of 27%. The survey also finds that the smoking rate dropped by 51% (from 6.9% in 2008 to 3.4% in 2010) after a 50% increase in tobacco duty in 2009. The results of the survey clearly show that the implementation of tobacco control measures, especially the increase in tobacco duty, has resulted in a continued decline in the smoking rate among adolescents. This bears testimony to the conclusion drawn by the WHO and the World Bank that increasing the tobacco duty is conducive to reducing and preventing smoking among young people.

President, I have given a detailed account of the Government's tobacco control policy and statistics in order to illustrate that the Government has continued to dial up the strength of the tobacco control policy to meet increasing public expectation for tobacco control. The work of tobacco control is carried out on all fronts, and the tobacco duty increase is a public health policy and also an integral part of the Government's tobacco control policy. In line with the overall tobacco control strategy, the Administration has, in each of the past few years, implemented measures to extend the smoking ban to cover more places, tighten the requirements on tobacco sale, introduce a fixed penalty system, enhanced publicity and education on smoking cessation, and so on. It is necessary for us to increase the tobacco duty in tandem with these measures, with a view to further reducing the number of smokers, especially among young people.

During the discussion on the Order in the Legislative Council, we have explained in detail the measures and plans adopted by the Government in dealing with illicit cigarettes, enhancing smoking cessation services, and assisting

newspaper hawkers. I can assure Members that we absolutely will not scrimp on resources for implementing effective tobacco control measures.

President, I hope Members can understand that the achievements made in tobacco control in Hong Kong do not come by easily. From the perspective of the overall tobacco control policy, the proposal to increase the tobacco duty made by the Financial Secretary in this year's Budget has a direct and positive effect in reducing the number of smokers and passive smoking, encouraging smokers, especially youth smokers, to quit smoking early, and also in the work of tobacco control and creating a smoke-free city for the next generation. For these reasons, I urge Members to support the tobacco duty increase proposed by the Government.

Thank you, President.

DR JOSEPH LEE (in Cantonese): President, in my capacity as the Chairman of the Subcommittee on Public Revenue Protection (Dutiable Commodities) Order 2011, I report on the deliberations of the Subcommittee.

The Subcommittee has held three meetings with the Administration and received views from the public.

Some members support the Order and agree to increasing the tobacco duty as a means to enhance tobacco control and protect public health, as well as preventing the youngsters from picking up the smoking habit. Some members have questioned the justifications for raising the tobacco duty and criticized the Administration for failing to seriously examine the social and economic impacts of the duty increase. The Administration has advised that since the early 1980s, the tobacco duty has been increased many times at a rate as high as 100% to 300%. Through successive tobacco duty increases, together with progressive tobacco control efforts on various fronts, cigarette consumption has been on a general trend of decline. According to the Administration, smoking prevalence has gradually declined from 23.3% in early 1982 to 12% at the end of 2009. As the total annual costs of diseases caused by tobacco amount to \$5.3 billion, the Administration considers that there is a need to continue to strengthen tobacco control by, among other things, taxation, to curb the proliferation of tobacco use.

Some members have questioned the effectiveness of the smoking cessation services and the adequacy of the resources provided for the same. The Administration has pointed out that since the tobacco duty increase was proposed in the Budget, the number of telephone enquiries received under the counselling programme for smoking cessation has increased substantially, and that more financial resources have been made available to tobacco control in recent years. In 2011-2012, the expenditure estimate of the Tobacco Control Office is \$113.3 million. An additional \$21 million has been specifically earmarked for the Department of Health to enhance its smoking cessation services, while \$19.6 million in additional funding will be earmarked for enhancing smoking cessation in primary care services by the Hospital Authority.

Some members have considered that the tobacco duty increase will only prompt smokers to switch to consuming illicit cigarettes, making the smuggling activities of illicit cigarettes more rampant. Moreover, as many illicit cigarettes are counterfeit cigarettes, they pose an even greater health hazard to the public. They urge the Administration to deploy sufficient manpower and resources to enhance enforcement against illicit cigarette activities. The Administration has advised that through internal redeployment of manpower, the Customs and Excise Department has closely monitored illicit cigarette activities at various control points and at street level. If necessary, additional resources will be deployed to step up anti-illicit cigarette enforcement.

Members have expressed grave concern about the impact of the increase in tobacco duty on the livelihood of newspaper hawkers. The Administration has said that after the increase of the tobacco duty in 2009, the list of approved commodities for sale by licensed newspaper hawkers has been expanded from eight to 12 types of items. The Food and Environmental Hygiene Department has also relaxed the restriction on the total space used for the sale of additional commodities to not more than 50%, and permitted these hawkers to display within the confines of their stalls advertisements related to the commodities permitted for sale. The Administration will remain open and explore with the trade possible ways to help their adaptation to the changes in their business environment.

President, that is all for the report of the Subcommittee. I will now express my personal views.

President, the Subcommittee has held three meetings during which members of the Subcommittee have expressed many different views on whether or not the tobacco duty should be increased. As a nurse, I think on the premise of "smoking is hazardous to health", I personally must support the tobacco duty increase proposed by the Government and oppose the repeal of the Order. But I wish to point out that the Government's policy objective in increasing the tobacco duty is solely to control tobacco, that is, the Government only hopes to see the public smoke less or, more preferably, quit the habit altogether.

However, when we talk about increasing the tobacco duty, we only focus on how much should be increased, and whether such rate of increase can help deter the public from picking up the smoking habit or make smokers quit smoking, and whether or not it carries only a punitive effect. Members have not suggested positive and encouraging ways to tell people not to pick up the habit or to tell smokers to quit smoking. Some Members consider that the vigour of the Government's policy is not enough. If we discuss the propriety of the tobacco duty increase purely from the angle of technical arrangement, I think it is beyond doubt that from past experiences, as the Secretary has also said, an increase in tobacco duty can effectively reduce the number of smokers.

Having said that, I personally consider that an increase in tobacco duty is actually just one of the ways to achieve the objective, and the Government should also proactively and vigorously implement other support measures, such as those in education and other aspects, to encourage the public to quit smoking and enable them to truly kick the habit. Education is important because whether or not to smoke remains purely a matter of personal choice in Hong Kong. Hong Kong is a free society where everyone has the right to choose. Of course, smoking is different from drinking alcohols in that smoking will produce second-hand smoke. As second-hand smoke will affect the health of other people, smokers should be responsible to other people. This is an important point. So, if the Government is truly committed to implementing the work of tobacco control effectively, it should not only emphasize that raising the tobacco duty substantially can discourage people from smoking, thus making the duty increase a measure purely punitive in nature. Rather, the Government should inject all the duties collected into helping smokers quit smoking or encouraging people not to pick up the habit. It is more important to achieve these goals through education or in other ways. I think the Government should implement these measures, rather than only discussing an increase in the tobacco duty, just as it has done this time around. Certainly, increasing the tobacco duty will no

doubt affect the people's livelihood and as we have said on various occasions, the Government is duty-bound to discuss the impact on newspaper hawkers. This issue may have to be referred to the Legislative Council Panel on Food Safety and Environmental Hygiene for discussion. The Government is duty-bound to handle this issue. On the other hand, when we argued over this issue, Members also expressed many different views. Some Members even questioned whether the tobacco duty should not be increased and proposed repealing the Order.

I happened to have read an interesting article in a newspaper. I have just learnt from the press that a book entitled *I smoke — the 100 Whys* has been published. I have not read this book but I have read the article in the newspaper, and taken a great interest in it. The writer of the article is Mr Daniel LEE who is not a smoker. He has drawn a simple conclusion after reading this book. I believe this conclusion Let me spend a little time citing his conclusion. Then, it can provide a basis for Members to decide whether they should support or oppose this Order and think about what exactly is going on now.

The writer says that although the tobacco tax has been increased a number of times and so many things have happened, the voices of the smokers have never been given audience. This book is the stories told by 100 smokers in person. The writer says, "Since the smoking ban was brought into force, seldom have we heard the voices of smokers. When the tobacco duty is increased and when no smoking areas are designated, there has been so little public discussion that it is, at most, a feeble struggle. Still less have we heard the view that smoking is a way of living, an experience. Smokers seem to have done an original sin which precludes them from participating in any discussion." This is the view of the writer.

Is what he said a true account of the facts? Have we demonized smokers? Is it a crime to smoke? I think we have to give some thoughts to these questions. In fact, in a free society, if a person likes to smoke or he likes to hide in his room smoking all by himself, is there anything wrong with it? Yes, this smoker will add to the medical care burden but he can argue that he has the means to go to a large private hospital for a chest X-ray and so, what is the problem? Is a free society supposed to be like this? Along this line of thinking, the writer goes on to say that this book is not meant to convey the position of smokers. Rather, it wants us to try to understand that different smokers actually have a story behind them and each smoker is, in fact, an ordinary person. In his article the writer tries to briefly tell some of the smokers'

stories in the book. He says that some smokers think that smoking is something to be proud of; some always want to kick the habit; some think that they are not addicted to smoking and so, there is no question of quitting it and they couldn't care less about it; some oppose the increase in tobacco duty and oppose the designation of no smoking areas; some agree to various measures and only hope that they are not being discriminated against because smoking is not a crime; some choose not to quit smoking even though they wanted to in the first place because of such paternal intervention which suggests that "the Government knows better" and they think, "This is none of your business since you are not my parents, and my health has nothing to do with you.". The writer points out that some smokers do hold these views, and as also admitted by the writer, many of them are actually deceiving themselves as well as other people in their views. This is the observation of the writer. As I go on reading it, I find it even more interesting. The writer then says that some people think that smoking can also be a way to longevity, while some people say that they smoke in order to kill themselves slowly, which is like saying "Yes, I want to die, so what?" Some people have really made these remarks and this is, of course, their free choice. He goes on to say that after reading these stories, the readers cannot but admit that smoking, like the many components of life, has its bitter and sweet moments, and fascination, and there are different stories. The writer further says that after reading the story of each and every of these smokers, we may have to think about a very interesting question: Why can smoking be so popular in a liberal society? But is it not very strange that if, in a liberal society, a ban on smoking can also command great popularity when smoking is very popular? But according to the writer, in present-day society, a smoking ban can command popularity in a liberal society because the personal choice of smoking has been vigorously censured. What he means is that smoking is regarded as a wrongdoing of an individual person, not the fault of society. Is this view correct? I really do not know, but this is an observation of the writer. The writer goes on to say that some people think that smoking will produce second-hand smoke and owing to the second-hand smoke, a ban should be imposed on smoking and smokers should cease to smoke. Even though people have freedoms in society, they should not smoke because smoking will affect other people. The writer explains that under the harm principle in liberalism, every person should have full freedom to act provided that he does not do harm to other people. However, it is because of the factor of second-hand smoke that smoking is driven out of the palace of free way of living and smokers are labelled as demons harmful to society. The tobacco duty is, therefore, increased to make up for the burden of additional medical expenditure and no smoking areas are designated to ensure that non-smokers do

not inhale second-hand smoke. Such an explanation sounds reasonable, and this is why people in a free society consider that smoking should be banned and that there should be no other alternative. The writer says that smokers who are subject to various restrictions should be considered as compliant with the harm principle and so, smoking can be a permitted way of living. But is that the case in reality? It seems that the writer has not got any answer. But I believe whether we will vote for or against the resolution today, we have to think about this: In this free society, what implications are there in the decisions we make? Have we considered the interest of other people in what we do? The writer further says this: "But it is not known as to when the smoking ban has departed from the pure "harm principle" as smoking is severely suppressed in society to the extent that even another cornerstone of liberalism, the freedom of expression, is compromised." This is the conclusion drawn by the writer after reading the book.

President, the writer continues to say that if such demonization of smoking is a reason for us to make concessions in terms of our freedoms, then, it is necessary for us to carefully look into the cause, for what is hidden behind it is an even bigger demon who can do damage to our free way of living. What demon is it? It is the paternal way of doing things; the demon which deprives us of freedom in whatever we do. To end, the writer says, "Obviously, the aversion to smoking does not only stem from its hazards to health, and smoking is behavioral semiotics in a more enriched sense." Obviously, the writer is a sociologist. He said that smoking is behavioral semiotics, which is a concept in sociology. He goes on to say, "At least my teachers and elders told me long before that smoking is a way of degeneration" — "師長" does not mean "司長" (Secretaries of Departments)¹; it means teachers or elders, not government officials, so please do not get it wrong. In other words, our elders have told us that smoking is to resign oneself to degeneration and that smoking does not have a future. These social norms and comments have not only made us This is why the writer says, "It is not only about the stories of smokers." Rather, when we talk about imposing a ban on smoking and when we are imposing tobacco control, we, being members of a modern society, actually need to look at the psychological structure in greater depth.

President, Members may find that this article bears little relevance to the topic of our discussion today. Why do I have to discuss this article? After

¹ "師長" and "司長" have the same pronunciation in Cantonese.

reading this article, I, being a nurse, support the views that people should not smoke and that smoking is hazardous to health. But from another perspective, when we are here monitoring the Government's use of resources and examining if resources are handled properly, we must ensure that the Government is doing a good job and that it can adopt a comprehensive policy. It should not only demonize smokers to the neglect of the livelihood of the people concerned or to the neglect of the freedom of smokers by saying that smoking is definitely harmful and telling people not to smoke and then, after the policy is implemented, the tobacco duty is increased to stop people from smoking while the Government keeps on saying that the number of smokers has dropped. This does not seem to be what a responsible government should do. Although I do not support this Order today and consider that the tobacco duty should be increased — What I mean is that the Order should not be repealed and the tobacco duty should be increased — I would like to ask: Has the Government actually considered whether its policies have exploited the freedom of some people in a free society? The Government has to give some deep thoughts to what it should do to help smokers, so that they will stop smoking and live healthily. Meanwhile, let us not forget that more often than not, there is no such thing as absolute health. Health can be relative.

I hope that in its future tobacco control or anti-smoking efforts, the Government will implement a comprehensive policy, rather than just adopting punitive measures and thinking that it has done a lot. Thank you, President.

PRESIDENT (in Cantonese): In his speech just now, Dr Joseph LEE repeatedly mentioned that he opposed or supported this "Order". I would like to remind Members that we are now dealing with the resolution on the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011, and the debate on this resolution is very much related to a bill on raising the tobacco duty which will be scrutinized by this Council at a later time. While I certainly cannot stop Members from speaking on matters relating to the tobacco duty increase in their speeches, nor can I only allow Members to speak on the repeal of the Order but not anything else, I hope Members can save their views for the debate on the relevant bill in future.

MS LI FUNG-YING (in Cantonese): President, as this motion is about whether or not the Public Revenue Protection (Dutiable Commodities) Order 2011 should be repealed, it is inevitable that many arguments and views on smoking will be advanced.

President, I am not a smoker and I do not like the smell of cigarettes. But insofar as I am concerned, personally, I hope that smokers can quit the habit of smoking. This is not only for the sake of their health but also for the reason of not affecting other people. However, it is one thing to ask smokers to quit smoking, but quite another for the Government to raise the tobacco duty by such a great rate and to resort to this financial measure to force members of the public who cannot afford the high price of cigarettes to quit smoking.

After it was announced in the Budget that the tobacco duty would be raised, the sale price of a pack of cigarettes went up immediately by \$10, that is, from \$39 to \$49. The rate of increase is more than 25%. Protecting the health of the public has always been the strongest argument advanced by the Government in raising the tobacco duty. But I would think that there is a critical point to every argument put forward. When this critical point is reached, a lofty ground presented will only seem lame and feeble. In the case of the increase in tobacco duty this time, the Government has cited many data on smoking among the young people to show the effect on preventing young people from becoming smokers after the tobacco duty is increased. The Under Secretary has talked quite a lot on this earlier. Previously, a study conducted by the Centers for Disease Control and Prevention in the United States pointed out that with every increase of 10% in the price of tobacco products, the tobacco utilization rate among the young people aged 13 to 18 would reduce by 2.3% to 3.7%. The Government has also compared the percentage of smokers in the population from 1982 to 2009, pointing out that the percentage has dropped by 11.3%. The conclusion drawn by the Government is that the tobacco duty is the most effective means to curb the use of tobacco and it is especially effective among the young people and people who are sensitive to prices.

I do not agree with this conclusion from the Government. The main reason is that ever since April 1995, the Smoking (Public Health) Ordinance has prohibited the sale of rolled tobacco to persons under the age of 18. Therefore, the argument of the raise in tobacco duty being targeting the young people is not tenable at all. Then the remaining part of the argument is about the effect of an

increase in the tobacco duty on those who are sensitive to prices. By this so-called group of people who are sensitive to prices, it can be said in a straightforward manner that they are the grassroots. Those who are closer to the bottom strata of society are the ones who are more sensitive to prices. The result is that, objectively speaking, this increase in tobacco duty is a law which targets the grassroots.

President, I do not encourage people to smoke. And the grassroots are no exception. But at the same time I respect a most fundamental fact, that for many grass-roots people, smoking is a pastime they can enjoy after a hard day's work and it is a moment when they can relax a bit from the burdens of life. Moreover, for those elderly smokers who are retirees and who do not have much income, smoking is their lifelong habit. They are those people who can be called sensitive to prices. Many of them are leading a hard-up life and it is true that they are very sensitive to prices. But, there is no causal relationship between increasing the tobacco duty and their quitting the smoking habit. I know many grass-roots people who are smokers. They would rather save on other aspects of living rather than quit smoking. In fact, in the information submitted by the Government, nothing is mentioned about the relationship between middle-age and elderly smokers above the age of 30 and the tobacco duty. I do not know if the Government has overlooked information in this respect or if it is due to the fact that increasing the tobacco duty cannot do anything to check smoking among the middle-aged and elderly people. So the Government does not cite such information. Any increase in tobacco duty will only increase the burden of life for the middle-aged and elderly persons at the grass-roots level. This is the main consideration I have for not agreeing to the government proposal of increasing tobacco duty.

President, the Government stresses that the aim of increasing the tobacco duty is to protect the health of the public. However and inevitably, an increase in tobacco duty will fuel the desire for the grass-roots smokers to buy illicit cigarettes. But it is hard to tell whether smuggled cigarettes are genuine products. If people buy smuggled cigarettes of a poor quality, their health will be harmed all the more. The Government emphasizes that after the tobacco duty is raised, the C&ED will enhance its efforts in cracking down on illicit cigarettes activities. I do not doubt the determination on the part of the Government to combat illicit cigarettes, but as criminal elements can always think of ingenious ways to circumvent the long arms of the law, it would be almost impossible to

totally eliminate the import of illicit cigarettes into Hong Kong. I do not want to see a policy which professes to protect the health of the people of Hong Kong lead to counter-productive results, that is, causing an adverse impact on people's life while also affecting their health.

Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, seldom do I deviate from the subject under discussion when I speak and yet, you always sternly stop me from doing so. In listening to the speech of Dr Joseph LEE just now, I was really baffled.

We are here to discuss the resolution on the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011 (the Order) today. Let me come straight to this subject matter. Under section 2 of the Public Revenue Protection Ordinance, the Chief Executive is empowered to make an order giving full force and effect of law to any duty, tax, fee, rate or other item of revenue to be imposed, removed or altered in the Budget during the transitional period. In other words, this is jumping the gun. But since there is this provision, he is right in doing this, as the Secretary has also said just now.

Take the present proposal on the tobacco duty as an example. The Chief Executive made the Order under the Public Revenue Protection Ordinance to temporarily amend the duty rates in Schedule 1 to the Dutiable Commodities Ordinance. As the Order is given full force and effect of law during this period, even if the bill on raising the tobacco duty has not yet been enacted into law by the Legislative Council, the duty increase proposed by the Government can still take effect in advance without exposing the Government to legal challenges.

Section 6 of the Public Revenue Protection Ordinance provides that any duty paid during this period in excess of the duty payable after the expiration of the Order shall be repaid (to the person who paid the same). Section 7 of the Public Revenue Protection Ordinance also provides for the restoration arrangement where a temporary reduction of duty ceases to be in force. I have said all this in order to speak with relevance to the subject first.

This Ordinance was enacted by the former Legislative Council in 1927. After the reunification, the Government made some slight amendments for the purposes of de-Britainization and decolonization by replacing all references to "Governor" with "Chief Executive", and that was all. However, the nature of the Ordinance has remained to carry an overtone of executive hegemony of the colonial government, completely neglecting the sacred functions of the legislature in enacting laws and turning a blind eye to the spirit of the separation of powers among the executive, legislature and Judiciary. Therefore, the Public Revenue Protection Ordinance is basically an obsolete product.

Take the United Kingdom as an example. In 1979, section 5 of the law on the duties of tobacco products made a specific provision on changes in the duties of tobacco products. Similarly, the Chancellor of the Exchequer can make an order to increase or reduce the tobacco duty without the scrutiny and approval of the Parliament, subject to a limit of not more than 10% of the original duty rates as originally provided for in law. The United Kingdom has set a requirement at this percentage. Is the Secretary aware of it? The percentage is 10% only.

As for the effective period, in Hong Kong, the period as set out under the Public Revenue Protection Ordinance is three or four months, and the Legislative Council will then have to enact the legislation. He has explained this point earlier on. I do not think that Members of the Legislative Council do not understand what he was saying just now. Then, in the second half of this process, we will have to decide whether to support or oppose the duty increase. As the legislation will be introduced to the Legislative Council by the Government, it will, of course, be passed.

Mr Albert CHAN and Mr Vincent FANG have proposed resolutions which seek to repeal this Order, but the Secretary cautioned against the repeal because if the Order is repealed and if the Legislative Council passes the legislation on raising the tobacco duty later, there will be a lot of troubles. Democracy precisely causes a lot of troubles, Secretary, does it not? Could it be that in order to avoid troubles, we are not allowed to repeal the Order and then forced to act as a rubber stamp and pass the legislation? How can there be anything as ridiculous as such? What logic is this?

The Secretary has cited some statistics earlier concerning a survey conducted by the School of Public Health of the University of Hong Kong (HKU). He said that after the tobacco duty was raised or amendments were

made to the public health legislation, the number of smokers among young people has dropped, and he also said a lot of other things. Speaking of the School of Public Health of the HKU, I am grossly enraged. At the last special meeting of the Panel on Security, a Prof LAM Tai-hing came and gave a speech, the topic of which was "If cigarette duty is not increased, cigarette smuggling will not be reduced". I had thought carefully about whether our discussion on that day was about sociology, philosophy, morality issues, political issues or legal issues. Besides, on that day, C&ED officials were invited to talk to us at the meeting on how rampant the smuggling of cigarettes had become after the increase of the tobacco duty, as well as what they had done to combat cigarette smuggling. What do these have to do with the Professor? Throughout his speech he was saying that we should save as many people as possible, or one out of two smokers would die, and so on. That was intimidation, wasn't it? Who needs to be told that mothers are females? Smoking is hazardous to health. All the children in this Chamber know this. Why should we need him to tell us to save as many people as possible?

The logic of what he then said was also very strange. He said that if tobacco duty were not increased, cigarette smuggling would not be reduced. I like to restructure sentences. President, you studied mathematics, and you are well versed in logic, reasoning and analysis. No one in the Legislative Council can compare with you. I remember when the Chief Executive ran in the election — I mean the election which Mr Alan LEONG also contested — that slogan of "I will get the job done" was said to be the idea of "Tai Pan" Albert CHENG. I made some amendments to it later. He asked why he could defeat Mr Alan LEONG. The answer is: "I am good at getting this job done". It is not because "I will get the job done", but "I am good at getting this job done". I made some changes to the words in it. Buddy, what he really means is actually "I am getting this good job", right? This is sentence restructuring.

Likewise, let me restructure Prof LAM Tai-hing's line of "if cigarette duty were not increased, cigarette smuggling would not be reduced". It can be turned into "if cigarette duty was increased, cigarette smuggling would not be reduced", or "if cigarette duty was not increased, cigarette smuggling would be reduced" or "if cigarette duty was increased, cigarette smuggling would be reduced". Do Members understand what I am saying? Put it in other words, President, we are all baffled.

We are now discussing the repeal of the Order. On what basis should the Order be repealed? I have fully explained it earlier on, right? President, I have behaved properly. I know that some people oppose the increase in tobacco duty; some support such an increase, and some have talked about hygiene and health. So, I have collected some information and I am going to read it out. Normally, I do not read out from any script.

I have to respond to the Secretary that the concern raised by him earlier is unwarranted. I also have to tell Members that the Government is most hypocritical. The Government said that the tobacco duty is raised to reduce the number of smokers, to improve public health, and to discourage young people from smoking, but at the special meeting on that day, we posed a question that the C&ED officer could not answer. The Secretary for Security should also attend this meeting today.

Currently, where does the Government put the smuggled cigarettes seized? Prof Gabriel LEUNG may not know that these cigarettes are put to auction. Such being the case, why does it not sell the ketamine seized by auction, too? The Government said that the tobacco duty is raised for the sake of the health of Hong Kong people, but the smuggled cigarettes seized are put to auction. President, do you not think that this Government is hypocritical? Some people argued that this is not the case because the cigarettes are put to auction overseas. But that is even worse, as this is doing harm not to Hong Kong people, but people overseas.

In this connection, I have submitted an oral question in this respect but I do not know whether or not I can be given a slot to ask it. I want an answer from the Government on the quantities of cigarettes seized for a period of time in the past, and with regard to these smuggled cigarettes, has the Government burnt them, just as LIN Zexu burning opium at Humen, or has it sold them? To whom they have been sold? How much revenue has been generated to the Treasury? The Government really has to give an answer.

Given that the SAR Government is so greedy for money and so hypocritical, Prof LEUNG, the major principles that you have just talked about can all be declared to be falling apart, right? Just tell me now why the smuggled cigarettes seized are put up for sale. This is inexplicable. Is it meant to generate more revenue to the Treasury? If so, is there not a stronger reason to

resell the drugs, ketamine and methylamphetamine (ice) seized because they can generate even more revenue? This Government is indeed going too far, buddy, isn't it? The Government cannot give an explanation. This is so laughable.

Besides, Ms LI Fung-ying said earlier that some of the smuggled cigarettes are counterfeit and some are expired and so, they are harmful to health. Is the C&ED capable of distinguishing between the counterfeit cigarettes and authentic cigarettes as well as those which are relatively healthier among the smuggled cigarettes seized? As a matter of fact, how can cigarettes be healthy in any case, right? Since they cannot tell which are the counterfeits, how can the cigarettes be put up for sale?

The Government has now proposed to raise the tobacco duty and even to raise it every year, putting forward such high-sounding reasons as protecting the health of Hong Kong people. Even some Members in this Chamber will be saying that they can do nothing about this. There are certainly these people, right? Ms LI Fung-ying asked: How about smokers who are the grassroots? The Government's reply is simple: "You have yourself to blame for being poor, and since you are poor, you had better not smoke." The rich people can smoke though, and this is like telling them to die more quickly. The Government is sometimes quite contradictory. It attaches great importance to businesses and support the rich people to expand their business and hence create jobs on the one hand, but it is telling the rich people to smoke more cigarettes and die more quickly on the other. Is this logical? Is it that the poor people should not smoke "Marlboro" which costs some \$50 a packet?

I have been to a prison once recently. Why did I go there? I went there at the request of the prisoners who demanded an increase of their wages and so, I was invited to a visit there. I asked them why they made the request. They said that it was because the tobacco duty had increased but their wages had not been raised. Tell them not to smoke in the prison and see what will happen. Is it possible to guarantee that a total ban on smoking can be implemented in prisons? Can you bear the consequences? In prisons, cigarettes are the currency. Secretary, they spend most of their wages buying cigarettes. As the price of cigarettes has risen substantially, they, therefore, approached me for assistance in putting up a demand to the Correctional Services Department for an

increase in wages. Is it not very funny? The Government has not considered this when raising the tobacco duty, right?

As I said earlier, this is such a hypocritical government. On the one hand, it keeps on talking about the health hazards of smoking, saying that the tobacco duty is increased to protect our health, to help smokers quit smoking and to reduce the number of smokers but on the other, it puts up for sale the smuggled cigarettes seized, thinking that we can never find out what it has done. The Government must tell us how many sticks it has sold and to whom they have been sold. I have submitted an oral question in this connection.

As I have mentioned, this Order serves to protect public revenue and as the Secretary has said, it aims to prevent the hoarding of cigarettes for speculation and hence reaping profits during the transitional period. Well, as the Government increases the tobacco duty every year, the public have a clear idea of what is happening and they will stockpile cigarettes when the tobacco duty is about to be increased. Does the Government really think that the people are blind?

Moreover, in the entire C&ED there are only 60-odd officers tasked to combat illicit cigarettes, but many an illicit cigarette stall is manned by over 100 people, so how can they combat them? The Government has always adopted a self-deceptive approach, deceiving itself as well as other people and burying its head in the sand. Then, it said in all righteousness that if this Order is repealed, the duty rates will have to be restored if the legislation on raising the tobacco duty is passed by the Legislative Council later and that will create a lot of troubles. Secretary, do not say that it would create troubles. The Legislative Council is really creating a lot of troubles, especially with me as a Member. Buddy, we have to protect the interest of the public now and of course, it will take a lot of troubles, but the more the truth is debated, the clearer it becomes, right? In this Council, a great majority of Members are already in support of the Government, right?

I have to declare that I used to be a smoker. I had smoked for more than 30 years, but I have quitted it for eight years. I understand that smoking is hazardous to health and this is why I do not smoke now. I am physically fit and have become an example for others to follow. My second son used to smoke, too, but after seeing the changes in me, he has quitted smoking, too. We have to rely on these approaches and education, in order to make people quit smoking.

But what education has the Government provided to the young people? Cigarettes are more expensive than ketamine. You said that the number of youth smokers has dropped, but it is because more of them are switching to taking ketamine now. Has the Government conducted any survey? Certainly not, right?

Speaking of these problems, we can sometimes see that the Government is incompetent and deplorable, and this makes me feel that it is indeed saddening to be Hong Kong people, and we cannot do anything about the Government. Apart from shouting hoarse in telling all these jokes as I am doing now, what else can we do? This resolution on the repeal of the Order will definitely be negated, and the bill on raising the tobacco duty to be tabled later will definitely be passed. But in spite of this, we still have to speak up. Thank you, President.

MR RONNY TONG (in Cantonese): President, there are two premises on which my speech is based. The first premise is about what I have heard from the President, that he hopes that we can focus on the proposed repeal of the Order. But I believe you will appreciate that in the end, our position on the bill to increase tobacco duty will directly influence our position on the repeal of the Order today. If in the end Members support the increase in tobacco duty, then I cannot see why they will support the repeal of the Order at this stage. On the contrary, if Members will oppose the bill in the end, then they may have another consideration and that is, even if at this stage they will oppose the Bill technically, should they not oppose the repeal of the Order as well? Therefore, there are necessary and causal considerations between the two. The reason why I have to speak today is to state my position at this moment in time on the legislative amendment to increase tobacco duty.

President, with respect to the second premise, I must make it clear that I am somewhat biased. This is because I do not smoke. But that does not mean that I have never smoked before. Mr WONG Yuk-man who has just left the Chamber has a great determination because, as he said, he quit smoking of his own accord eight years ago. I do not have this great determination like him. President, when you and I were young, there were many young people who smoked. I do not know if you, President, have ever smoked. You shook your head to show that you have not, did you? Actually, you do not have to answer me. (*Laughter*) When I were young and at that time when everybody just

indulged themselves in sensual enjoyment, it was perfectly natural to smoke and it was odd for someone not to smoke.

Then when I went to study in the United Kingdom, I found that the cheapest cigarettes there cost at least three or four pounds a pack. And those which were more expensive would cost five to six pounds. President, how much were three to six pounds worth in those days? We can do some simple arithmetic. A bus trip from Oxford to London would only cost 60 pence. If I went to the supermarket, I could spend five pence and buy a pack of pork bones this big and I could make soups for a whole week. Or I could use the same amount of money to buy a pack of chicken liver of this size. But it did not occur to me that I could eat chicken liver. And President, this is something you may know as well. And that was enough to last a whole week, too. It can therefore be seen that it was so expensive when a pack of cigarettes was sold for three or four pounds. And it was because of that that I was forced to quit smoking.

President, I wish to point out that there was a classmate of mine who came to study in the United Kingdom with me. He came from a rich family. And it was not a problem for him to spend three or four pounds on a pack of cigarettes. So he still smokes even today. President, you know that we are advanced in years. I am not talking about you, I am referring to my classmate and me. It may be true that his health is not as good as mine. Would his health be better had he not smoked? Honestly, no one knows. But, certainly, smoking is not what Dr Joseph LEE said just now. He said that some people would say, "This is my own business. It is none of your business even if I want to die early."

President, this is not the truth. I think I was once deluded by this kind of seemingly romantic idea of freedom. But in recent years we can see a lot of strong medical evidence which shows that the harm done by passive smoking could be even worse than active smoking. So smoking is not a simple thing as a personal preference. It is a social problem. Of course, it is also a question of youth culture. So I would think that with respect to this topic, we cannot simply say that we advocate liberalism so we have the right to smoke in all circumstances. President, no freedom in this society is not subject to any limitation. We have the freedom of speech, but we also have laws on libel to regulate our freedom of speech. The same goes for smoking. If it may affect public health, then we must think very carefully about it.

President, the second argument that many Honourable colleagues would frequently advance in opposing the increase in tobacco duty is that even if tobacco duty is increased, it will not stop people from smoking. Just now many Honourable colleagues have mentioned that after the increase in tobacco duty, regular cigarettes are sold at a higher price than illicit ones — Mr WONG Yuk-man has said that they are more expensive than the ketamine. Then many young people will be forced to take ketamine instead of smoking cigarettes. And so the effect will be counter-productive. President, about this point, I would say that this is an exaggeration. This is because no system in this world is perfect and free from flaws. There are pitfalls and loopholes in every system. The same goes for laws and other systems. There are loopholes that can be open to abuse. Some people would exploit these loopholes in law to their advantage. But that does not mean that the law is unsound or should be abolished.

President, I often use an example when I talk with the students. And that is, there are people who drive past when the traffic light is red and so knocking down or killing someone, but does that mean we should ban traffic lights? No. President, to judge whether a system is good or bad, we should look at the value of that system and decide whether it is good or bad by looking at it as a whole. If it is found that there are loopholes, then they must be plugged by some other measures. We can never say that there is no need for law to keep public order because some robberies have occurred.

What I find to be most difficult to make a decision on relates to Ms LI Fung-ying's remark, which is also what many residents from various districts have told me, and that is, this increase of tobacco duty will have no effect on the rich. The rich can continue to smoke. The case is like my classmate who has been rich all his life and he can go on smoking while I cannot because I am not rich. Then will this be a kind of discrimination against or exploitation of the grassroots, especially the elderly persons? Or is it an unreasonable or even inhumane kind of restriction? President, this is a point which I find the hardest to decide. However, I would think that since we are Members of this Council, we should look at every matter and issue from the perspective of the whole community. It remains, of course, that we should make some sort of value judgment and decide whether something is worth supporting.

President, I am not saying that lending our support to this is right or wrong. My advocacy may be wrong and it may even be something that most people do not want to see. But all along I have never thought that Members should follow

the ups and downs of opinion polls. President, we must make a decision that is true to our conscience and we should look at the matter from the perspective of society and determine whether it is right or wrong. We should then decide to support it or oppose it. Provided that what we do is true to our conscience, I think the people would understand. President, I am sympathetic towards the argument put forward by Mr WONG Yuk-man and Ms LI Fung-ying. It can even be said that I can accept their argument. There are certainly some sorts of fallacy in increasing the tobacco duty. The grassroots may feel more discontented than the rich, and their quality of life may be affected. But at the end of the day, I think I would still have to make a difficult choice and that is, I cannot lend my support to the repeal of the Order. And at this moment in time I think I should lend my support to the increase in tobacco duty.

Thank you, President.

MR WONG SING-CHI (in Cantonese): President, what we are discussing today is the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011 which seeks to increase the tobacco duty. The Democratic Party considers that the tobacco duty should be raised. Indeed, smoking is proven to be hazardous to health and therefore, the Democratic Party supports the tobacco duty increase and does not support the repeal of the Order. Many colleagues have pointed out earlier that the tobacco duty increase should not be used as a means to stop smokers from smoking or to make them cut down on smoking and besides, it cannot stem out duty-not-paid cigarettes. I will discuss and analyse these comments one by one.

Cigarettes are tobacco, and what exactly are they? Cigarettes contain nicotine, and I believe Prof Gabriel LEUNG knows it very well. But their contents are not just this simple, as they also contain more than 3 000 chemicals. When I discussed this with my son, he was greatly surprised to learn that a cigarette which is so tiny in size can contain more than 3 000 chemicals, and this shows how harmful they are. Besides, during my many years of work in the field of social work, I have handled cases of detoxification. Summing up these cases, we can find that they boil down to two types of dependency. One is physical dependency (which means dependency on substances or that triggered by physical reaction), whereas the other is psychological dependency (which means dependency caused by psychological factors).

Smoking includes both types of dependency. According to my wife who is engaged in psychological counselling, the human brain can release such substances as dopamine or endorphin which can adjust by themselves to produce the feeling of pleasure. She told me that we feel happy on seeing a beautiful lady because dopamine is released by the brain, which makes us feel good and produces some sort of pleasure. But smoking can actually damage certain cerebral cells or functions, especially as smokers will be controlled by the release of these substances. For heavy smokers, the self-regulatory function of the brain in releasing these substances may probably be damaged. I am not sure about whether this is really the case and I hope Prof Gabriel LEUNG can enlighten us later on, but this is my understanding.

Smoking can obviously lead to physical dependency and psychological a dependency in smokers. Like abusers of other kinds of drugs, smokers will develop a dependence both physically and psychologically at the same time, but the level of dependence among drug addicts is certainly far more serious. In fact, the tobacco industry is precisely making use of a tiny stick of cigarette to control smokers by making them patronize their products continuously, so as to perpetuate their exploitation of the smokers.

What are cigarettes? They are chemicals and tobacco, and the substances contained in cigarettes can cause a constant dependence on cigarettes among smokers, ultimately making it difficult for smokers to quit smoking. It is proven that people with a smoking habit for decades often face tremendous difficulties in the course of kicking the habit. Many elderly people or adults cannot stop smoking because they are already controlled by cigarettes or they are controlled by products of the tobacco industry, and it has become impossible for them to quit smoking. They should have our sympathy, and they have their difficulties and needs. But what makes these elderly people develop this deep-rooted habit to the extent that it is impossible for them to stop smoking? The answer is cigarettes.

Why do people who often vow to uphold justice, to defend the interest of the grassroots and to fight for the interest of the underprivileged go so far as to suggest that the elderly should be allowed to smoke, or else it would be tantamount to exploiting them? The fact is that throughout their lives, these elderly have been consistently subject to the exploitation of cigarettes. Do we wish to see that the young generation will continue to be subject to exploitation?

Do we wish to see young people being controlled by the tobacco industry and by tobacco since their youth?

President, Mr Albert CHAN suggested that we had better ban the sale of cigarettes instead. I agree. But can this be done easily? Of course not. It is because hundreds of thousand smokers have smoked for decades and they have long been controlled by cigarettes. If, all of a sudden, they are told to give up smoking, there must be a desirable smoking cessation programme and a package of support measures to discourage or even stop them from smoking in order for the smoking ban to achieve any effect. If not, they may really act against the law.

In order to truly fight for the interest of the underprivileged and the poor, we should impose a smoking ban. But before this can be achieved technically and in the current circumstances, we have to adopt a step-by-step approach by at least implementing measures to gradually make it less likely for the young generation to pick up the smoking habit, so that they will not be controlled by cigarettes for the rest of their lifetime. Therefore, if the tobacco duty is not increased because there are many elderly smokers and an increase in tobacco duty will make their lives miserable as they eventually have to sacrifice even the pleasure of smoking, this is tantamount to "trimming the toes to suit the shoes". Rather, we should call on Prof Gabriel LEUNG and the Government to conduct studies and come up with more proposals to help the elderly quit smoking. Given the shortage of social resources, the activities and care services provided in the community are inadequate and as a result, there are not enough activities for the elderly to spend their time and they can, therefore, can only rely on smoking for some sense of satisfaction. This is, in fact, an unhealthy phenomenon. We should identify more ways to enable the elderly to live well and to have more opportunities to explore their interests through daily activities, rather than relying solely on smoking as a pastime because cigarette is primarily a product that controls human beings.

President, as mentioned by many colleagues earlier on, an increase in tobacco duty will worsen the inflow of duty-not-paid cigarettes into Hong Kong. This is true indeed. I hope that the Secretary can provide assistance in this respect, because the inflow of smuggled cigarettes is indeed very rampant in Hong Kong. I have had the experience of monitoring the delivery of vegetables from the Mainland to Hong Kong late at night and when the boxes of vegetables

arrived in Hong Kong, many cartons of cigarettes were surprisingly found to be hidden among the vegetables. As these vegetables exported to Hong Kong have the certificate of origin and customs clearance documents, after random inspection is completed for the first batch of vegetables, no inspection is required for the rest of the vegetables. This has given an opportunity to the unruly smugglers to smuggle cigarettes into the territory. I have lodged complaints with the C&ED. The C&ED has replied that an investigation will be carried out but so far, I have not heard of any result of the investigation.

During the Easter Holiday just passed, I found time to visit Shenzhen with my wife, who cannot travel far, for the delicious food there. After we had completed immigration and customs clearance at the Lowu checkpoint and in the area under the jurisdiction of the Shenzhen customs authorities which connects to an exit of the Shenzhen underground, I saw in front of a shop of "China Mobile Communications" a group of women putting many large plastic bags on the floor and stuffing them with cigarettes. The Government should send people there for an investigation because this is happening every day. On my way to and from Shenzhen, I personally saw these people brazenly putting batches and batches of cigarettes into plastic bags. As even I can find out these cases, how can it be possible that the law-enforcement officers of the Government are unaware of what is happening?

The Government may think that as the place is within the boundary of China, they are not in a position to take enforcement actions and so, they cannot send people to carry out investigation there. But the Government only needs to send people to observe how they can clear immigration and customs clearance while bringing along these cigarettes with them before smuggling the cigarettes into the territory. Since they can so brazenly handle these batches and batches of cigarettes for smuggling into Hong Kong, it means that they are confident that they will succeed. I do not know how they manage to do it; nor did I have the courage to tail them because I was afraid that I would get into troubles once they become alerted. After all, I do not live in the Mainland and so, I have no idea how I should tail them; nor do I have the courage to do so. But I hope the Government can send some people to conduct investigations at these places where the smuggling activities are carried out and collect the relevant information.

The sale of smuggled cigarettes is indeed very rampant now. I have worked in the North District for many years and I have received promotional pamphlets on which it is stated explicitly that any quantity of cigarettes can be delivered immediately as soon as an order is placed by phone. These promotional pamphlets can still be found now. I have referred the case to the police and the C&ED for follow-up actions, but I do not know why they can never track those vendors of smuggled cigarettes. I hope that the police and the C&ED can proactively crack down on these crimes. However, we cannot refrain from addressing this problem because no action can be taken against them or the actions taken are ineffective. Like the increase of profits tax, could it be that the profits tax should not be increased because many companies will hence evade tax or try to avoid tax by all means and take advantage of loopholes to avoid paying a large amount of tax? This certainly should not be the case. The reason for not increasing profits tax now is just that many companies will then find it impossible to sustain their operation and so, their plights must be taken into account. It is not because an increase in profits tax will result in tax evasion or avoidance that the tax should not be increased. I believe no one will put forward such a view.

But today, some colleagues have outrageously suggested that the tobacco duty should not be increased because a tobacco duty increase will cause cigarette smuggling to become more rampant and breaches of law to become more serious. How can there be such a case? This view simply cannot hold water. Since a decision is made to raise the tobacco duty and it is known that cigarette smuggling will become more serious, actions should be taken in respect of intelligence, information and striving for the co-operation of the public, with a view to getting the greatest possible assistance for government enforcement actions. This is a more reasonable way to address the problem positively. We cannot "trim our toes to suit the shoes" time and again, thinking that as a duty increase will give rise to various undesirable situations, the tobacco duty should not be increased in order to prevent the worsening of cigarette smuggling. This is not the way how things should be handled.

Our objective is to protect the public from being controlled by any substance or commodity easily. Cigarettes are a product that controls human beings, damages the functions of human beings, and tampers with the substances released by the brain, but it is still impossible for us to impose a total ban on smoking. In fact, the tobacco industry has been employing various means which include exerting influence on Members of the Legislative Council and many

members of the community in an attempt to obtain their assistance in continuously luring the public to keep on smoking. In this connection, the Democratic Party hopes that Hong Kong people can have better health and cut down on smoking.

Lastly, President, I wish to point out that some people have used the slogan of "settling the debt of tax with votes" to — I do not wish to use such words as "coerce" or "suppress" — call on Members of the Legislative Council not to support the tobacco duty increase. This is actually short-sighted. Why should Members who support the duty increase be labelled as incompetent to the extent that an appeal is made to the public not to vote for these Members? There are still a lot of livelihood issues and problems of the disadvantaged as well as other problems that we have to deal with. Why are these issues and problems not considered more important than cigarettes? Why are there people who will not vote for these Members only because they support the tobacco duty increase? Let us not be misled by these people, or else it would be unnecessary for the public to cast a vote anymore because when any person makes a decision, it is certain that other people will be affected. I think members of the public should be concerned about whether Members are working for the people wholeheartedly. The decision of Members as to how they will vote may affect the habit of the public in their living or their interest, but I hope the public will not merely set eyes on these trivial interests or changes in their habit of living. Rather, they should attach importance to the underlying principles upheld by Members as well as what they have been fighting for.

What we are fighting for is that products controlling the functions of human beings can disappear gradually, so as to stop these products from further affecting every member of the community. This way, the public can have better health, society can achieve sustainable development and human beings can live in a more dignified manner and more freely. Thank you, President.

DR LAM TAI-FAI (in Cantonese): President, when discussing whether to support or oppose this Protection Order, it is inevitable that we will talk about some cause and effect and our views on smoking or not smoking. So if what I am going to speak strays away from the topic, I hope the President can bear with me because I really cannot help it.

President, earlier on you responded to a question from Mr Ronny TONG on whether or not you smoked. President, you did not give any reply, other than only shaking your head. I do not know if that meant you did not answer or you did not smoke. But as far as I know, you are not a smoker.

I used to smoke. But in 1993 when I was 33 years old, I stopped smoking. It was really an awesome experience because I kicked the habit overnight. At that time, I had to lead the football team Rangers and fight our way to Division One in the football league. There were six or seven youth teams at that time. I felt that if I had to lead a youth team and if I were to hold a cigarette in my hand and watch a ball game or play football, the image would be too bad. So I made up my mind and quit smoking. Having said that, when I lead the football team, I often swear and this is a habit I cannot quit. This is because I will be thrilled when our team scores and I cannot control myself.

President, the harms of smoking are indeed countless. We all know that smoking is hazardous to our health. From the medical perspective, smoking causes cancer. On top of that, smoking leads to cardiovascular diseases, tuberculosis and other diseases. Cigarettes are highly addictive and it can be said that long-term smoking will shorten a person's life. But the odd thing is, many national leaders on the Mainland are smokers and yet they live a very long life. So at times, this is something we cannot figure out in logic.

Actually, even if people do not smoke, they are exposed to the same kind of harms when they breathe in second-hand smoke. Many medical studies show that inhaling second-hand smoke will also cause cardiovascular diseases, lung cancer, and so on. There are also medical reports which point out — Secretary, please correct me if I am wrong — that passive smoking can increase the chances of miscarriage in pregnant women. I am not sure if this is true or not.

Besides, looking at the issue from another perspective, now we are talking about minimum wage and it is often said that smoking affects work and chances of finding a job. As a matter of fact, smoking affects the performance of wage earners because they need to find an excuse to smoke and get away from their place of work. May I say to the young people here — those students sitting in the public gallery — that in future you have to look for a job and when you come to an interview, and if people find a smell of cigarettes on you, it will definitely affect the chances of you landing the job or getting a promotion.

On the other hand, smoking will certainly affect a person's image. For if not, I would not have quit smoking in 1993 when I had to lead a youth team. Often young people who smoke are labelled as undesirable. If students smoke, they are labelled as bad students. And even if they have good academic performance, they are regarded as bad students if they smoke.

If someone smokes in a family, it would often lead to family quarrels and frictions, and the relationship among members of the family will be affected as a result. But why do so many people smoke even though they know perfectly well that there are so many negative influences or adverse impacts? Many people say that smoking can help them suitably unwind. They would find peace of mind when they have a feeling of ennui. I think the President or Members must have heard the saying, smoking a cigarette after a meal makes one as happy as an immortal. Therefore, there is certainly a reason for people, despite the full knowledge that smoking is hazardous to health, to ignore the health hazards and gladly pay the price of their health.

After all, to smoke or not to smoke is actually something that a person can have the right to decide. So I would think that we should judge everything with a balanced point of view. I will not suggest people to smoke or agree with the idea. I do not firmly oppose other people smoking. The caveat is when you smoke, you should not affect other people and cause any nuisance.

The kind of tobacco control work mentioned by the Government in the Budget seems to be only on the punitive increase of tobacco duty. I think the tobacco control work done by the Government is not comprehensive enough. Nor is there a detailed plan for it. As a matter of fact, the Government's substantial increase of tobacco duty this time adds to the financial burden of many smokers, especially those with a low income. They cannot bear with the increase in tobacco duty. Also, it affects many small business operators and newspaper vendors. Mr Vincent FANG has just said that business has fared very badly after the financial tsunami and this increase in tobacco duty makes business all the more difficult. It causes social conflicts as well.

But the most ridiculous thing of all is that people who can afford to buy cigarettes are not affected at all. They will not quit smoking because the Government increases the tobacco duty, and so it would not help their health.

President, Mr Albert CHAN was right when he said earlier that the most effective tobacco control method was to ban smoking. The most effective method is to tell the tobacco companies not to manufacture cigarettes. But as there is no tobacco company in Hong Kong, then the best way is to ban smoking and ask the companies not to sell cigarettes in Hong Kong. Then this would be a solution to the problem once and for all.

But, frankly, this approach is much too extreme. I do not think it would be accepted in society. And I do not think the Government dares do so. This is because the results could well be more disastrous than unpegging the linked exchange rate and could cause a great upheaval.

So a multi-pronged approach must be adopted in tobacco control and one should not rely on one single method, that is, by imposing a heavy and punitive tax. The tactics to be used must be diversified. This includes what Members have said, that the quality of work done by the Tobacco Control Office (TCO) must be enhanced and that educational efforts should likewise be strengthened. So, the Government must Suppose this piece of law is passed, and as public revenue increases, the Government should increase the resources for undertaking promotional activities extensively so that the people and students can understand the harms of by smoking. More resources should also be deployed to help the young people quit smoking and refuse to smoke. Yet, I believe elderly smokers may find it more difficult to do so.

On the other hand — it may deviate somewhat from the topic, but it is very important — President, the Government must improve the leisure, cultural and recreational activities organized at the district level. More facilities should be provided and a greater number and variety of activities must be held. This will help elderly persons and young people develop some healthy habits of living and they will not feel bored and turn to smoking. If they have some good pastimes, then they will not take smoking as their only source of comfort and enjoyment. They can play football. Actually, I like the way Long Hair plays football. I am not saying that he plays football well — for that matter, I am sure Mr Albert CHAN would disagree — but the fact is, he will never smoke when he is in the football pitch. He only smells of sweat, but never tobacco. So I like the way he plays football.

Many people complain that the TCO has been less than rigorous in enforcing the law. In this regard, when the Government gets more revenue from the tobacco duty, can it send more people out and carry out inspections? Of course, it can also look into whether or not the no smoking areas are reasonable or should they be expanded. Or if some of these no smoking areas are too unreasonable. I hope Members may review that.

Many Members have said, and also Mr Vincent FANG, that increasing the tobacco duty will make sale of illicit cigarettes more rampant. This is because the profit margin is made greater. Those people who engage in such illicit activities will find it more profitable. In a meeting of the Security Panel last time, C&ED officers said that the number of illicit cigarettes seized during the first three months this year was as many as 25.6 million sticks. This is 1.6 times more than the number seized during the same period last year. This rate of increase is really shocking. The C&ED has admitted that it is believed that the situation of illicit cigarettes would worsen after the increase in tobacco duty.

In other words, and as Mr WONG Yuk-man has said, some more serious problems and those which would disrupt public order would arise when one problem is not yet solved. We will see the harms before any good is done. Does the Government not have a better way to curb the problem of illicit cigarettes which worsens after the increase in tobacco duty? If there is none, then would the smokers have been asked to pay a price for no justifiable reason? And have they been made scapegoats? I hope the Government can think about that.

Lastly, as the supervisor of the Lam Tai Fai College, I will not oppose an increase in tobacco duty. But about the increase in tobacco duty this time — the President may accuse me of sidetracking again — the rate of increase is far too great. Besides increasing the tobacco duty, I believe the work of the TCO should be strengthened at the same time. If only the tobacco duty is increased, but other kinds of work are not done, I would think that the smokers will certainly be made the scapegoats. And the tobacco traders, newspaper vendors, and so on, will also become scapegoats as well. It is only the Treasury and those who sell illicit cigarettes will stand to benefit.

So things must be done in a gradual and orderly manner. I have read from the newspaper that Mrs Regina IP has suggested that the increase in tobacco duty be spread out over five years. I am not sure if my memory has failed me or not

and if I am wrong, would Mrs IP please correct me. She suggests that an amount of \$0.1 should be increased at one time and the increase should be effected gradually. I agree with this direction because we can observe the result of such an increase in tobacco duty in the process. So on this occasion, I will oppose the repeal of the Protection Order. But I will support the Government and urge it to exercise extra caution in handling the rate of tobacco duty increase and the work of the TCO. For if not, the move taken by the Government will be futile.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, we are now discussing the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011. This Order confers on the former Governor and the present Chief Executive a special power. This is because, as provided in the Basic Law, the Government shall need the consent of this Council before it collects any tax. It is on the strength of this Order that the Government proposes to increase the tobacco duty in the Budget and announces that it comes into effect immediately. It is obvious that this Order is problematic *per se*, and that is, the Government assumes that this Council will pass this decision to increase the duty and this Order will not be overruled. Today, Mr Albert CHAN proposes to repeal this Order and so a crisis has arisen and that is, if this Order is repealed and the tobacco duty cannot be increased, then what should be done with the money already collected?

Such a situation happened in this Council before and that is, the rate of increase in tax was too large and it was opposed by this Council. In the end, the rate of increase in tax was amended. But where did the money go? There is no identifiable ownership of debts. The money paid in excess goes to the tobacco traders. This is an oddity in logic. And this logic is premised on an Order which is unreasonable and in contravention of the Basic Law. That is why I say that the Government is eating the bitter fruits of its wrongdoing.

During the colonial era, the Governor was the representative of the Queen and so he could do anything he liked. If he was to promulgate an order, he was doing it to give his subjects some face and that was all. But times have changed, and I am sure the Government may be challenged in Court now. However, I would not discuss that issue today.

The question now is who pays the tax? It appears that those who pay the tax are the tobacco traders, but in reality it is the smokers. This is because tobacco traders can transfer the increase in tobacco duty to the smokers. President, I wish to seek the advice of the learned Secretary, as he often talks about that Order. Does he have any method to ensure that the tobacco traders will reimburse the money to us? Should this not be done? Can you deny that you are not bullying the smokers while letting the tobacco traders reap the profits? Why do you give the money to the tobacco traders? Is it because it is these tobacco traders who are harming us by selling us cigarettes and so this is the money they deserve to get? This is what is meant by picking up a watermelon but dropping some sesame seeds in the process.

President, in any case, I admit that I am a smoker, and a victim. Although I enjoy being victimized, there is no reason why a privilege which contravenes the Basic Law will incur losses to the victims while the perpetrators of wrongs will reap benefits. So I wish to say here that this kind of perfunctory attitude shown by the Government and this Council is extremely deplorable. If the Government wants to increase the tobacco duty, it can introduce a law and let us pass it, provided that it complies with the Basic Law. Why should it invoke such a privilege? It does not matter if it invokes this privilege, but why does it not return the money to us as it is logical to do so? This is unlike the case of buying a car because there is proof when a car is sold and the money can be returned to the person who buys it. Why is the money not returned to the car companies? Are you not talking about being reasonable, logical and scientific with us today?

The case is very simple. None of the Honourable colleagues has ever mentioned this issue before. As people who advocate justice, there is no reason why they propose that a sales tax be levied on the public at large. Those who harm the public must be punished by imposing an income tax or profits tax on them, or a tax of whatever name it may be. In other words, everything will be fine if the profits tax of the tobacco traders is raised to 99%. But does the Government dare do it? It does not have the guts to do so. So we are demonized. Does it think that the smokers are the most heinous and wicked people in the world and tobacco traders should be favoured? The principle behind this is very simple, as people who advocate social justice, there is no reason that they should agree to a retrogressive sales tax. This is the crux of the matter. It is because the nature of a retrogressive tax is very clear and that is, the

consumers should be responsible. All consumers should pay the same rate of tax, irrespective of whether they are rich or poor. This is a very simple rule.

We are discussing this Order today and so I will not talk about their hypocritical logic. If I am really to talk about it, I would ask, does the Government think that drinking wine will do harm to the body? I think it will. Then why is the wine duty not increased but waived instead? Does it think that eating food with trans fats is harmful to the body? Trans fat really does have a secondary effect. But we have no law to prohibit the use of trans fats. When we eat bread, cakes, ice cream, and so on, we will certainly take in trans fats. But the Government does not punish those who make or sell products with trans fats. And there is MSG, President, you people all consume pricey food and of course, there is no MSG in it. The budget for some top officials who treat me to a meal is a few hundred dollars already. I do not know what the budget is if they invite some other people to a meal. It is likely that the food does not have any MSG in it. But most of the people eat fast food and all of that kind of food has MSG. The cooks will freely splash MSG onto the food. President, do you feel sleepy because you have eaten too much food with MSG? It is really hypocritical and it has got a secondary effect. This is actually more serious than the effect of second-hand smoke. It is because the secondary effect of second-hand smoke is already gone with this non-stop expansion of no smoking areas by the Government.

I wish to ask Members, this question about things like alcohol, trans fat, MSG, and tar. I do not know who says that nicotine kills. But nicotine is no match for tar. A piece of barbecued pork chop will have tar in it if it is just a little bit charred. Does that not have any secondary effect? Or if people think that it is wrong to talk about secondary effect, then can Members give any guarantee? Can they guarantee to pay for the losses incurred to people whose families are broken because of alcoholism? Are these not secondary effects? When the father drinks, the children will suffer. Now you are feeling drowsy again. So that is a problem with you people if you do not smoke. Things will be fine when you smoke.

Members, actually I would very much like to reason with the Government. But like other governments in the world, this Government does not argue with reason. It only talks about politics. Dear students, politics is about violence of the majority. The Government thinks that when people want it to make the air

clean, but it is only making a mess of it, so it launches an anti-smoking campaign. This is happening all around the world. No country can stop the greenhouse effect. All the governments of the world say that the greenhouse effect is bad. But they cannot solve the problem. However, there is something which is far worse, namely, the smokers.

Secretary, have you ever heard the expats, that is, those senior executives who come from abroad to work in Hong Kong, say that they want to leave Hong Kong because there is too much second-hand smoke here or because the air quality here is too bad? You must be honest. Have they ever said to you something like this: "When I walked past Central, I saw Long Hair smoking and when I smelt the odour I thought I had to leave." Or have they said: "All these nonsense about blue sky and white clouds, Donald TSANG is just blowing his own trumpet. The fact is air quality is worsening." Should the Government not punish these people?

President, it would be disaster if we follow the Government's logic. I have refuted the allegations against second-hand smoking. As for first-hand smoking, why is it that when people do something that will only harm themselves, the Government will punish them because it says it is for the good of the public? Why do the top officials not do it? They should not drive cars. But they are driving, or having someone to drive for them. Do not drive. Why does someone not invent some kind of car that will never hit and kill people? This is outright hypocrisy. I cause no harm to other people. I am only doing something to harm myself. But now the Government wants to decide how I should punish myself and force me to quit smoking. This is what the communist party is doing. The Government is trying to sanitize the people. It thinks that when the people do that, it is no good for them. And so it dictates things that the people must not listen to and things they must not do. This is dead wrong. What the Government should do is to crack down on the problem at source.

Now the Government is introducing this Order in great haste. I wish to seek the advice of the Secretary and would you please reply later. I will refute other matters later on. I see that there are students here and so I would like to sidetrack a little bit so that they can hear what I have to say, for they will not be able to hear it after they have left. This practice of making Orders by the Government seems to be proven. What is the rationale behind it? Why is the Legislative Council bypassed and why are restrictions imposed on the

Government with respect to collecting tax? What is the justification for that? What kind of remedy is available to clean up the mess? If this motion from Mr Albert CHAN is passed and the Order is repealed in part or in its entirety, then to whom should the duty already collected go? To whom will the Government return the money? If the money is to be returned to the smokers, this will be the ground on which the Government is challenged in Court. But the Government is bent on having its way despite its full knowledge that this will happen.

Secretary, may I seek you advice? Why is this money not returned to us? I have got a pack of cigarettes here. I give it to you, can you make a record of that and I will get the tax refund later on with this pack of cigarettes? I know this will not work. Let me say this to you once again. Why do you bully the smokers who do not have any means to recover the money from you? You know full well that if this Order is repealed, you will return the money to those tobacco traders who reap a hefty profit out of endangering the smokers. As a government, you cannot say that what you do is based on the legal grounds alone and even if the legal grounds are actually wrong and in contravention of the Basic Law, they will be fine if they are proven. Secretary, you have come here today, do you want to count the number of votes in your hand, or do you want to talk in an overbearing manner, or do you want to say that it is not fair? I hope you will respond to that. If you do not, I do not think you will command my respect. Or are you thinking that according to the Script, you have come here not because of that but because you want to save as many people as possible. Then, sorry I have to say that this Government is a lame government. This lame Government is worse than smoking. This Government is causing us troubles. This Order is dealing a hard blow to the consumers and those people in society who do not have any money. It is beneficial to those who make a fortune every day. What kind of an Order is this?

President, I really hope that the Secretary can respond to all this. If he does not, then I can only think of doing one thing, that is, to hurl articles at his superiors, John TSANG and WONG Yan-lung. This Order is nothing but an Order that dates back to the dismal colonial past. This Order came into existence in 1927 when the Kuomintang massacred the communists with the support of the British.

MR ALAN LEONG (in Cantonese): President, the policy proposal to increase tobacco duty has aroused widespread concern in society. As for the pros and cons advanced by people who hold divergent views, we have heard about them clearly in the debate. The Civic Party believes that with respect to this issue which is very controversial, no one — irrespective of those who are for or against the increase in tobacco duty — will deny that physical health is very important.

President, there is an increase in the incidence of diseases both directly and indirectly caused by smoking. It leads to a surge in public healthcare expenditure, a problem which all the people of Hong Kong should face squarely. With respect to our position on this issue, our first and foremost consideration is precisely the health of the people. We hope that there will be less people who smoke and less second-hand smoke is formed, thereby reducing the diseases caused by smoking. It is on this premise that we will fight and urge the Government to adjust its policies and reduce the impact on other stakeholders because of this increase in tobacco duty. We will try our best to find a multi-win solution.

President, a topic which is of great concern to the Civic Party is how the young people can be prevented from forming the habit of smoking during their adolescence, so that they will be free from the torments of being hooked on cigarettes. Once the habit of smoking is developed, it is hard to kick it. One has to exert tremendous efforts and great determination before one can quit smoking. So when discussing the issue of the increase in tobacco duty, a very important focus is on whether or not an increase in tobacco duty can effectively reduce the number of young people from forming the habit of smoking.

President, we notice that the findings of a survey conducted by the Faculty of Medicine at The University of Hong Kong (HKU) show that in 2009 when the Government had increased the tobacco duty substantially, the number of smokers among the young people fell significantly by half. This proves that the increase in tobacco duty successfully deterred 13 452 young people from smoking. It is estimated that at least 6 726 persons would not die in the future from smoking-related diseases.

The Civic Party thinks that since repealing the Public Revenue Protection (Dutiable Commodities) Order 2011 at this moment runs counter to promoting smoking cessation among the public and public health, therefore it is hard for the

Civic Party to support it. In future deliberations, the Civic Party will request the Government to exert its best with respect to a number of issues, including the provision of free smoking cessation service, thoroughly combat illicit cigarettes activities and improve the business environment for newspaper vendors. Please allow me to elaborate these aspects.

President, the findings of the survey conducted by the Faculty of Medicine at the HKU which I have just cited show, and the Civic Party has reason to believe that increasing the tobacco duty can help reduce the number of smokers and reinforce the desire of smokers to quit smoking. Increasing the tobacco duty seems to be very effective in reducing the number of young people in forming a habit of smoking. However, we also understand that as the tobacco duty is a retrogressive tax, for these smokers at the grass-roots level, if they cannot kick the habit instantly, this increase in tobacco duty will really add to their financial burden. As Mr Ronny TONG has said, this is a factor of consideration which has been troubling the Civic Party for a long time. However, when considering the overall effect of this increase in tobacco duty on society, the Civic Party will still in principle accept the argument that an increase in tobacco duty will reduce the number of people forming a habit of smoking and fostering the desire of smokers to quit smoking. On this basis, the Civic Party supports the increase in tobacco duty.

President, I have also pointed out earlier that we have expressed our concern for at least three areas. During the period from today to the end of June President, the Protection Order will expire on 23 June and we believe the Government will introduce the Dutiable Commodities (Amendment) Bill 2011 to this Council for Second Reading, Committee stage and Third Reading before 30 June. In the meantime, we still hope very much that the Government can do more in the three areas raised by us.

President, another area which we are very much concerned about is the rigour with which the authorities combat illicit cigarettes. I think the Government should improve the effectiveness of detecting illicit cigarettes activities and the actual work related. The Government should adopt an aggressive approach in order to achieve better results. Put simply, if on the one hand the Government increases the tobacco duty significantly, but on the other the efforts in combating illicit cigarettes remain lame and feeble, it would make people suspect that the Government will ever achieve its objectives even if it

publicizes such policy objectives. So we hope that before the bill is read the Second and Third times, the Government can make an unequivocal pledge to this Council on combating and detecting illicit cigarettes. This will make us rest assured about the policy as professed by the Government and that such a policy will be put into practice. For if not, if the Government is ineffective in combating illicit cigarettes, this move of raising the tobacco duty would be futile.

President, our second concern is about whether or not the resources put into educational efforts and smoking cessation programmes can be greatly increased. I heard earlier Mr Vincent FANG raise the idea of specific funds for specific uses. In the first meeting of the Bills Committee on the Dutiable Commodities (Amendment) Bill 2011, I heard the Secretary say that it would be difficult for the Government to take this suggestion forward because it had never been done by the Government. However, we hope that in May when the Bills Committee holds its second meeting, the Secretary can make a pledge in terms of the policy concerned. This is because the Government is not raising the tobacco duty in order to add to the already rich fiscal reserves. The argument which we have been hearing all along is that the Government wants to help the smokers quit smoking and prevent other members of the public from forming the smoking habit. Then will the Government commit more resources to its educational efforts?

President, of course we have heard about the educational efforts made by the authorities in collaboration with the schools or NGOs, but we would still hope that in the next few weeks, the Secretary can set down specific targets in this regard. We hope in particular that the Government can set some targets linked to the amount of additional revenue arising from the increase in tobacco duty and the objectives for the input of resources in this respect.

Moreover, we know that the Tung Wah Group of Hospitals and the Pok Oi Hospital are running a number of programmes to help smokers quit smoking. In the public hearing we heard representatives from the Pok Oi Hospital ask the authorities whether or not more resources could be put into perfecting, intensifying and expanding schemes like a smoke-free campus. People from the Tung Wah Group of Hospitals have also pointed out to us that despite the significant amount of resources put in by the Government, if a smoking cessation clinic can be set up in each of the 18 districts in Hong Kong, or at least achieving the aim of having a smoking cessation clinic in the neighbourhood whenever

smokers want to quit smoking, then it would be much more satisfactory. If this can be done, this Council, especially the Civic Party, will think that the matters have been handled in a better way than before when we are to lend our support to the Government concerning this policy. The Secretary may consider making more efforts in the next few weeks in relation to this suggestion.

President, in these last few minutes, I must speak briefly on the livelihood of the newspaper vendors. The increase in tobacco duty will certainly cause some impact on the business of the newspaper vendors, and I believe the Secretary will not deny it. We have heard that the policy objective of the Government is to reduce the number of smokers in Hong Kong, rather than increasing the pressure faced by newspaper vendors in doing business. The latter is certainly not the policy objective of the Government.

However, if this policy which aims at helping smokers quit the habit of smoking and prevent Hong Kong people from forming a habit of smoking will generate some side-effects which are not the desired outcome of such a policy of the Government, then should the authorities not do some work to spare these newspaper vendors of any increased hardship in doing business as a result of the tobacco duty increase?

Members know that the Secretary knows very well what the newspaper vendors want most is that they can be allowed to display advertisements and publicity. I have discussed this point with the Under Secretary Prof Gabriel LEUNG in a meeting of the Bills Committee. Prof LEUNG is in attendance today. According to him, these newspaper vendors are issued a licence by the Government to sell newspapers, but not to display advertisements or publicity. Of course, he is right, and I believe so. But the question is whether or not the authorities should take this policy forward to keep it abreast with the times and conduct a review of it from time to time and devise measures in tune with the needs of the times.

So I still hope that in the next few weeks when the Secretary handles the problem of the pressure faced by newspaper vendors in doing business — this is because their business turnover may drop after the increase in tobacco duty — he can devise some specific and clear measures and arrangements to reduce the pressure faced by them.

President, I hope very much that the Secretary will not think that, since he has got enough votes to negative this resolution to repeal the Protection Order he can rest assured and do nothing. He must not sit back and do nothing before the bill is introduced before this Council in end June for the Third Reading. I hope the Government can do its part and play an active role and address the three concerns of the Civic Party.

I so submit.

MRS REGINA IP (in Cantonese): President, I give my full support to the efforts made by the Food and Health Bureau in protecting the health of the people, and I understand that representatives of the Government have heard a lot of calls made by the World Health Organization (WHO), expressing its hope that Hong Kong should strive to reach the goal set by the WHO to raise the tobacco duty to 75% of the retail price. This is to make Hong Kong serve as a role model, especially to the Mainland. I fully understand this aim and so I do not support the repeal of this Order.

However, and in any case, this increase of the tobacco duty by 41% is far too much. Although I have discussed this with the Secretary and the Under Secretary and I see the point that increasing the tobacco duty will create a certain deterrent effect on the young people who want to start smoking, this hefty increase in tobacco duty will make many people lose their last enjoyment in life. Their means of living may be affected. Or there may be serious consequences in their health when they buy illicit cigarettes or counterfeit cigarettes, or when the young people turn from smoking cigarettes to taking ketamine. So although I will not support the repeal of this Order today, I demand that the Food and Health Bureau lower the increase in tobacco duty, or as suggested by the New People's Party, spread the increase in tobacco duty over five years. As a matter of fact, spreading the increase in tobacco duty over five years is already quite a burden for many people, especially those doing menial labour at the grass-roots level. This is because prices are very high these days. If this increase in tobacco duty is spread over five years, it means that each stick of cigarette will be 20 cents more expensive and \$2 more for each packet.

We all know that smoking is hazardous to health. As many Honourable colleagues have pointed out, consuming MSG will also be hazardous to health,

and so is drinking. Drinking is really hazardous to health. When I studied in the United States, I knew that there would be one or two university students in many of the universities who die of binge drinking in their fraternities each year. Dear little friends on the public gallery, please listen, do not ever learn this. In the United States, the alcohol duty is not raised to a level that bars young people from drinking. In the United States, the legal drinking age is 21. They would send a lot of plain-clothes officers on undercover duty on the university campuses and prosecute young people who are in breach of this law. They also carry out a lot of publicity work on campus.

Drinking is hazardous to health. But compared to the case of Hong Kong before the alcohol duty was reduced, the alcohol duty in the United States is much lower. This is because alcohols serve some social and economic functions and carry commercial value. I think that this is the same with cigarettes. Let us review the past figures. Many years after the tobacco duty increase, apart from having some effect on the young people, the number of smokers has not fallen sharply. So the New People's Party suggests that the increase in tobacco duty should be spread over five years. I think that this is more reasonable and the Government can hence meet the standard set by the WHO. Thank you, President.

MR ANDREW CHENG (in Cantonese): President, earlier on you reminded colleagues to speak with relevance to the Order by all means. But after all, the colleagues who proposed to repeal the Order are opposed to the tobacco duty increase and if we support the repeal of the Order, it means that we oppose the duty increase, but if I disagree with them, it means disagreeing with their opposition to the duty increase or in other words, supporting the tobacco duty increase. So, it boils down to the question of tobacco duty increase. President, I hope you will bear with my speech making references to the question of tobacco duty. But the speeches made by many colleagues earlier actually also revolved around this issue.

I think that in recent years since this discussion on a total ban on smoking in indoor areas began in the Legislative Council, this issue has been raised for discussion once every few years. Although smoking is hazardous to health, has the Government primarily played the role of a leading henchman, as it has always resorted to imposing a smoking ban and increasing the tobacco duty? Or its

approach is to allow the public to make a decision on their own and then see whether the number of smokers will naturally drop or shrink?

Obviously, the Government does have some statistics to support it, and I believe these statistics. There is also a lot of medical evidence to prove that smoking is addictive. For any addictive product, be it cigarette or alcohol, given its addictive effect, we have to help the addicts' withdrawal by external ways. One of such ways may be censure by family members. The Government has always produced APIs depicting children bidding their parents to smoke less because of the health hazards and the consequences of second-hand smoke. If these measures are inadequate, the authorities will often employ financial incentives to make the public feel that smoking is very expensive and then consider quitting it. A packet of cigarettes may be even more expensive than a lunch box. Nowadays, a simple meal may cost just some \$10 or \$20, but a packet of cigarettes can be very expensive and so, smokers will consider whether or not they should continue to smoke. Therefore, with regard to the view of colleagues supportive of the repeal of the Order who hold that the tobacco duty should not be increased too quickly or at too high a rate, I respect their view, but I beg to differ.

With regard to the impact on the grassroots, I think everyone is free to choose his way of living and every person has his own free will, but we do not hope that other people will be rendered affected. We can look at this in both the narrow and broader senses. In the narrow sense, we look at the impact on the people around smokers and the effects of second-hand smoke; and in the broader sense, we look at the medical expenditure borne by society. These are all supported by statistics. Smokers can have a bearing on the overall medical expenditure of the Government, obliging the Government to plough in more public money. This is why we think that smoking can lead to external consequences in some cases, rather than just being a personal enjoyment. Some elderly are very unhappy about the indoor smoking ban and sometimes, they even rang up Members' offices and said, "If I get killed, it is my own business and if my life is doomed, I have only myself to blame, so why should you be meddling in my affairs? With this ban on smoking, there is just nowhere for me to smoke." I wonder if they are like those people "who would otherwise prefer to die" described by Mr CHEUNG Man-kwong. But the problem is that it is, of course, easy in the case of death but as smoking can cause lung cancer or other cancers before the eventual death, I believe not only the smoker himself has to suffer, even his family members will have to suffer, and the entire healthcare

system and expenditure on the same will also suffer as a result. Therefore, if opposition is raised on the ground that the grassroots will be affected, especially as this group of grassroots people will be deprived of their one and only one enjoyment, I must say that I take exception to this view.

After all, human beings can choose from many kinds of enjoyment and interests, and if the interests and hobbies chosen by people can greatly affect their health, we should provide more incentives to tell them about the harmful effects. In fact, many smokers have thanked us. They have thanked us because they can now make up their mind to quit smoking, and many smokers do hold this view. Therefore, with regard to the arguments advanced by some colleagues of this Council from the angle of the freedom of living, personal free will, the impact on the quality of living of the grassroots and even exploitation or suppression of the grassroots, I really cannot agree with them.

Concerning the scourges of alcohols and cigarettes, I heard a number of colleagues say earlier that alcohols may give people the impression that the harm done is not too serious, for there is no second-hand alcohol. But the problem is that alcohols can result in drink driving or crimes committed under the influence of alcohol. Many people act like lunatics after drinks. They may beat their wife or husband because alcohol can cause mental confusion. This is the influence of alcohols and so, they are equally bad. But why is it that the wine duty can be waived while the tobacco duty has to be increased, and does this not amount to discrimination? President, I would like to respond to this point.

If colleagues consider that the Government is not right to waive the wine duty and increase the tobacco duty, and as long as they think that both alcohols and cigarettes are hazardous to health, they should support the increase of tobacco duty and then tell the Government to increase the wine duty for this reason in the next Budget, rather than opposing the tobacco duty increase because the wine duty is waived. In fact, I think as long as we hold that both alcohols and cigarettes are hazardous to health, we should put pressure on the Government on this ground and point out that the previous reduction or wavier of the wine duty was a wrong decision. I think the Government should address this issue in the context of the tobacco duty.

Besides, when I heard the speech of Mr WONG Yuk-man earlier I agreed with a point he raised. He said that the Government is found to be selling the smuggled cigarettes by auction. I always see the C&ED seize a large quantity of

duty-not-paid seafood. I have a schoolmate who works in the C&ED and I asked him whether such seafood would be put up for sale because those lobsters, scallops and abalones are delicious. He said openly that they would definitely be destroyed and would not be made available for human consumption because it was feared that they might be harmful. I asked him why they would not be sold by auction because perhaps some people would not mind and they could even check the seafood by themselves since a lot of them are delicious seafood items.

The Government does not even sell seafood by auction for fear that they may be tainted. But while the Government considers that smoking is hazardous to health, it outrageously puts the smuggled cigarettes to auction. I think this is inconceivable and unacceptable. I hope that the Under Secretary will go back and seriously consider this problem, because they do not know whether the smuggled cigarettes are authentic cigarettes and whether they contain any toxin. Could it be that each and every stick of these cigarettes is checked? That is impossible. I think the problem of the auctioning of smuggled cigarettes must at least be raised today to remind the Government of it.

Moreover, Mr Vincent FANG proposed the idea of "a specific tax for a specific purpose". We have actually discussed this for many years but the Government invariably said that the tax revenue so collected will go to the "large reservoir". We have consistently pointed out that government injection into the smoking cessation services has been scarce and if the Government, after collecting the duty, does not appropriately plough in resources for the provision of smoking cessation services for smokers, all its efforts would actually be thrown down the drain. Since colleagues have put forward this view and even Mr Vincent FANG said that he would propose an amendment, I think the Government has to take this into consideration. The tobacco duty is increased basically in the hope that more people are encouraged to quit smoking and for this reason, the Government should spend the duty collected on assisting smokers to quit smoking. We have discussed this for years and if, in every district, a few more clinics can be developed where smoking cessation services are provided, I think the smoking cessation services will produce more significant results.

President, in respect of actions taken by the Government against smuggled cigarettes or the statistics on smokers provided by the Government, I have always been a front-line supporter of the Government, and I often say that we are the "pro-government camp" in this respect. The Government must understand that

we support it in the hope that it can truly reduce the number of smokers in Hong Kong. I even reminded the Under Secretary at a meeting that the Government should tell smokers or the public in a high profile that it is the long-term objective of the Government to make Hong Kong a smoke-free city. He must show such boldness in order to succeed, rather than doing nothing while the tobacco companies carry out a lot of lobbying work at the back. We all know how enormous the resources of the tobacco companies are. If the Government remains weak and seeks to increase the duty only without acting boldly, it would give people the impression that its intention is purely to generate revenue from this duty and what it does will never be convincing. As regards the auctioning of smuggled cigarettes, I think this is indeed going against the Government's objective of moving towards a smoke-free city. Of course, some people may say, "Andrew CHENG, Bhutan is the only place in the world where smoking is banned, the only country where smoking is prohibited." But I reckon that in the next decade or in the next two or even three decades, more and more places and countries in the world will gradually move towards becoming cities and countries where smoking is banned.

I think if the Government has the determination, it must show it, rather than acting with misgivings and fears by imposing a smoking ban and increasing the tobacco duty on the one hand but putting the smuggled cigarettes to auction on the other. I think this defeats the original intention. I will certainly throw weight behind the Government in this area of work, just that I think what it has done is a bit inadequate. I hope that it can do better in the provision of smoking cessation services, and I hope that its handling of the tobacco duty and wine duty will not give cause for criticism anymore. On these issues, for the benefit of public health, the Food and Health Bureau should bravely forge ahead, rather than acting with misgivings and fears. Thank you, President.

MR CHAN KAM-LAM (in Cantonese): President, since the publication of the Budget, the tobacco duty increase has become a focus of public concern. Subsequently, we have listened to the views of many deputations in the Subcommittee on Public Revenue Protection (Dutiable Commodities) Order 2011. We understand that the public obviously have strong and different views on the 41.5% increase in tobacco duty proposed by the Government.

The DAB has reservations about the idea that the tobacco duty increase can reduce the number of smokers. After the tobacco duty was raised by the Government in 2009, the total number of smokers increased rather than decreased. According to the statistics provided by the Government, in 2008, the smoking population accounted for about 11.8% of the total population in Hong Kong, whereas in 2010, about 12% of the population were smokers of whom 700 000 were daily smokers. We have also read some figures before, and according to the statistics compiled a decade ago, the daily cigarette consumption among smokers was about 13 sticks, and there has not been any change in this number ever since. Over the past decade, while we can see a slight drop in the percentage of smokers in the total population but as we all know, the actual number of smokers still stands high. This explains that the increase of tobacco duty can produce only a temporary effect and is not at all effective.

President, many smokers have smoked for a long time and it is impossible for them to succeed in quitting smoking as soon as they want to kick the habit. A substantial increase in tobacco duty will only add to the financial burden on these grassroots people, particularly as the Government already increased the tobacco duty significantly by 50% in 2009. That was only two years ago and as the Government is again proposing a 40% increase in the tobacco duty now, the smokers will certainly raise objection and we can fully appreciate this view. We are concerned that the tobacco duty increase can neither reduce the number of smokers nor encourage smokers to quit smoking willingly, and that smokers are eventually made to consume expensive cigarettes on the one hand while they criticize the Government on the other.

As Members all know, over a period of time, especially starting from 2006, the Government has carried out a lot of work for the purpose of tobacco control and of course, we understand that these tobacco control efforts have been effective. The Government is gradually reducing the places and space where smokers are allowed to smoke. As we can often see (especially in Central) in the corridors or alleys on the ground floor of office buildings, many people always gather around garbage bins with an ashtray smoking. A vogue expression of "hot pot pack" has also been invented to mean these smokers gathering around trash bins to smoke.

Moreover, a substantial increase in tobacco duty will drive the growth of the illicit cigarettes market. Past statistics have clearly shown that since 2009, the quantities of illicit cigarettes seized by the C&ED have been on the increase, and even C&ED officials have admitted that cigarette smuggling has been increasing after the tobacco duty was increased, thus making it necessary for them to redeploy additional manpower and resources to address the problem. We are concerned that after this tobacco duty increase, the problem of illicit cigarettes will become even more rampant. There is also the view that the tobacco duty increase will lead to a reduction in the quantities of duty-paid cigarettes sold. A reduction in the sales of duty-paid cigarettes can be interpreted in two ways. First, the Government may think that it is because more smokers have quitted smoking that the quantities of duty-paid cigarettes sold dropped. The other is that the public do not buy authentic cigarettes and turn to illicit cigarettes instead.

As mentioned by many Members today, cases of illicit cigarettes being sold brazenly are quite commonly found in many communities. Some students also told me this morning that in certain districts, not only are there people selling illicit cigarettes, but they are also selling one or two sticks of cigarette individually. The situation may have become alarming at the district level. But I would not agree to the view that this is due to ineffective operations taken by the C&ED, and I think the C&ED has already done a lot. But as we all know, illicit cigarettes are sold in a great variety of ways in the districts. In my view, even if the Government exerts its utmost to hunt them down, it is not going to be an easy task.

President, after the Government introduced the Dutiable Commodities (Amendment) Bill 2011 (the Bill), a Bills Committee was formed and for a period of time in future, different views can be expressed at the Bills Committee. We consider that different views on the rate of increase in tobacco duty or relating to the smoking ban or tobacco control after the duty increase can be referred to the Bills Committee for discussion, rather than repealing the Order.

Some colleagues said earlier that Members who oppose the tobacco duty increase should support the repeal of the Order, but I do not agree. We all know that the Order is meant to be a transitional measure with a validity period of not more than four months. The Order came into effect at 11.00 am on 23 February

when the Financial Secretary delivered the Budget for a period of four months until 23 June, not 30 June as Mr Alan LEONG said earlier on.

The Order mainly serves to ensure the legitimacy of the provisional duty revenue collected by the Government and give effect to the relevant measure in the Budget. This practice has long been proven. If we object to or vote down this Order, the problem will be that from today onwards, the rate of tobacco duty can no longer be maintained while the Bill is still under scrutiny, but we do not know whether the original Bill will be passed or the entire Bill will be negated in the Legislative Council before 23 June. In the interim, some businessmen or smokers will stockpile large quantities of tobacco. Does this do any good to society? We think that we should not cause such confusion in society. As in the cases of other taxes or duties, if the Order is repealed, there will be peddling or smuggling activities in society targeting the new duty revenue to be generated under the Order. This is not what we wish to see.

We do not agree to repealing this Order on the tobacco duty, but we certainly hope to keep on listening to the views of various sectors of the community on the adjustment of the tobacco duty rate in the Bills Committee in future. We all the more hope that we should maintain a safeguard for the smooth, effective and necessary collection of tax revenue under the Budget. Therefore, we will vote against the repeal of the Order today.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, in considering the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011 proposed by Mr Albert CHAN, we actually have to consider two factors: First, the impact of the repeal of the Order administratively and financially, and second, the impact of the tobacco duty increase on the public as mentioned by the Financial Secretary when he delivered the Budget on 23 February.

First of all, I would like to discuss the impact of the tobacco duty increase on the public. No doubt cigarettes have many harmful effects that can be attributed to the chemical compounds contained in them, such as nicotine, and also the effects of the substances produced in the course of burning. We

understand that nicotine can cause blood pressure to rise and a persistent in-take can even cause atherosclerosis and increase the chances of heart disease incidence.

Moreover, the burning of cigarettes will produce tar which can cause irritation to the respiratory tract and oral cavity and lead to some other problems. In particular, the irritation caused to the trachea and bronchus will develop into chronic obstructive pulmonary disease. Members who have seen patients with this disease will understand the gravity of the consequences of habitual smoking. In fact, this disease will cause gradual deterioration of the patients' health. The patients will suffer badly as if they are being strangled constantly. They are unable to breathe smoothly, and they feel as if they are being strangled harder and harder until they die. Patients with this disease have to endure great pain and sufferings.

The irritation by tar will cause cancer in the respiratory tract and oral cavity of smokers. The respiratory tract aside, the chances of cancer in other parts of the body will also increase as a result of smoking. Besides, we also understand that smoking can affect the health of foetus and newborns. These are the harms of smoking to human health.

Then, do cigarettes have any merit at all? Their merit, if any, is that they may do some good to our mental condition. Some people think that smoking can improve the coherence of thinking and induce inspirations. This is why people who like writing will probably smoke while they write, as they think that this can help with their train of thoughts. Besides, research studies have found that there are more smokers among patients with certain serious mental illness (such as chronic schizophrenia). In the past, we would generally explain that this is the result of patients having nothing to do in mental institutions and therefore, they naturally lack the awareness of quitting smoking. But subsequent studies found that nicotine, which can be found in cigarettes, seems to be able to make these patients feel more relaxed mentally. In spite of this, I still consider it not worthwhile indeed to take such huge risks and to suffer from the great health hazards of cigarettes only for this mental enjoyment.

On the other hand, a number of colleagues have pointed out earlier that cigarettes are not the only harmful thing in the world. As we can see, there are food items containing high levels of sugar and fat everywhere in society, and their excessive consumption is definitely not good to health. Besides, as Members

may know, burnt meat will increase the risk of cancer in human beings. So, are these not also harmful to our health?

In fact, there are things which can do harm only after persistent consumption. For instance, certain drugs can be harmful to health if they are administered inappropriately. Drinking a small quantity of alcohol can actually benefit our health as it will do good to the heart, but excessive consumption of alcohol will result in serious problems, causing damages to human organs, such as the liver, the nervous system and the heart, and the mental condition can be seriously affected, too. Moreover, with regard to such organic solvents as petrol or thinner with which we may come into contact in daily life, they can do great harm to the health of people who choose to inhale them.

Therefore, to what extent something is harmful depends on how we use it and this, to a certain extent, rests with the decision of the person concerned. I think in a civilized, advanced society, the people should bear certain responsibilities for their choices made for their health. Does the Government have to take responsibility for everything? For instance, if a certain thing is harmful to the people, should the Government increase the tax frantically in order to stamp it out? I wish to cite another example. Lawful gambling is allowed in society and even though there is the betting duty, I have not heard of the need to increase the betting duty annually. Could it be that gambling will lead to less tragedies and social problems than cigarettes? Why should the Government be prejudiced?

As we are engaged in the work of trade unions, we will come into contact with many wage earners or blue collars from the grassroots. To put it plainly, the grass-roots wage earners face great pressure in their living as things are expensive and prices soaring and yet, their wages have not been increased or they have been increased by a very small percentage that cannot catch up with inflation at all. They work long hours. Every day, it is already dark when they finish work and in the morning, they set off to work before sunrise. They have to work so hard that they sometimes do need to pull a puff to get ride of boredom, just as I said earlier on. This is very common among grass-roots workers. True enough, this is not a good habit but in this weird society, the people have been under great suppression and if they are subject to further suppression in a way that even this very small comfort has to be taken away from them because cigarettes are harmful and they are, therefore, barred from taking them, I am

afraid this is not something that a government which keeps tabs on public sentiments should do.

The four colleagues of the Federation of Trade Unions (FTU) actually share this feeling. Furthermore, the tobacco duty was increased only last year. It takes time for us to adapt to every measure in society, and it takes time for smokers to smoke less or to quit it. They have just grown accustomed to smoking less but this year, the tobacco duty is further increased. Also, there are now many cigarette vendors, such as newspaper hawkers, whose income will be reduced, and it also takes time for them to make up for the shortfall in income but this year, the Government is again trying to take away some of their income. How can they possibly adapt to this? Is this something that a government which cares for its people should do?

I have spoken at length on the impact of the tobacco duty increase on Hong Kong society. Now let us turn to what consequences there will be if Mr Albert CHAN's motion on the repeal of the Public Revenue Protection (Dutiable Commodities) Order 2011 is passed. As far as I understand it, two scenarios may possibly arise. First, as Mr CHAN Kam-lam has just said, this is a temporary measure with a validity period of not more than four months. As regards the consequences — I remember that this was also discussed in the House Committee — it will depend on whether or not the principal legislation will be passed ultimately. If this motion on the repeal of the Order proposed by Mr Albert CHAN is passed today, the Government will have to refund the excess duty collected during the period from the passage of this motion today to the enactment of the principal legislation. But if the principal legislation is not passed in future — I hope my understanding is correct — the Government will need to refund to taxpayers the full amount of the excess duty collected under the Order from the very beginning and that is, from the delivery of the Budget by the Financial Secretary.

But who have paid this duty to the Government? It is the cigarette importers and distributors. According to my understanding, each smoker has paid more for the duty and yet, they do not pay it to the Government direct but through the distributors. In other words, the duty to be refunded to the distributors and importers by the Government will not go to the pockets of smokers in the end. Therefore, this is also a factor we need to consider, and both factors have certain justifications.

After careful consideration, the FTU finally decided to abstain at the vote to be taken on the motion proposed by Mr Albert CHAN today. This is all I wish to say.

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

(Mr LEUNG Kwok-hung raised his hand to indicate his wish to speak)

PRESIDENT (in Cantonese): Mr LEUNG, you have already spoken. Members can speak only once in this debate.

MR LEUNG YIU-CHUNG (in Cantonese): President, regarding today's debate on the repeal of the Order, we should really ponder over and rethink some issues at a deeper level. The reason why there are problems with this practice is that we have inherited the practice which dates back to the colonial government in the past and which is used until the present day.

Back in the colonial times, the budget would come into force immediately on the same day it was delivered. It was meant to prevent people from hoarding commodities and engaging in speculations. I think we can all see the point of it. However, from another perspective, this kind of practice would also lead to another problem and that is, when deliberations are made on the proposals concerned, there would be uncertainties and we do not know if these proposals can be passed. If a proposal is not passed, what would be the consequences? As some Honourable colleagues have said earlier, as the duty has already been paid, so if a proposal to raise duty is not passed, then to whom should the duty paid in excess be returned? This is a perennial question. But why could things function as usual for so many years during the colonial times and no disruption had ever happened? Because the former Legislative Council gave people an impression that it was a rubber stamp and regardless of what proposals were presented by the Government, they would likely all pass. So there was no need to worry about the emergence of this odd and weird situation we have now. Everybody thinks that no problem would arise and the Government also claims that no problem would arise. Thus this practice is used to this day.

Of course, there is still no need for the Government to worry today, for it should have enough votes to ensure that this motion to repeal the Order will not be passed. So there is no need to worry about what will go wrong. But times have changed and the composition of the Legislative Council is changing all the time. I hope that the Government will not take everything for granted, thinking that no matter what proposal it presents to the Council, the Council will certainly pass it.

I have listened very carefully to the speeches made by Honourable colleagues and no matter if they are for or against the increase in tobacco duty, they do have some other views, such as on whether or not it is desirable to levy tax in this way. There are many Members who question it, such as they would ask whether or not the rate of increase is too much, or if the rate of increase can be reduced, or if the increase can be made in phases. One thing which is very much different from the past is that in the days of the former Legislative Council, especially at the time when all Members were appointed, there was very little discussion on such issues. Almost whatever proposal submitted by the Government would certainly be passed. So this is something we should ponder over seriously.

A Member has proposed a motion to repeal this Order today. Some Honourable colleagues agree while some others would abstain. But most Members would vote against it. So the Government needs not worry. But if someday something really happens which is quite like the exceptional cases we have had before, and as the President said yesterday, if the voices of opposition in society are so strong that some Members may really have to vote against the Government's proposal, then what should be done?

One of the reasons why some Honourable colleagues oppose the repeal of this Order relates to the question of to whom should the duty paid in excess be returned once this motion is passed. If it is to be returned to the tobacco traders, people would feel it is unfair. But it is not possible to return the money to the smokers. It is because of this that some Members have to vote against the motion. But if some clarification can be made of that issue, then the story could well be different. An example is the debate on the First Registration Duty for cars which is to be held later. As it is clear that the tax money should be returned to the car owners concerned, it is likely that more Honourable colleagues will support the repeal of the Order.

So regardless of this motion to repeal the Order is passed or not, the Government should look at the matter as a lesson learnt. What is that lesson? It is the lesson that the Government cannot take it for granted that something which was in use all along in the past will certainly be able to be applied to the Council today. This is because the composition of the Council is always changing and despite the fact that the democratic element in it is still insufficient and despite the fact that there is still a long way to go before democracy is ever reached, this kind of change is bound to happen some time. We cannot wait until that day when this comes before we start to think whether or not this conventional practice is right or wrong and whether it is sound or otherwise.

President, I agree with what you have said, that the debate today is not on the question of whether or not smoking will harm one's health, but on the question of whether or not this Order should be repealed. So I will not talk about the relationship between smoking and health. But I wish to tell the Government that this method must be changed and this convention in the compilation of a budget must be changed. Otherwise, should a motion to repeal an Order be passed, the problems which I have just mentioned will arise. Therefore, I hope that the Government can ponder over this and do some soul-searching.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, then I will call upon the Secretary for Food and Health to speak.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I thank Members for the valuable opinions they have expressed earlier, and many Members have raised questions on the reasons for increasing the tobacco duty and its effectiveness. Please allow me to respond to the key points of the motions

moved by Mr Albert CHAN and Mr Vincent FANG as well as the speeches made by Members.

President, first of all, I have to reiterate again that the Government's objective in tobacco control is to protect public health from the hazards of tobacco products as far as possible and lessen the resultant burden to be borne by society. To achieve this objective, the most effective way is to reduce the number of smokers. We have all along adopted a step-by-step and pragmatic strategy to address the problem of smoking, taking multi-pronged measures comprising legislation, enforcement, taxation, publicity, education, and smoking cessation to contain tobacco use and reduce the impact of second-hand smoke on public health.

An increase in tobacco duty rates is an integral part of tobacco control which is an important public health policy. As regards the effectiveness of the tobacco duty, some people have questioned that a duty increase may not necessarily reduce smoking. But facts speak louder than words. There has been plenty of established evidence proving that tobacco duty is an effective means of tobacco control.

The World Health Organization's (WHO) Framework Convention on Tobacco Control which formally took effect in 2005 has clearly pointed out that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.". This is a scientifically proven conclusion drawn by the WHO based on the information provided by signatories worldwide.

The World Bank also published in 1999 a report on the impact of the price of tobacco. Its findings indicated that a price increase of 10% on a packet of cigarettes is expected to reduce demand for cigarettes by about 4% in high-income countries, and by about 8% in low- and middle-income countries.

A nation-wide research conducted by the Chicago University of the United States in 2000 has also shown that a price increase of 10% is expected to bring about a reduction in the population of young smokers by over 6%, and a reduction of adult smokers by about 3% to 5%.

The Center for Disease Control and Prevention of the United States Department of Health and Human Services also published the findings of a research study in 1994, pointing out that an increase in the price of tobacco could effectively reduce tobacco use initiation among adolescents.

President, some people may question why there is not a marked downward trend in smoking prevalence following an increase in tobacco duty and whether this is evidence showing that the duty increase is ineffective. I must point out that cigarettes are not a necessity and smokers will react to price adjustments. A most evident example to prove that an increase in tobacco duty is indeed conducive to developing among smokers a stronger desire to quit smoking is this: Many smokers called the smoking cessation hotline of the Department of Health (DH) and the smoking cessation clinics of the Tung Wah Group of Hospitals enquiring about ways to quit smoking immediately after the 40% increase in tobacco duty was announced by the Financial Secretary. In the several weeks following the announcement of the duty increase, the number of enquires received by the DH's hotline was a few times more than that before the duty increase was announced, showing an overall upward trend in the number of smokers seeking help for smoking cessation. President, should we, at this point in time, do anything to make them waver in their determination to quit smoking?

In fact, over the past two years, whether from government statistics or scientific researches done by universities, we can see that the percentage of smokers among young people has significantly dropped over 10%. To make young people smoke less and prevent them from coming into contact with cigarettes and becoming addicted to smoking is the most important work in tobacco control, and it is in this area of work that the most significant long-term effects can be achieved. Given that young people are vulnerable to the influence of popular cultures and peers, it is all the more necessary for us to raise the tobacco duty as a means to increase the strength of tobacco control. After stepping up tobacco control efforts on various fronts, including publicity, education, legislation and enforcement, it is now time to adopt the financial measure of taxation.

President, in tandem with the tobacco duty increase, we have enhanced other supporting measures to encourage and help the public to quit smoking. For the past two years, the Government has substantially increased the provision of resources and through the DH and the Hospital Authority, various kinds of

smoking cessation services have been provided, including smoking cessation hotlines, clinics, and an interactive online cessation centre, providing smokers with free advice on quitting, psychological counselling and pharmaceutical treatment to meet the needs of different groups of smokers. To further strengthen its efforts on smoking prevention and cessation, the DH has launched a community-based smoking cessation programme jointly with the Tung Wah Group of Hospitals since January 2009, and also launched a smoking cessation pilot programme using traditional Chinese medicine jointly with Pok Oi Hospital with effect from April 2010, providing a free smoking cessation treatment programme covering physical check-up, psychological counselling, pharmaceutical treatment, and one-year individual follow-up service. Smoking cessation services are provided by professional teams of doctors, nurses, and trained smoke-free ambassadors who support each other in their work to give full play to their respective strengths, with a view to ensuring that their clients are provided with the most suitable and sustained smoking cessation services.

After the announcement of the tobacco duty increase, the number of enquiries received by the DH's smoking cessation hotline has increased in multiples, reflecting an overall upward trend in the number of smokers seeking help for smoking cessation. We will continue to keep in view the demand for smoking cessation services among the public to ensure the adequacy of these services. In this financial year, we will continue to double the funding for smoking cessation services to \$44 million, focusing on promoting smoking cessation as well as the provision and promotion of smoking cessation services. This will include increasing free smoking cessation services offered by voluntary organizations and setting up a smoking cessation hotline which targets young smokers. The SAR Government absolutely will not be miserly with expending resources on smoking cessation services, and we are ready to try every approach to provide smoking cessation services so long as it is feasible. We will work continuously to actively publicize the hazards of smoking among the public and step up the promotion of smoking cessation, in an effort to enhance the effectiveness of the tobacco duty increase.

President, many Members are concerned about the crackdown on illicit cigarettes. I fully agree that it is imperative for the authorities to step up this area of work in parallel with the increase in tobacco duty. The past two years have seen a notable decline in the number of cases involving local illicit cigarette activities and in the seizures of illicit cigarettes, reflecting the effectiveness of the

intensified enforcement actions of the Customs and Excise Department (C&ED), especially as street-level peddling activities have been reduced in scale and magnitude and the overall situation has been brought under control. Since the new tobacco duty rates were announced in the Budget, the C&ED has made full preparations to step up actions against illicit cigarette activities by strengthening manpower to closely monitor illicit cigarette activities at various control points and at street level and to bolster enforcement against illicit cigarettes at different levels, including the importation, storage, distribution and peddling of illicit cigarettes. Between January and April just passed, especially after the new duty rates came into effect, the seizures of illicit cigarettes by the C&ED have increased significantly, reflecting the effectiveness of the enhanced enforcement actions taken by the C&ED.

With regard to the concern raised by individual Members or persons that the tobacco duty increase will only result in proliferation of illicit cigarettes which is counter-productive to reducing tobacco consumption and may even give a nudge to the offenders, I believe the majority of people, including the smokers, are law-abiding citizens. Meanwhile, the C&ED has undertaken to take vigorous enforcement actions to step up the crackdown on tobacco smuggling activities. The C&ED will make suitable deployment in the light of the circumstances and needs and provide additional manpower for strengthening front-line enforcement actions. I believe we are fully capable of preventing deterioration in the situation of cigarette smuggling. According to overseas experience and the past experience of Hong Kong, I believe the effectiveness of a tobacco duty increase in reducing smoking will not be greatly affected by illicit cigarettes.

With regard to licensed newspaper hawkers who sell cigarettes, a continuous drop in cigarette sales following the major direction of stepping up tobacco control is an irreversible trend. I understand Members' concern about the livelihood of newspaper hawkers. The authorities have always adopted a lenient and empathetic attitude in exploring and dealing with options to improve the business environment of newspaper hawkers, which include expanding in 2009 the list of commodities permitted to be sold by licensed newspaper hawkers. We will maintain an open mind and are more than happy to jointly explore with the trade practicable approaches which can help them adapt to the change.

I understand that many Members are concerned about the support provided for smoking cessation services, the enforcement against illicit cigarettes and the measures for assisting newspaper hawkers, but these are not reasons for rejecting an increase in tobacco duty rates. Let me emphasize once again that we will certainly channel adequate resources to implementing various effective tobacco control measures.

Some people said that the increase in tobacco duty rates is meant to deal a blow to low-income earners or the grassroots in an attempt to create class conflicts. I must seriously point out that cigarettes are a harmful substance which is hazardous to health. There is no distinction between the rich and the poor when it comes to health, and the hazards of smoking will not differ because of different social classes. Any citizen, whether he is rich or poor, will not be affected by the duty increase as long as he does not smoke. In fact, take a person who consumes a packet of cigarettes a day as an example. He has to spend about \$18,000 on cigarettes a year after the duty increase and if he can quit smoking, the money hence saved can perhaps be spent in better ways. It shows that reducing or quitting smoking is beneficial to health and at the same time enables smokers to save the unnecessary spending on cigarettes.

Some people have neglected the effect of the tobacco duty increase in protecting public health, turning a blind eye to the health of the general public. This is absolutely undesirable. President, let me once again make an appeal and stress that the increase in tobacco duty rates is a policy to protect public health which targets tobacco consumption which is internationally recognized as a problem in the realm of public health. It is not meant to deal a blow to anyone in any stratum or sector in society. Moreover, the reduction of tobacco consumption can also reduce second-hand smoke which can, in turn, protect the health of the public, including family members of the smokers and children. We would wish to see more smokers kick the smoking habit even if it means less revenue to be generated from the tobacco duty, as the Financial Secretary has said. So, it is indeed not fair to say that the increase in tobacco duty rates will deal a blow to the low-income earners.

President, some Members hold that alcohols and tobacco are both hazardous to health and therefore, we should not increase the tobacco duty without doing the same to the wine duty. From the medical perspective, second-hand smoke will obviously affect every person who comes into contact

with it and directly do harm to the health of other people. Smoking is hazardous to health, disregarding the quantities of cigarettes consumed. But drinking alcohols is different from second-hand smoke which is directly and obviously hazardous to health, and drinking alcohol may not necessarily be harmful. Therefore, from the angle of public health, the consumption of tobacco products which are absolutely harmful and devoid of benefit should not be compared with the consumption of alcohols.

Certainly, excessive consumption of alcohols or even alcoholism is hazardous to health, and as different people have different reactions to alcohol, the public should find out more about the effects of alcohol consumption on their health. The DH has all along been committed to launching public education and publicity campaigns on the hazards and risks of alcoholism through the production of various types of publicity materials and online publications and organization of various promotional activities. Our objective is to give the public a better understanding of the hazards of excessive consumption of alcohols and alcoholism.

President, I would also like to clarify the arrangement for refunding the tobacco duty in the event that the duty increase is negated by the Legislative Council. Under the existing legislation, if the authorities have to refund the tobacco duty, it can only be refunded to payers of the tobacco duty who are, in most cases, tobacco importers and distributors. It is impossible for us to pass the refunded amount to the ultimate consumers of tobacco products; nor do we have the power to ask tobacco importers and distributors to return the refunded duty to the ultimate consumers of tobacco products. This is not a question of whether it is fair or unfair, because the law only empowers the Hong Kong Government to refund the duty to payers of the tobacco duty. In any case, this is not going to be changed even if the Public Revenue Protection (Dutiable Commodities) Order 2011 (the Order) is repealed.

Lastly, as I stressed time and again in my opening remarks on the motion and just now, the increase in tobacco duty rates is a policy concerning public health. All we hope is that Members will understand that the results achieved in tobacco control in Hong Kong do not come by easily and we should not put sectoral interest and political gesture above public health. If the motions proposed by Mr Albert CHAN and Mr Vincent FANG are passed today, in which case the Order will be repealed, apart from causing confusion in the collection of

tobacco duty, it will put across a wrong message that Hong Kong is regressing in tobacco control, telling the public (especially the young people) that it is unnecessary to continuously step up control on tobacco. This will deal a heavy blow to the work of tobacco control in Hong Kong, and it is tantamount to telling all smokers who are trying to quit or considering quitting the habit to stop. It is even putting the cart before the horse to rationalize the unlawful act of selling and buying illicit cigarettes and equate the tobacco control policy which aims to protect public health with infringement on personal freedoms, for this will only promote among the public (especially the young people) the sophistry that there is nothing wrong with smoking and indirectly conduct publicity for the tobacco industry. I believe this is absolutely not something any Member would wish to see.

With these remarks, I urge Members to vote against this motion. Thank you, President.

PRESIDENT (in Cantonese): Mr Vincent FANG, do you wish to speak again?

MR VINCENT FANG (in Cantonese): President, I do not intend to speak.

PRESIDENT (in Cantonese): I now call upon Mr Albert CHAN to reply.

MR ALBERT CHAN (in Cantonese): President, the response by Under Secretary Prof Gabriel Matthew LEUNG just now can be said to have fully reflected the hypocrisy of the Government. Although a number of Members also expressed in their speeches just now their concern about the impact of the increase in tobacco duty on the disadvantaged, the poor and newspaper vendors, they claimed they would support the Government increasing the tobacco duty, even in the absence of any specific response by the Government on making improvements. This also reflects the hypocrisy of this Council.

President, in their speeches just now, individual Members and the Secretary indicated, either in an implicit or sarcastic manner, that the lobbying of tobacco traders had been very powerful. I can tell members of the public clearly that I

have never communicated or contacted with tobacco traders during the past few years. And I have never received any money from them, unlike the accusations made in some Cold-War-like tactics or some smearing attempts.

It is extremely dirty and shameless of the Government, this Chamber or some of my political rivals to smear and suppress me by exploiting these issues. As I have pointed out repeatedly, I personally do not smoke, and I encourage members of the public not to smoke, too. I already raised this point in moving the motion just now.

Similarly, the Secretary was trying to smear me when he said that the moving of this motion would send a wrong message to young people because before formally proposing this motion, I already made it clear that I did not want to see Hong Kong people smoke, and I also encouraged smokers to quit smoking.

Over the years, President, I have been strongly opposing the Government's increase of tobacco duty, and I have expressed my opposition again and again, but the Secretary's response is still most feeble. This is a class issue, though the Secretary thinks otherwise. Now that the Government has employed a fiscal means of increasing tax in an attempt to influence public behaviour, money must be a vital factor in influencing the relevant behaviour. So, why is it not a class issue? Obviously, those are blatant lies. The Government has completely turned a blind eye to this issue.

During their analysis of policies, the authorities definitely need to analyse the impact of increasing a particular item of tax, namely tobacco duty, on certain income earners. As pointed out repeatedly by the authorities and many Members as well as revealed in many studies, when a tax is increased to a certain level, certain people, especially young people, will be affected because in general, the income of young people is relatively poor. As recalled by Mr Ronny TONG, when he was young, he had to control his behaviour because he had no money. As a result, he had to stop buying cigarettes and subsequently kick the habit. Given that this policy will not affect the rich, what is it if this is not class discrimination?

When it comes to the issues of tobacco and alcohol, I even have the feeling that the Government has completely neglected the findings of studies conducted by international health authorities, for Under Secretary Prof Gabriel Matthew

LEUNG has described drinking as not necessarily harmful. DENG Xiaoping, who had smoked for decades, died at the age of 80 something. How can the Under Secretary tell it was not smoking that influenced DENG's body functions, thus making it possible for him to live a few more years? As I mentioned just now, many studies conducted by international organizations show that the damage and losses caused by alcohol to the entire community is higher than that of tobacco.

A study conducted in France in 1997 indicated that the total loss of the community caused by smoking was a mere FF89.2 billion a year, but the total loss caused by drinking was FF111.5 billion. According to the studies conducted by numerous countries, in general, the total loss of the community incurred by alcohol is higher than that by tobacco by approximately 30% to 50%, with different degrees of impact found in different places.

Just now, the Secretary quoted the impact of smoking on Hong Kong by citing the figure of \$5.3 billion. I have done some computations and found that this translates into \$760 per person. President, with respect to the loss incurred per person as a result of drinking, it was \$5,890 in the United States, \$2,658 in Australia and \$3,077 in Canada, bearing in mind that some of these figures were recorded a decade ago. On average, the impact of drinking on Hong Kong is several times that of smoking. The impact of drinking on the community as a whole was calculated on the basis of the actual average expenses per person.

However, many Members seem to be indifferent to these figures. Contrary to the accusation made by Mr Andrew CHEUNG that we were completely silent, I already raised objection when the Government proposed reducing wine duty back then. We condemned the Government that it was simply benefiting its own people or senior officials because one of them liked drinking red wine. He could have saved tens of millions of dollars in duty because he bought red wine in whole boxes I should have said whole containers of red wine, not whole boxes of red wine. Obviously, this is class discrimination. Secretary, why do you think there is no class discrimination?

It is now a fact cast in iron that the rich can "drink cheap wine" but the poor have to "bear with expensive cigarettes". Members may wish to visit public housing estates to talk with the elderly people there. Their livelihood is affected as they have to spend their only income buying cigarettes. How can

their livelihood not be affected? Can government officials be so blind and behave in such a unscrupulous manner, completely turning a blind eye to the impact on the ordinary masses?

When it comes to newspaper vendors, Mr Alan LEONG made a most rhetorical remark, that they would urge the Government and request it to properly address the problem with newspaper vendors by June. The year 2009 already saw a catastrophic impact on newspaper vendors. As a result, their income was slashed by half, with the children of some of them having no money to pay for their tuition fees. But what can they do? Will Senior Counsels make compensations to them?

People frequently mention public interest. The fees charged by barristers in Hong Kong are so high that ordinary people cannot afford to initiate a lawsuit. Should we not introduce all Senior Counsels from the Commonwealth so as to lower the fees charged by barristers here in order that the public interest of the people of Hong Kong can be protected? Now that we are talking about public interest, we had better liberalize everything and introduce competition! As a Senior Counsel currently charges \$10,000 per hour, how can ordinary people afford it? It is equal to their entire month's salary, buddy! They have to give their entire month's salary to a lawyer for one hour's consultation. Would it not be better to open up the market to induce a fee reduction so that the interest of ordinary masses and the public in Hong Kong can be protected?

As regards the problem with nurses, in the face of the shortage of nursing manpower in Hong Kong's hospitals, we might as well introduce nurses from outside Hong Kong to ensure that patients in Hong Kong and public interest are protected. Is it a good idea, Dr Joseph LEE? You sounded so great when you talked about public interest. However, when it comes to the interest of your own sector, you act like you are facing your enemies, prepared to fight a deadly struggle.

Given that newspaper vendors have neither power nor influence, who in this Chamber will speak for them? Which political party will speak for them? We are even accused of politicizing the issue. In fact, the Government itself plays the major role in politicizing the issue. Mrs Regina IP has made it very clear that the Government has to politicize the issue because it has to meet the request of the WHO. In order to deliver to the WHO, it has completely

overlooked Hong Kong's actual situation and the well-being of those ordinary masses who are affected by this policy. This is because the Government has to achieve its political goals and meet the WHO objectives. Not only has no study been conducted on those policies, the measures implemented are also completely devoid of safeguards. Although the relevant problems were already mentioned in 2009, they can still occur again and again. As if nothing has happened before, Members continue to render their support for repeating the mistake made in 2009.

Members can see that no soon had the tobacco duty been raised by the Government several months ago than illicit cigarettes promptly entered the territory. The sale of these cigarettes is also common, and there are also telephone orders for door-to-door delivery of illicit cigarettes everywhere. Secretary, you are not blind, are you? Just now, you made such a great speech that the Government would pull out all the stops to combat illicit cigarettes. Should it fail to do so, will you resign? Will you commit hara-kiri?

However, these newspaper vendors will be seriously affected because of this government policy. Fine. They can be sacrificed. The newspaper vendors can be sacrificed. They have neither power nor influence. Moreover, their number is not large. Just let these hundreds of people be sacrificed! Is this what the Civic Party means? Is this what the Democratic Party means?

On the contrary, I find the speech delivered by Mr Vincent FANG very strange. I was deeply moved at hearing Mr FANG mention "the grievances of the people and the livelihood of the newspaper vendors". Despite the fact that the newspaper vendors account for only a very small number of ballots and they are not among the communities this rich-man's party is concerned about, the Liberal Party has surprisingly expressed concern about the grievances of the people and the livelihood of the newspaper vendors. Yet, political parties belonging to the democratic camp are completely indifferent to the well-being of the disadvantaged groups and ordinary masses.

President, one of the major principles of representative government and parliamentary democracy is, of course, letting the majority make decisions. However, another equally important principle is to protect the interest of the minority. Otherwise, this Council and the Government will become organs of tyranny and executive hegemony for the majority. In formulating a policy, will the Government not give any consideration to ensuring that people under this

policy, especially some members of the disadvantaged groups, will not be trampled upon or harmed because of the Government's lofty goals and unattainable ideals? Will the Government not give any consideration to this?

Although those people have expressed concern after the presence of this problem has been identified, saying they will urge the Government to pay attention to this problem, the policy can still be implemented all the same, not only in 2009, but also in 2011 and in the future. What kind of a Council is this? What public opinion does it represent? It can even behave in such a hard-hearted, cruel and unscrupulous manner.

President, I believe the motion proposed by me today in a bid to repeal the Order can definitely not be passed. Even Dr David LI has come back to cast his vote. The Government has really exerted its utmost in lobbying. I wonder if Dr David LI has come back to give me support, but it appears not to be the case. Nevertheless, I will not expect him to support my motion to repeal the Order.

Another argument advanced by the Government just now is that the Order, if repealed, will give rise to other taxation issues. This precisely reflects the Government's disrespect for this Council. There will always be a chance for any motions proposed by the Government to be repealed, too! In devising the relevant revenue measure, the Government should also consider how to deal with the sequelae when the relevant proposals are repealed. However, the Government has completely failed to give any consideration to this and make any planning. When a government motion is really repealed, the Government will say that this is our responsibility, and that the problem is caused by the repeal of this Executive Order by this Chamber or Council. The Government is calling a stag a horse, trying to shift its executive incompetence and failure to the Legislative Council.

Currently, the Government is executive-led. The Government is responsible for devising the relevant revenue arrangements as well as the model of dealing with taxation. This is your responsibility, Gabriel Matthew LEUNG. How can the Government behave in such a shameless manner as to shift its responsibility to the Legislative Council all of a sudden? Not only are the salaries of government officials several times higher than ours, they also enjoy a high status, enormous powers and attractive perks. This is the responsibility of government officials! Hence, this executive framework, which calls a stag a

horse and confuses right and wrong, causes the Legislative Council to become even worse off than a rubber stamp, to be trampled upon arbitrarily under executive hegemony.

President, the dignity of this Council is completely gone. I urge Members to think clearly what sort of a system is the system of parliamentary democracy they are pursuing and how legislative, monitoring and executive roles should be played. If Members voluntarily allow the Government to trample upon them, it will only bring shame to this Council and cause the disadvantaged in Hong Kong to be harmed further.

PRESIDENT (in Cantonese): Before I put to you the question on Mr Albert CHAN's motion, I wish to remind Members that irrespective of whether Mr Albert CHAN's motion is passed or not, Mr Vincent FANG may not move his motion.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG and Mr Vincent FANG voted for the motion.

Dr Raymond HO, Dr David LI, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Timothy FOK, Mr Abraham SHEK, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che and Mr IP Kwok-him voted against the motion.

Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted against the motion.

Mr Frederick FUNG, Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, four were in favour of the motion, 19 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, three were in favour of the motion, 21 against it and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Third motion: Repealing the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011.

I now call upon Mr KAM Nai-wai to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR KAM NAI-WAI (in Cantonese): President, I move that the motion under my name be passed. President, the motion proposed by me seeks to repeal the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order).

President, why did the Democratic Party propose to repeal the Order? Everyone knows that the Financial Secretary mentioned in the Budget this year that the most important objective of increasing the FRT for motor vehicles is to relieve traffic congestion instead of raising revenue. This is spelt out clearly in the Budget. However, can increasing the FRT for motor vehicles really relieve traffic congestion? The Democratic Party holds that using an increase in FRT for motor vehicles as a means to ease traffic congestion can simply not administer the right cure. We consider this government policy a "three-not" policy, for it is not reasonable, not fair and not environmentally-friendly.

Why is it not reasonable? We doubt whether increasing the FRT for motor vehicles can reduce the number of private cars. In our opinion, this measure cannot reduce the number of motor vehicles. If increasing the FRT for motor vehicles of course, the President might remind us of confining our speeches to the repeal of the Order as our discussion today is on repealing the

Order. However, we must first discuss the issue of principle because we think this Order, namely to increase the FRT for motor vehicles as a policy to relieve traffic congestion, can simply not administer the right cure. It is a mistake in principle. This is why the Democratic Party has proposed to repeal the Order. This is why we consider that this is a "three-not" policy, for it is not reasonable and not fair.

I consider this initiative not fair because the Government has put all the blame on owners of new private cars, but actually, traffic congestion is very often not caused by private cars. I also consider this initiative not environmentally-friendly because many people will decide not to purchase new cars as a result of this tax increase. Moreover, they may continue to use old or second-hand cars, thereby making air pollution increasingly worse. Under such circumstances of course, we will present more data to prove that the Government's increase in the FRT for motor vehicles is basically a mistake.

As I mentioned just now, increasing the FRT for motor vehicles cannot reduce the number of motor vehicles. Members may wish to look at the figures provided by the Government. During the past years, a relative marked change in the figures of private cars first registered could be seen in two of the years. One was 2003, when the figure of private cars first registered saw a drop of 25% compared to the previous year. Some people may attribute the fall to the fact that the Government happened to increase the FRT that year. However, Members should also recall that there was an outbreak of SARS in 2003. As a result, Hong Kong economy was extremely volatile and worrying. The dwindling of the desire to purchase new cars back then was inevitable. Apart from this, in 2009, the number of private cars first registered recorded a 17.9% fall, also a double-digit fall, over the previous year, which was attributed mainly to the Lehman Brothers incident and the financial tsunami, as there was no increase in the FRT for motor vehicles that year. Hence, a fall in the number of private cars first registered has absolutely nothing to do with an increase in the FRT for motor vehicles.

Meanwhile, some trade associations have indicated to us that, after the increase in the FRT for motor vehicles, members of the public may not purchase new cars but they may turn to imported second-hand private cars. The figures of imported second-hand private cars have more than tripled from more than 3 000 in 2007 to more than 9 400 in 2010. In other words, an increase in the FRT for

motor vehicles will only lead to the import of more second-hand private cars into Hong Kong, and this will affect our environment. Hence, increasing the FRT for motor vehicles will not help reduce the number of private cars. This explains why we consider the Government's initiative not reasonable.

We also consider the Government's initiative not fair because the Government points out that, compared to last year, vehicle speeds recorded a drop of 7% and 5% this year in the New Territories and urban areas respectively. Actually, there is no need for studies. Everyone knows that traffic congestion is attributed to the uneven utilization of the three harbour crossings, namely the West Harbour Crossing, the Cross Harbour Tunnel and the Eastern Harbour Crossing. This also explains why vehicle speeds in the urban areas recorded a drop of 5%.

On the other hand, some people have mentioned that the vehicle speed in the New Territories dropped 7% compared to last year. Perhaps the Government has not mentioned the fact that the people of Hong Kong have found it increasingly hard to afford living in the urban areas. Moreover, the Chief Executive has also appealed to them to move to the New Territories. What I am talking about is migration of the population, and I can also quote a figure to illustrate this. The total number of permanent buildings in the New Territories was 1.28 million in 2007, but it rose to 1.31 million in 2009. In other words, more and more people live in the New Territories. The growth in population will naturally lead to growth in motor vehicles. Therefore, the reduced vehicle speed in the New Territories is also inevitable.

Of course, many people will suggest using public transport instead of driving. Moreover, the Government often appeals to members of the public to use public transport. However, it was announced yesterday that taxis would raise fares. Coupled with the fare increase by the MTR Corporation Limited earlier, people have to pay more and more in using public transport. As a result, more and more people may be forced to turn to driving their own cars. It is not reasonable that the Government has basically not administered the right cure and shifted the responsibility to private car owners instead.

Third, we consider the Government's initiative not environmentally-friendly because when we review the Motor Traders Association of Hong Kong (HKMTA) once mentioned that approximately

150 000 private cars found in 2009 were registered in or before 2000. These old cars, which have been on the road for more than 10 years, will cause air pollution on the road. According to the HKMTA, if the 40 000 or so old vehicles of more than 10 years of age can be replaced by Euro IV vehicles, the pollutants currently emitted by private cars, such as suspended particulates, can be reduced by 12%, and the volatile organic compounds reduced by 28%. In other words, the more old vehicles are eliminated, the better environmental pollution can be mitigated. However, the environment will become even more polluted if more people use old vehicles as a result of an increase in the FRT for motor vehicles. It is therefore not environmentally-friendly to do so. Hence, the Democratic Party opposes in principle using the increase in the FRT for motor vehicles as a tactic to relieve traffic congestion, as we consider this a policy mistake made by the Government.

Of course, it has been proposed I also heard similar views expressed over the issue of increasing tobacco duty. Many colleagues here echo that, insofar as the fundamental principle is concerned, they too disagree that increasing the FRT for motor vehicles can relieve traffic congestion. Nevertheless, like the repeal of the Order on increasing tobacco duty will cause confusions, the repeal of this Order will likewise cause confusions. This is why some colleagues do not support the repeal of the Order.

I hope colleagues will understand that, as a result of repealing the Order related to increasing tobacco duty, the tax refund might fall into the hands of tobacco traders rather than smokers. However, there is no such problem with private cars, as the Government can definitely locate their owners. In fact, motor vehicle owners had received a tax refund before. Hence, unlike the problem with increasing tobacco duty, there is no question of failing to locate taxpayers or give them a refund.

In a letter addressed by the HKMTA to the Legislative Council on 28 April, it mentions before the end of the letter that "the HKMTA must declare clearly that we oppose the repeal of the Order but we also oppose the Government increasing first registration tax". What reasons has the HKMTA given? Of the several reasons put forward by the HKMTA, I would mention two of them in particular. The HKMTA points out that "as vehicle owners registered in the future may be exempted from paying 15% of the FRT as a result of the repeal of the order, the Government will have to recover the payment should the motion on

increasing the FRT by 15% be unfortunately passed in the future, thereby wasting substantial administrative manpower and resources." This is one of the viewpoints put forward by the HKMTA.

The HKMTA also points out that "should the motion on increasing duty be passed, the Government will have to recover tax paid in a lump sum from owners who are exempted from paying additional duty for the time being, thus exerting pressure on vehicle owners in making immediate payment". These are the two reasons advanced by the HKMTA in opposing the repeal of the Order. Nevertheless, I do not entirely understand this: How will the Order, if repealed, give rise to any problems should the bill related to increasing the FRT for motor vehicles be vetoed by Honourable colleagues? Today, I wish to ask Honourable colleagues this question: Will Honourable colleagues disagree in principle with the Government increasing the FRT for motor vehicles? Should they object in principle, how will the relevant bill be passed by the Bills Committee? If we can repeal the Order, thus leading to the vetoing of the bill, how come the Government will have to recover tax paid from some vehicle owners, as pointed out by the HKMTA? I do not entirely understand its logic.

In my opinion, if we practise what we preach by repealing the public revenue protection Order on motor vehicles FRT while vetoing the relevant bill, then we will be able to achieve consistency and prevent the Government from implementing this unreasonable policy. This is the most important point. Therefore, I hope Honourable colleagues can examine clearly if the present arrangement for repealing the Order will really cause confusions in the market. I do not think such confusions will occur. Hence, I hope Members can support my motion to repeal the Order. Later, I will also propose the arrangement for vetoing the bill to be tabled later. I hope both of my proposals can be passed, such that the Government cannot implement this policy considered unreasonable by us. Thank you, President.

Mr KAM Nai-wai moved the following motion:

"RESOLVED that the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011, published in the Gazette as Legal Notice No. 33 of 2011 and laid on the table of the Legislative Council on 2 March 2011, be repealed."

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I wish to state from the outset that the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order), which Mr KAM Nai-wai moved a motion to repeal, and the relevant bill under the scrutiny of the bills committee concerned are two different matters. President, you have already reminded us of this in the previous debate. In fact, the proposal to repeal the Order has been discussed in the Subcommittee established to scrutinize the Order and it was not supported by members of the Subcommittee.

The Financial Secretary proposed in the 2011-2012 Budget that the rate of each tax band for the First Registration Tax (FRT) for private cars be increased by about 15% to curb the growth of private cars and ease traffic congestion. To effect the proposal, we introduced a bill into the Legislative Council on 13 April to formally amend the FRT for private cars. This bill is currently being examined by the bills committee concerned.

The objective of the Order is to protect public revenue and maintain the smooth, clear and orderly operation of the market by giving temporary effect to the proposal in the bill. The Order was made by the Chief Executive under the Public Revenue Protection Ordinance after consultation with the Executive Council to give immediate effect to the proposal on the day the Budget speech was delivered, that is, at 11 am on 23 February 2011. The Order, with a four-month effect, will lapse on 23 June 2011, during which all private cars registered for the first time are subject to the FRT rates proposed in the Bill.

We believe that it is necessary to pass the Order to give temporary effect to the bill. In fact, as a usual practice, the Government introduces the Public Revenue Protection Order to guard against tax evasion activities during the transitional period. It has been the practice for FRT adjustments proposed in the Budget in the past that the Public Revenue Protection Order would be introduced to guard against tax evasion activities. If the proposal is not implemented immediately upon announcement, many vehicle buyers will advance their purchase in anticipation of the tax increases, thus resulting in revenue loss and defeating the objective of containing the growth of private cars.

Mr KAM Nai-wai's proposal to repeal the Order will cause confusions. If the Order is repealed before the scrutiny of the Bill is completed, car owners who register their cars for the first time have to pay the FRT at the old rates and the newly passed rates respectively during the period between the repeal of the Order and the end of the bill's deliberation, as well as the time after the completion of the scrutiny of the bill. Such a complicated situation of different FRT rates for private cars during the aforementioned short period of time will cause disputes, confusions and inconveniences to buyers and the trade.

Moreover, even if the Order is repealed before the Bill's scrutiny is completed, the difference between the tax collected at the new rates proposed in the bill and the tax collected at the original rates during the time between the commencement of the Order and the repeal of the Order will still not be refunded to the buyers until the deliberation of the Bill has been concluded. If the Order is repealed and the Bill is passed, then the Government will have to recover from the buyers taxes which have not been paid. This will also cause confusions and inconveniences in the market.

Having heard my remarks so far, do Members find the situation very complicated? It is very complicated indeed.

Let me explain it briefly once again. First of all, before the Budget proposed to increase the FRT, we had a set of old tax rates. Subsequently, the Order was gazetted on 23 February to charge the new tax rates. From that day onwards, for all new cars to be registered at the Transport Department, their owners have to pay the tax at the new rates. However, a Member has now proposed to repeal the Order. If it is passed, it means that the Order will have no effect. In that event, newly registered private cars will be charged at the old rates again but no action to refund or recover the tax will be taken immediately. Rather, it will be in the end, when the deliberation by the bills committee concerned has been concluded that we will recover the differences according to the new tax rates passed from those who have registered their cars for the first time during the period. The result is that this will cause great inconveniences to all parties, be it car owners, car companies, people who want to buy or change their cars or the Administration. There will be total confusions as to who should pay the new rates; who should pay the old rates; during what time the new rates should be paid; during what time the old rates should be paid; whether any refund has to be made and whether the difference has to be recovered; when tax recovery

should be carried out or refunds should be made; how much more has to be paid and how much has to be refunded.

Regarding the confusions mentioned just now, in fact, there was also a detailed discussion in the Legislative Council during its deliberations on the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2003. At that time, the collective wisdom was that if the Order was repealed, it would cause confusions to the trade and vehicles buyers as well as operational difficulties. Having considered the consequences and the possible confusions that might be caused if the Order was repealed, the Legislative Council decided that it was inappropriate to repeal the Order.

The abovementioned confusions cannot be avoided unless the Order remains in force. Moreover, the fair refunding mechanism under the Public Revenue Protection Ordinance will ensure that the excess tax collected will be refunded to car buyers and they will not incur any loss in any way.

Based on the said reasons, I call upon Members to vote against the Resolution to repeal the Order. Meanwhile, we will continue to discuss the relevant bill with the bills committee concerned.

I would like to reiterate that the relevant bill is intended to deal with the problem of the rapid growth in the number of private cars at an early date. The deterioration in the traffic situation will have an impact on all road users, particularly public land transport passengers taking buses, minibuses and taxis who make a daily average of about 7.2 million passenger trips. The impact on the general public should not be overlooked. Otherwise, this is neither fair nor reasonable to them.

Thank you, President.

MR WONG TING-KWONG (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Subcommittee), I would like to make a report. For the deliberations on the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order), the Subcommittee has held three

meetings in total and received views from the relevant trade associations and members of the public.

Regarding the proposal of increasing the FRT for private cars by about 15% in order to curb the growth of private cars and prevent deterioration of traffic congestion, the Subcommittee holds that the Administration has failed to provide adequate justifications to support its view that the traffic congestion problem is caused by the growth in private cars. Members of the Subcommittee hold that to tackle the problem of traffic congestion effectively, the Administration should launch a comprehensive plan to ease traffic congestion, instead of only resorting to one single measure of increasing the FRT for private cars. Furthermore, they share the view that the increase in the FRT for private cars may encourage buyers to turn to imported second-hand private cars which cost less. Therefore, they do not think the increase in the FRT for private cars can achieve its desired effect of curbing the growth of private cars. The Subcommittee has also noted that the number of first registrations of imported second-hand vehicles has almost tripled rapidly over the past few years.

The Subcommittee has expressed grave concern about the increase in the FRT for private cars delaying the phasing out of old cars, thus adversely affecting air quality. In this connection, Members have put forward the following proposals:

- (a) granting a tax refund to buyers of newly registered private cars if they have their old cars written off simultaneously;
- (b) exempting buyers of approved environment-friendly petrol driven private cars from the FRT increase; and
- (c) increasing FRT concessions for these vehicles.

The Subcommittee proposes that buyers who have placed orders for private cars before the proposed FRT increase took effect but have not yet registered the new cars should be exempted from the FRT increase.

As the deliberations of the Subcommittee have been set out in detail in the report submitted to the House Committee, I will not repeat them here.

President, below are the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and me.

President, being a motorist, I would like to declare to this Council that I have a private car. As every motorist knows, it is most disgusting to find serious traffic congestion during the peak hours when cars can hardly move. The journey time for a traffic congestion black spot in Central when we drive to the Legislative Council to attend meetings every day is several times longer than the normal journey time. I believe Members are already accustomed to such situations.

According to the figures provided by the Government, the number of newly registered private cars in 2010 had soared by 45% over that in 2009. With the year-on-year growth rate of the total number of private cars standing at 5.4% and their road occupancy rate of up to 40%, the speed of motor vehicles has been slowed down by 5% on average. The Government has also emphasized that if the growth of private cars is not arrested, the problem of traffic congestion will only continue to worsen. However, it seems to me that it is unfair for the Government to blame the traffic congestion problem on the rapid growth of private cars.

To start with, there are also other modes of transport on the roads. In particular, during the peak hours, the queues formed by buses waiting to pick up/drop off passengers at bus stops already occupy a lot of road surface and waste a lot of time. According to the projection made by stock critic, David WEBB, by citing the figures provided by the Transport Department, the total distance covered by private cars in 2009 was approximately 4.5 billion km, a mere 1.1% increase over 2000. On the contrary, the distance covered by taxis and buses had increased by 15.6% and 11.4% respectively.

Furthermore, it is clear to all that the Cross Harbour Tunnel (CHT) has a serious traffic congestion problem. In 2009, the usage of the CHT by private cars was 36%, which was relatively small compared with other modes of transport, for the usage of the CHT by taxis and lorries was 48%. This shows that the actual situations reflected by different data are different. There are all sorts of interpretations, so to speak.

Furthermore, a number of vehicle owners are actually "holiday drivers", who drive mainly for family fun as well as the convenience to take their family members to the countryside.

In fact, the DAB does not entirely negate the effort to curb the growth of private cars. However, without sufficient justifications, the Government has resorted to levying tax in order to exercise control by increasing the FRT again, putting the onus of resolving the traffic congestion problem on private cars alone. Not only has the Government failed to prescribe the right remedies, it has also failed to give holistic consideration to other improvement methods, such as realigning bus routes, resolving the uneven flow of vehicles at the three harbour crossings, expanding the public transport networks, lowering fares for modes of public transport, considering electronic road pricing, and so on. If the Government merely considers increasing the FRT for private cars, the problem would only continue to remain, and it does not serve to resolve the problem at all.

The sale targets of the lower and medium priced vehicles, which are most affected by the FRT increase, are also middle-class people. All along, the middle class has been enjoying limited social benefits. When things are getting more and more expensive nowadays, these people are once again made to bear the pressure exerted by the increase in tax. It can be said that their burden has become even heavier. Hence, the increase in the FRT will make them consider: First, shelving their plan to purchase new vehicles and retain their old ones; or second, turning to imported second-hand private cars which levy less FRT. I believe the impact on the luxury vehicles bought by the rich is very limited because, for these rich vehicle owners, the FRT increase is negligible.

Under such circumstances, the FRT increase will only ultimately lead to a "three-lose" situation. Firstly, the middle class has to pay an exorbitant tax. Secondly, the number of vehicles will not be reduced, and so the Government's objective of increasing tax to resolve the traffic congestion problem cannot be achieved. Thirdly, the principle of environmental protection will be defeated. As the speed of replacing old vehicles with new ones slows down, the roads will be crammed with old vehicles, and this will not help ameliorate air pollution. As a result, the public at large has to continue to bear with the noxious smog at the roadside.

Furthermore, some people in the trade have reflected that after the announcement of the FRT increase, there have been successive cases of buyers

forfeiting their deposits and bargaining, causing an estimated 20% loss in business, and some vehicle owners even face liquidity problems. In the light of the move made by the Government to increase the FRT when the economy has just slightly recovered and business prospects have only slightly improved, the trade can only heave a sigh. What is more, they can only hope to make up for their losses with the business opportunities possibly arising from the sale of imported second-hand motor vehicles as a result of the FRT increase. However, this will also cause more damaging pollution to the environment.

President, although the DAB finds it hard to ascertain the effectiveness of using an FRT increase as one of the means to ameliorate traffic congestion, the "negative" impact estimated to be brought by this move is very obvious. Therefore, the DAB hopes the Government can enhance the relevant measures by considering whether three categories of persons, including vehicle owners who have paid deposits before the announcement of the measure, vehicle owners who replace their old vehicles with new ones and persons who purchase specified environmentally-friendly models, can be exempted from the increase in the FRT in order to alleviate the impact brought about by the increase.

President, the DAB does not consider it appropriate of Mr KAM Nai-wai to propose repealing the Order because it is just a temporary measure. In the event that the Order is repealed, the FRT will be charged at the old rates as before the commencement of the Order. There is however no immediate refund in respect of the excess tax collected during the period when the Order was in force. Furthermore, as the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011 (the Bill) is currently being scrutinized by this Council, if the Order is repealed and in the event that the Bill is subsequently passed by the Legislative Council without amendment, the Administration will have to recover the FRT underpaid for the period from the date of publication of the resolution repealing the Order to the date of enactment of the Bill. If the Bill is not passed by the Legislative Council, there will be a refund of the excess tax collected during the period when the Order was effective up to the time of repeal.

In addition, repealing the Order before the deliberation on the Bill is completed by the Legislative Council or before the outcome of the Bill is known will invite speculations, cause great confusions to the trade and vehicle buyers and pose difficulties in administration.

On the other hand, if the Order remains in force, any excess tax collected under the Order will have to be refunded in the event that the Bill is subsequently passed with tax rates lower than proposed or not passed at all.

Therefore, the DAB supports allowing the Order to remain in effect and hopes that the Government can study in detail the feasibility of the abovementioned proposals during the deliberations on the Bill.

President, I so submit.

MS MIRIAM LAU (in Cantonese): President, I am absolutely clear that we are now discussing the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order), and I will confine my speech to the proposal of repealing the Order, that is, the resolution proposed by Mr KAM.

The objective of the Order is to keep market transactions clear, smooth and orderly during the period from the Financial Secretary's announcement on 23 February of increasing the FRT for motor vehicles to the passage or rejection of the proposal by the Legislative Council through the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011 (the Bill).

The relevant bills committee of the Legislative Council is currently racing against time in scrutinizing the Bill, which must be put to a vote, regardless of whether Members will vote in favour of or against the Government's proposal to increase the FRT. Repealing the Order today can simply not achieve the effect of vetoing the FRT increase. The Liberal Party has all along considered the Government's justifications for increasing the FRT for motor vehicles unconvincing. Various figures reveal that the growth in the number of private cars bears no direct relevance to traffic congestion. Moreover, the effectiveness of curbing the number of private cars has also been called into question. Notwithstanding this, we do not support repealing the Order at this stage. I must emphasize here that our opposition to repealing the Order does not mean that the Liberal Party supports the Government's proposal to increase the FRT. We are still scrutinizing the Bill in the bills committee in the hope of getting a better idea of whether or not the Government has more data to support its argument. As we believe repealing the Order is not tantamount to putting the FRT to a final vote, we must consider the benefits or negative effects brought by retaining or

repealing the Order. According to our analysis, repealing the Order will have no effect in forestalling the Government's proposal to increase the FRT, as the bills committee is still discussing the proposal, which will not be put to a vote until later. On the contrary, repealing the Order will complicate the matter, cause confusion to the market, bring more trouble to the trade, create unnecessary administrative work and trigger disputes. Neither can we see any benefits for consumers.

According to the provisions of the Public Revenue Protection Ordinance, even if the Order is repealed, the excess tax collected will not be refunded immediately to vehicle owners who have paid the tax at the new rates. They have to wait until the Bill is voted for or against in the Legislative Council. Of course, some people will say — Mr KAM will also say so — that if the Order is repealed, at least vehicle buyers do not need to pay the new tax during this period, and they can benefit by buying vehicles at the old tax rates. I believe it is just a fancy misunderstanding, as the Bill has retrospective effect. In the unfortunate event that the Bill is passed, the unpaid tax subsequent to the repeal of the Order will be recovered from the relevant vehicle owners. Moreover, there is no way they can escape. As for cigarettes, I have pointed out many times that there is no way for the Government to verify the person who has bought a certain packet of cigarettes. However, there is absolutely no way for vehicle owners to escape as all files are kept in the Transport Department. By then, the Government, car dealers and relevant vehicle owners will all be in great trouble. What is more, unnecessary disputes will arise. Of course, we might take it for granted if repealing the Order only brings trouble to the Government. However, the Order, if repealed, will cause trouble to everyone, including car dealers, vehicle owners, consumers, and so on.

I have twice consulted the trade, including the Motor Traders' Association of Hong Kong (HKMTA), Right Hand Drive Motors Association (Hong Kong) Limited, Hong Kong Automobile Association and associations related to the automobile trade on the Government's proposal to increase the FRT and the Order. The position of the trade is very clear. They oppose the Government increasing the FRT for motor vehicles and, at the same time, they unanimously oppose repealing the Order.

Mr KAM mentioned in his speech just now that the HKMTA had issued a letter to Honourable Members, and he also read out two sentences from the letter.

In order to give Members a better understanding of the views of the automobile industry or car dealers on the repeal of the Order, I shall read out the contents of the letter to give Members a clearer idea. Hence, I will quote the contents of the letter to this effect: "The HKMTA strongly opposes the motion proposed by a Member to withdraw the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011. In our opinion, this move will not bring any convenience or benefits to our customers; on the contrary, it will lead to more misunderstandings, causing unnecessary disputes and trouble in various quarters.

If the Order is repealed:

- (a) Vehicle owners registered during the period between 23 February and the date of repeal of the Order may mistakenly think that the extra 15% tax payment already made will be refunded immediately and thus request car dealers for an immediate refund. Hence, car dealers have to do a lot of talking to explain to every vehicle owner, as there will be no immediate refund from the Government at this stage.
- (b) Although vehicle owners registered after the repeal of the Order will be exempted from the extra 15% tax payment, the Government will have to recover the extra payment from every vehicle owner in the future in the unfortunate event that the motion on increasing the FRT by 15% is passed, thereby wasting a lot of administrative manpower and resources.
- (c) In the event that the motion on increasing the FRT is passed in the future, the Government will recover the FRT payment in a lump sum from vehicle owners who are temporarily exempted from paying the extra FRT, thereby exerting pressure on vehicle owners to make immediate payment.
- (d) Neither car dealers, vehicle owners nor the Government receives any benefits in the entire process." (End of quote)

Just now, I heard Mr KAM say very clearly that if the proposal to increase the FRT for motor vehicles is not passed, the problem of recovering tax by the Government will not occur. I am afraid this is probably Mr KAM's fancy

misunderstanding. Although Mr KAM and individual Members may not support this proposal, whether or not this proposal will be passed is not a matter for Mr KAM and individual Members to decide. Instead, we have to wait until the Bill is put to the vote after its resumed Second Reading for a decision to be made on its passage or otherwise. According to Mr KAM, the matter can be solved so long as we present a united front. However, there is no way to tell how united we are. The automobile industry was greatly shocked on hearing this. In the event that this situation really arises, I believe they will be reluctant to spend a lot of time negotiating with their customers because they will then be unable to do business.

However, Mr KAM will be praised for being the "champion of the people's cause" should he succeed in repealing the Order. But the question is: Who are those "people"? I will briefly discuss this later. The industry as a whole, however, will have to pay an enormous price after he has made himself the "champion of the people's cause". Of course, vehicle buyers who have already made payment will immediately recover the excess tax paid from car dealers upon the repeal of the Order. If we can veto the proposal to increase the FRT subsequently, the possibility of recovering tax not yet paid from the relevant vehicle owners will cease to exist. However, the possibility will become a reality should Members fail to veto the proposal to the increase FRT after the vote. Who will bear the responsibility in the end? The responsibility will fall on the industry.

Just now, the Secretary described the complexity of calculations and the calculation method in a lively manner. I believe we should really reconsider whether or not we should act in this way in the light of such a grave concern expressed by the entire industry as a result of the proposal to repeal the Order today. It is not our subjective wish that the Bill will definitely be passed if it is not supported. I think the final result will be known only when the Bill is put to the vote during its resumed Second Reading debate.

I have discussed with the industry on two occasions and read their letters. I find its concern and misgivings most reasonable. At the forefront of the industry, they are in the best position to gauge the market conditions, the mentality of their customers, how their customers will deal with these issues and the response of their customers. Repealing the Order will do no good to consumers. What is more, it might send out a wrong message to give people an impression that the old tax rate will definitely be reinstated and so, they should

hurry up to purchase vehicles as there is no need to pay the 15% new tax. Actually, we disagree that people should hasten to make car purchases because they must be very cautious. They should not make the purchases because of low prices. Repealing the Order gives people the wrong impression that they should hurry up to purchase vehicles, for if they do so later, the prices might not be so low because of possible tax increases. This message is really wrong as it impresses people that they should purchase vehicles in a hurry in order to pay less tax. However, should the possible scenario I mentioned just now occur in the future, resulting in the passage of the original bill or amendment(s) as Members should have learnt that some political parties have proposed that relevant amendments be made by the Government, though what will happen is still unknown for the time being. In the event of the passage of a certain motion — be it the original bill or an amendment — such that tax has to be recovered from consumers all of a sudden, there will definitely be disputes with car dealers. This is not what we and car dealers would like to see. There are already too many disputes in our community. We need not provide more opportunities for such disputes to arise.

There are just several weeks to go before the Bill is to be put to the vote. If consumers disagree with the new tax rate, they should wait until the passage or otherwise of the Bill before deciding whether or not they should buy a car. In the event that the Bill is not passed, everyone will be pleased and consumers can then buy their cars. Even if the Bill is passed, consumers can still evaluate if it is worthwhile to buy one. They enjoy full autonomy to do so. We must refrain from repealing the Order to confuse consumers, as they have no idea whether the situation is temporary or permanent and so they might have false hopes. I think we need not and should not do so.

The Bill will still be debated and put to the vote if it is introduced into this Council for debate a few weeks later, regardless of whether amendments will be made. By then, both the industry and consumers will have a clear idea and absolutely no confusion of whether the Government has to make a tax refund, whether vehicle buyers have to pay the new tax rate and the amount of new tax to be paid. We find this arrangement more appropriate and in line with the intent of the Order, namely the hope to keep market transactions clear, smooth and orderly before the proposal of increasing the FRT for motor vehicles is put to the final vote.

For the reasons mentioned, the Liberal Party opposes the resolution proposed by Mr KAM Nai-wai.

President, I so submit.

MR RONNY TONG (in Cantonese): First of all, President, I declare that I am a car owner. Therefore, I might have a conflict of interest.

President, each revenue measure must have a clear and specific social interest goal. Like the issue of increasing tobacco duty we debated just now, our concern is the social culture, particularly the culture of young people's habits, and the overall health conditions of members of the public.

The objectives of the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order) proposed by the Government are improvement of traffic condition, reduction of the number of vehicles and improvement of air quality. However, these objectives are actually very ambiguous. Let me begin with a few words on the number of motor vehicles and traffic condition.

President, since the colonial era, there have been countless increases in the FRT for motor vehicles. But unfortunately, such increases have failed to produce any impact on the rising number of motor vehicles in Hong Kong. The greatest effect achieved so far is just an extremely short "buffer period". Like tunnel toll increases, increases in the FRT for motor vehicles will be forgotten by Hong Kong people very quickly because many rich people do not care whereas some poor people regard motor vehicles as necessary transport. Therefore, I do not consider the Order proposed by the Administration in order to improve the number of motor vehicles or traffic condition a convincing excuse (even the Government itself might not find it convincing).

President, the improvement of traffic condition and air quality is also a questionable objective. Honestly, even the Government's data show that the most important factor affecting air quality in Hong Kong is the failure of many modes of public transport in Hong Kong, including buses, commercial vehicles, and so on, to meet international environmental standards. If the Government is genuinely sincere in improving roadside air quality in Hong Kong, it should accept the proposal advocated by the Civic Party all along, that is, to allocate

resources to assisting bus companies and the commercial vehicle sector in switching to greener models or heed the proposal made by public light bus drivers to allow their buses to carry more seats and allow them to immediately switch to models compliant with international environmental standards.

Though such measures do not require the Government to put in too many resources, they can be greatly effective in improving roadside air quality in Hong Kong. However, the Government is reluctant to accept the relevant proposals. Preferring a cash handout of more than \$30 billion, the Government is unwilling to put in a small amount of resources to improve air quality in Hong Kong. This explains why when the Government made the proposal of increasing the FRT for motor vehicles, it gave people an impression that it was just pretending by proposing some bogus objectives.

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

Deputy President, I think the most important issue is what objectives we hope to achieve through repealing the Order and whether doing so will lead to even greater confusions. Deputy President, this is precisely our greatest concern. By simple logic, we know that even if the Order is repealed the move to repeal the Order appears to be unnecessary should the bill on increasing the FRT for motor vehicles be eventually passed. If the majority of Honourable colleagues in this Council do not support increasing the FRT by then, the Government naturally has to refund the excess tax collected to members of the public. What we are talking about is just a waiting period a month or two. As explained by the Secretary just now, even if the Order is repealed now, it does not mean that the tax already paid by users can be refunded immediately.

Deputy President, what we are talking about is probably a period of one or two months. As stated by Ms LAU just now, members of the public may decide for themselves whether it is really necessary for them to replace their motor vehicles immediately during the period.

Deputy President, if repealing the Order will cause unnecessary trouble to the industry and instant and specific benefits will not be brought to vehicle owners, then why is it necessary to create more confusion at this stage to cause

inconvenience to the industry without giving vehicle owners instant and tangible benefits?

Deputy President, we really cannot see any reasons for us to support repealing the Order at this stage.

MR WONG SING-CHI (in Cantonese): Deputy President, the motion moved by Mr KAM Nai-wai is definitely meaningful, but the thinking of many Honourable colleagues is dominated by that of the Government. The Deputy President was also like this when she spoke just now. I think Members all lack resolve when they think about this matter and they are not lobbying actively according to what they ultimately wish for. Rather, they vacillate and worry about this and that. This is very simple, Deputy President. As you pointed out, if we are steadfast and think that the increase in the Motor Vehicles First Registration Tax (FRT) is unreasonable, we should think of ways to vote against the FRT increase, so that the Government will withdraw the Order.

Deputy President, in opposing the increase of 15% in the FRT, in fact, we have three opportunities. The first one presented itself after the Financial Secretary had delivered the Budget on 23 February and it was found that it was not true that the Budget could not be revised. After the proposal to inject funds into Mandatory Provident Fund accounts had been lambasted, it was changed to a cash handout of \$6,000, so it is possible to revise the Budget. Therefore, when the first opportunity arose, we also hoped that the Financial Secretary could withdraw the proposal to increase the FRT, but our proposal was not endorsed.

This is now the second opportunity. To repeal the Order is the second opportunity. If all of us in the Legislative Council today are determined to repeal the Order or a majority of Members of course, in the end, it may still be impossible to repeal the Order because we have to vote in groups. Even though one group gives its support, if the motion is not passed in the other group because one or two more votes are needed, even though a majority is secured in the overall number of votes, if the Resolution is not passed in separate voting, it still will not be possible to repeal the Order. However, this will show to the Government that actually, there are many people who are opposed to it. For example, if the result is 32 Members versus 26 Members but in the functional constituency group, the motion cannot be passed, and consequently, even though

it is passed in the geographical constituency group, it is useless. But on seeing the voting results, the Government will know that things do not bode well for it. It is practically impossible for the motion to be passed if a vote is really put on it. It is in such circumstances that the Government will consider withdrawing the Order or making greater concessions in the bills committee concerned.

However, today, we have tied our own hands and even those Members who said vocally that the tax must not be increased and that increasing the FRT will add to the already onerous burden of the public have also done the same. In the past few days, I could not hear any Member say aloud, "The Government is really terrific. Increasing the FRT is really great and I will surely support you.". I have not heard such comments. Deputy President, when you spoke just now, you said you were not sure if any Member would support the Government in increasing the FRT by 15%, but I really have not heard anyone say so. If any Member supports the Government, let us talk about this together, so that the Government can count the votes. However, there really is none and even Mr WONG Ting-kwong of the DAB also said aloud that increasing the FRT was mutually detrimental and would only bring about an all-lose situation.

Deputy President, I wonder if you also think so, but it is possible that throughout, Members present here do not think that things will really turn out this way and they do not really oppose the Government increasing the FRT by 15%. They are only saying this aloud with a view to getting something in exchange. I wonder if this is the case. If it is, then no wonder that Members all lack determination. I think they do consider the FRT increase unfair, unreasonable and environmentally unfriendly, so I still hold a little hope that they will make a volte-face.

Therefore, Deputy President, what is being discussed now is not the grounds. The discussion on the grounds ended long ago. I really have not heard anyone say that the Government's measure to increase the FRT is a right step. If anyone has, I call on him or her to say so when speaking later. All people say that this is not right. However, although all people think that this is not right, no one did anything at the first opportunity, the second opportunity or the third. They only think they would negotiate with the Government when the third opportunity arises. Therefore, Deputy President, I think some political parties and Members do not have the determination to right the wrong done to

private car owners and vindicate them of the Government's false accusation that they cause traffic congestion. They only want to up their ante by opposing the Government's increase in the FRT vocally for the sake of their political parties' interests or views. If this is the case, it would really be disappointing.

Deputy President, no matter how, the Democratic Party will continue to oppose the FRT increase. I hope the Liberal Party will also continue to oppose it, since it has to be accountable to the relevant trades. Moreover, since the DAB also said vocally that this would lead to an all-lose situation, they should also continue to oppose it. I hope the Civic Party will also do the same and continue to oppose it if it believes that something is wrong. I can even hear a lot of people from various political parties say that they also oppose it now. This being so, we had better declare our positions now and demand that the Government withdraw the Order because it will not be able to secure enough votes. But Members have not done so. Obviously, they all have their own hidden agenda. I hope car owners and the public can watch clearly who will make a volte-face and who will think at the crucial moment that this measure of the Government can be supported. I hope political parties and Members will not make a volte-face so easily and disappoint the public.

Therefore, if Members are not going to make a volte-face today, what is the harm of supporting the motion moved by Mr KAM Nai-wai to repeal the Order? Members all cite such grounds as causing confusions, not knowing how to refund the tax already paid in the future, and so on, as excuses. Frankly speaking, if the Order is repealed today, I do not believe that the legislation to increase the FRT by 15% can be passed. If the Order is successfully repealed today, I am sure the Secretary will withdraw the bill immediately. Would he take any further risk? In these circumstances, how could there be any administrative confusion? In this way, from today onwards, all people buying cars will not have to pay this additional 15% in FRT.

Maybe some people would say: What about those people who have already paid? For those who have already paid, no matter how, they cannot get the money back today. Even if the Order is successfully repealed and the Government withdraws it today, the tax will have to be refunded gradually. Therefore, this will not cause any serious confusion at all. However, some Members still think that at the last minute, they want to serve as a Member of the royalist camp and support the Government in increasing the FRT by 15%. It is

on account of such thinking that some people are worried about causing confusions.

Deputy President, if, in the end, the majority of political parties and Members "accept the goods" after some tinkering has been done, the confusions will not be caused by this motion moved by Mr KAM Nai-wai to repeal the Order, rather, they will be caused by the volte-face made by Members. If Members do not make a volte-face but put in place proper administrative arrangements for refunding the tax, even car dealers will not experience any confusion.

Therefore, I hope that those Members who speak later on will continue to debate this matter, but please do not say that repealing the Order will cause administrative confusions anymore. This will not be the case at all. What will cause confusions is your volte-face, saying now that you oppose increasing the FRT by 15% but when the motion is finally put to the vote, you make a volte-face and support the Government, making it possible for the Government to increase the FRT successfully. This is what will create confusions.

Deputy President, I hope that people who continue to voice their opposition to this motion moved by Mr KAM Nai-wai to repeal the Order will state clearly later on if, at the final stage of dealing with this motion, they will still consider supporting the Government in increasing the FRT by 15%. If they will, it does not matter, but they should speak up and discuss this with other Members. All of us have to watch clearly which Members will really persevere in opposing this unfair, unreasonable and environmentally unfriendly tax increase proposal. Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, what is being discussed at this stage is the motion moved by Mr KAM Nai-wai to repeal the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011. It is the same in nature as the motion on tobacco duty moved by Mr Albert CHAN earlier. However, the President pointed out just now that when we discuss this motion on repealing the Order, we should focus on the relevant Protection Order rather than referring frequently to the formal legislation, which will be discussed only several weeks later.

However, Deputy President, I believe you will also understand that during discussions, it is really difficult not to touch on the formal legislation to be

discussed a few weeks later. The speech delivered by Mr WONG Sing-chi just now deals with precisely the same matter, that is, Members were asked to state clearly in their speeches whether or not they would change their stance and eventually switch to supporting the Government when discussing the formal legislation. For this reason, I believe a clear account must be given in this regard.

According to the Government's explanation, the reason for proposing an increase of 15% in the FRT is the sudden surge in the number of private cars registered for the first time, which has led to traffic congestion. However, both the Civic Party and I are not convinced for the time being that the number of cars registered for the first time contributes to traffic congestion. Moreover, I think there is the suspicion that the Government is juggling with figures. Why? The Government pointed out that the number of private cars registered for the first time was 41 240 in 2010, a surge of 45% compared with the previous year. On hearing this, it appears that the increase was really substantial. Next, the Government cited the figure for 2008 in comparison, pointing out that this figure had increased by 20%, so apparently, this increase is also alarming. However, often, we have to study the figures provided by the Government very carefully because the authorities often cite figures that are favourable to them without giving a clear account of the underlying truth.

Take this instance as an example, in fact, the number of cars registered for the first time saw a drop in 2009. If we compare the figure for 2009 with that for 2008, we can find that not only was there no rise in the number of vehicles registered for the first time, on the contrary, there was even a significant drop. In 2009, the number of vehicles registered for the first time was 28 000 whereas in 2008, the number was close to 35 000, so the drop was about 18%. The total number of private cars, including second-hand ones, was 394 000 in 2009, and compared with 383 000 in 2008, the rise was only 3%. It is only necessary for one to make comparisons with the figure for 2008 released by the Government to find out that the total number of private cars actually increased only by 2% to 3%, so it is really difficult to blame all the traffic congestion or the traffic congestion this year on private cars.

Mr David WEBB has provided quite a lot of figures to us. If we compare the number of private cars in 2000 with that in 2009, it is true that the relevant

figure rose by 17.7% but in terms of their road usage, the increase in these nine years was only 1.1%. However, the increases in road usage by buses and taxis in the same period reached 11.4% and 15.6% respectively. In other words, the amounts of time that buses and taxis use the roads are far greater. Whenever we made enquiries with the Government about these figures, it would always offer the explanation that they were annual averages, saying that insofar as the rush hours were concerned, private cars were indeed the main cause of traffic congestion. When we further asked the Government how it had managed to derive the number of private cars on the road during rush hours from the annual average, the authorities did not offer any explanation. Therefore, the Government is always selective in citing figures.

In addition, the Government also pointed out in a paper submitted by it that inflation is another reason for increasing the tax. As the GDP has increased by 39.9% and inflation by 12.4% since 2003, the FRT also has to catch up with inflation in the same period and be adjusted upwards. This is also misleading because vehicle prices will surely be adjusted upwards according to inflation, so the FRT, which is charged according to tax rates, has also increased due to the increase in vehicle prices, so inflation has already been factored in. The authorities cannot possibly raise the FRT after vehicle prices have been adjusted according to inflation. Otherwise, the salaries tax should also be adjusted upwards according to inflation. This simply cannot hold water. Therefore, when studying the figures released by the Government, if we have any slight lapse in attention, the Government will be able to muddle through.

We have also raised many queries in the meetings of the Subcommittee, for example, on the growth in the number of private cars, we proposed that it be dealt with from the viewpoint of environmental protection by offering a waiver of FRT if a new car is bought in the place of an old car that is scrapped. However, the Under Secretary went so far as to advance the plausible argument that such a measure would not lead to a drop in the number of cars. Deputy President, this is so very typical of "an official speaking with two mouths". Our senior officials in the SAR Government are even more formidable. They all have seven months, saying whatever they like.

Moreover, we also asked if more concessions could be offered for the purchase of environmentally-friendly vehicles, since the purchase of environmentally-friendly vehicles presently is only entitled to an 30% concession

in the FRT. If the FRT has to be raised, is it also necessary to appropriately raise the concession in the FRT for buying environmentally-friendly cars? However, the Government was unwilling to make any undertaking even on such a simple request.

When the Government announced an increase in the FRT in the Budget, in fact, some members of the public had already ordered their new cars but had not yet registered them. When the cars ordered by them are ready for delivery, they will have to register them but due to this government proposal to increase the FRT, they have to pay a sum of tax not factored into their budget, so can the authorities offer exemptions to these people? The Government replied that it was not possible to do so. The aforementioned instances of unfairness make us doubt enormously the government proposal to increase the FRT by 15%.

Another important consideration is that each year, the Government charges many different kinds of taxes, thus making the coffers overflow with money. If the Government has sufficient grounds, that is, on the ground of insufficient funds, to increase the FRT as cars are luxury items, we can still think about this but this time, it is obvious that revenue is not a problem. Increasing the FRT has no impact on the rich, but to members of the public who have to replace their cars, their burden will be increased. Moreover, this measure is also not consistent with the principle of environmental protection because the Government is forcing these people to continue using their old cars.

We believe that if the Government is really so determined to solve the problem of traffic congestion, it should consider implementing the Electronic Road Pricing scheme by imposing charges on cars for using roads in busy areas. Only in this way can this matter be dealt with by targeting the use of roads by cars. From the angle of environmental protection, the authorities can also increase the licence fees for more polluting old vehicles rather than increasing the FRT. In sum, the Civic Party believes that the Government's proposal cannot achieve the goals suggested by it, nor can this approach address the cause of the problem.

On the motion moved by Mr KAM Nai-wai to repeal the Order, the problem does not lie in the lack of active lobbying by the Civic Party and the ultimate possibility that it may change its position because it wants to exchange interests with the Government, as Mr WONG Sing-chi put it. I must state

clearly here that the Civic Party will not engage in any exchange with the Government for the sake of self-interest and it is really from the perspective of environmental protection or traffic congestion caused by the growth in car numbers that we have put forward a series of proposals to the Government. For now, we can only say that so far, the Government has still not accepted our proposals. If the Government is bent on not making any change, ultimately, the Civic Party will not support the Government proposal to increase the FRT by 15%. However, since the scrutiny of the principal legislation is still at the stage of views collection and some groups will still voice their views to us, coupled with the fact that the deliberation has still not been concluded, even though we find the government position most unacceptable at this stage, the final outcome is still unknown. In fact, this matter involves not just the voting inclination of the five Legislative Council Members from the Civic Party but also the voting inclination of some 50 other Members. I wish to tell Mr WONG Sing-chi that no matter how actively the Civic Party lobbies over many other matters, ultimately, we are only a minority in the legislature, so we will not forge ahead rashly. As Mr WONG Sing-chi said, there are many hurdles in this matter and even if one can clear one or two of them, it is useless because it is the last one that is critical to the whole issue. If one cannot clear the last hurdle, all the efforts made at the first two hurdles will be in vain, and quite a lot of confusions will thus be created.

Deputy President, I agree with the views voiced by you earlier on. You cited the letters written by various motorcar trade associations to Legislative Council Members and we have also received them. They represent the heartfelt voices of workers well-versed in the front-line operation of the trade, so we must give them our full trust. Of course, we all know that various groups have different views but when dealing with problems, a balance must always be struck. As Mr Ronny TONG said, we only have to wait for several weeks more, so at this stage, please excuse us for not being able to support this motion on repealing the Order moved by Mr KAM Nai-wai. But it does not mean that ultimately, we will support the government proposal to increase the FRT. Thank you, Deputy President.

MR PAUL CHAN (in Cantonese): Deputy President, I wish to declare my interest. Before the Financial Secretary announced an increase in the FRT, my company had already decided to buy a new car to replace one that had been in use

for 11 years. The new car has not yet been delivered but if this proposal to increase the FRT is eventually passed, my company will have to pay some \$100,000 more. However, since this sum of money has not yet been paid, at this stage, it is not appropriate for me to vote on the repeal of the Order. Therefore, I will not vote today. Thank you, Deputy President.

MISS TANYA CHAN (in Cantonese): Deputy President, in fact, our former party leader, Ms Audrey EU, has already stated the position of the Civic Party clearly and our past discussions with the Government have also given us some revelation. Of course, we all have doubts about the arguments of the Government in proposing this increase in the FRT. I believe all political parties doubt whether or not this tax increase can check the growth in the number of motor vehicles. The Government also tried to cite some examples, such as the situation in 2003. However, if Members look at the records of the more distant past, they will find that one cannot draw conclusions simply by looking at the figures for a couple of years.

Just now, Ms Audrey EU said that the Government cited the figures for 2008 and 2010 but in fact, the figure for the year in between, that is, 2009, is the most important one. Members will all remember that in 2008, the financial tsunami occurred, so the drop in 2009 was quite substantial, that is, compared with the year before, the increase in 2008 was 4.5% but in 2009, the number decreased by almost 18%, whereas the rebound in 2010 was substantial, with a spike of about 45%. We can see that perhaps due to economic factors, there was a time lag in the purchase of vehicles. How great an effect will a single increase in the tax actually have? Judging from the number of newly registered private cars in 2003, we can see that in fact, a trend of gradual increase emerged in the following years. The Government told us frequently that after the tax increase in 2003, the figure dropped immediately by 25% but we can see that the figure for 2004 actually increased by 20% (of course, the base was smaller at that time) and by 2007, the increase in the number of cars reached 30 000. Therefore, even though a rather important tax was raised on the last occasion, the effect on checking the increase in the number of motor vehicles was not pronounced or long-term.

We have read at the Third Comprehensive Transport Study Final Report, in which the increase in overall vehicle number is mentioned. I have a simple table in hand but, sorry, it is very small. It is said therein that at the time of the Sino-British talks, the total number of vehicles saw a decrease, then it edged up

gradually. Therefore, often, the increase in vehicle number cannot be suppressed simply with a tax increase and it may be due to economic prosperity or the economic situation that people will consider replacing their cars. Therefore, even if the tax is raised now, concerning the only ground cited by the Government — to suppress the number of cars, will the equation really work and after the tax increase, will the number of cars be curbed immediately? Judging from past figures, it seems the justifications advanced by the Government are not at all sound. Moreover, the effect may fade within a short time or experience a time lag for economic reasons.

In addition, in this discussion, as pointed out by Ms Audrey EU just now, we also have a lot of concern about environmentally-friendly cars. As we all know, the purchase of environmentally-friendly cars approved by the Government is eligible for a concession and compared with buying expensive cars, in view of the present tax rates, the appeal of this concession has been reduced and it is not as attractive as before. Therefore, we think that this measure to increase the FRT cannot attract people to buy environmentally-friendly cars, nor can we see how it can serve as an incentive. At the same time, as in Mr Paul CHAN's case, we have also come across cases in which deposits had been paid but due to the sudden announcement of a tax increase, additional expenses were incurred, so the people concerned are feeling mostly at a loss.

Frankly speaking, no matter if an expensive or low-priced vehicle is bought, anyhow, one more vehicle will run on the road. If a car really needs to be bought, of course, we hope that it can be an environmentally-friendly one and we hope all the more that after the Government has put in place a measure to encourage the purchase of environmentally-friendly cars, environmentally-unfriendly cars can be removed from the roads at the same time. We hope that environmentally-unfriendly cars will not enter the second-hand market.

As a matter of fact, this kind of "bargain" was also introduced about a decade ago and if a diesel car that had been in use for 10 years was replaced with a new car, a saving of \$30,000 in FRT could be made. Who made use of this measure? It was the incumbent Chief Executive. Back then, he bought a second-hand car and saved \$30,000. It shows that this measure could attract Donald TSANG, the Financial Secretary designate at that time, to make this move.

Concerning this Order, I also noticed one very special thing, that is, in recent years, there has been a sharp rise in the number of imported second-hand

private cars. Of course, Members would say that the FRT payable in respect of imported second-hand vehicles will also be raised, so the people concerned will also feel the pinch. However, what I find intriguing is why the increase was so significant. I wish to discuss this with Members, particularly with the Deputy President. For example, in 2007, the number of imported second-hand private cars accounted for about 9.8% of all newly registered private cars; in 2008, it accounted for 10% and that was only a slight increase. In 2009, it increased to 15% and in 2010, the figure was even more striking, having risen to 22%. In terms of the annual rate of increase, the increase in imported second-hand private cars is even more remarkable. In 2007, the rate was 11.1%, in 2008, the rate was also 11.1% but in 2009, the rate suddenly spiked to 21.6% and in 2010, the increase was even more remarkable and it more than doubled to 107%, or 9 085 cars.

On this matter, it turned out that I was only rather late in learning about this. This is perhaps because I do not own a car and do not have to spend money on keeping a car for the time being. Even if I should buy a car, I will consider buying an electric car because it enjoys a full waiver of FRT. However, I find that apparently, in recent years, a lot of people like to adopt this approach of importing second-hand private cars. As far as I know, the only advantage of a new car lies in its price but so long as it has run on the road for a while, it is already considered to be a used car and its depreciation will be very marked, thus making its price drop significantly.

Why do I have to talk about this matter? I find this very interesting and with a mind to learn, I looked up the material and found that in 2001, the incumbent Chief Executive, Donald TSANG, was suspected of trying to reap a bargain by claiming that a new Mercedes-Benz he had purchased in the United Kingdom was a used car and importing it into Hong Kong in the form a second-hand car, thus saving a total of \$280,000. If he had bought it through a car dealer, it would have cost him \$1.08 million but he saved \$280,000, or about 25% of the price. At that time, Prof LAU Siu-kai of the Central Policy Unit (he was still the associate director of the Hong Kong Institute of Asia-Pacific Studies of the Chinese University of Hong Kong then) was interviewed about this incident and he described the Financial Secretary, that is, Donald TSANG, as a typical "Hong Konger" who was shrewd in spending money and followed the principle of buying things at good prices. I wonder if he still has this mentality now.

Why do I talk about second-hand cars in particular? I hope the Government will look into this area. Even if the FRT is increased, it will only compel the public not to buy their cars from car dealers but to resort to other channels instead. In the end, this will not reduce the number of private cars on the roads in Hong Kong. As the Chinese put it, "Where there is a measure, there is always a counter-measure". Of course, some friends also pointed out that some car models produced by overseas car manufacturers were not available from their dealers in Hong Kong, so it was necessary to buy certain private cars by importing them. This we understand. However, another problem that will arise at the same time is that we hope the imported cars can be more environmentally-friendly by all means, but we do not know if there is any way in which imported private cars can be confirmed to be equally environmentally-friendly.

We hope that the Government can look into this matter by all means and examine why the increase doubled in this way. I remember that the Under Secretary responded to me then that it was because of the exchange rates, but at hearing that, I thought it was perhaps not the reason. We all know that the exchange rates of the Hong Kong dollar and the US dollar have been the lowest this year, so in terms of the exchange rates, we surely have to pay more, so why did this situation of a double increase still occur? I believe there must be other reasons, so I hope colleagues in the Transport and Housing Bureau can look properly into this area. Of course, at such a time, the Civic Party opposes as Ms Audrey EU said just now, we cannot see any reason for a volte-face, so we hope colleagues in the Transport and Housing Bureau can look into why the increase in the number of second-hand cars is so significant.

Certainly, in this discussion on the Order, we have not been able to discuss in detail the use of road space in Hong Kong by vehicles with both Mainland and Hong Kong licences. Since the tie between China and Hong Kong has become even closer, I believe these vehicles also take up a considerable amount of road space but the information provided does not enable us to assess to what extent these vehicles are contributing to the traffic congestion in Hong Kong.

For all of these reasons, the position of the Civic Party is very clear. Of course, we understand that the great administrative confusions pointed out by Mr WONG Sing-chi, which we do not wish to see, may arise only if the relevant bill is discussed and only if it is introduced into the Legislative Council and passed

several weeks later. However, generally speaking, we need to be more careful and cautious. We reiterate that the position of the Civic Party is very clear but we are not sure of the positions of other friends. We think it is not preferable to cause any unnecessary confusions. Therefore, although at this stage, we cannot support Mr KAM Nai-wai's motion, when we discuss the principal legislation at the next stage, we hope very much to find that the Government has made improvements and that it has really heeded public opinion.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, I am grateful to Members for their views.

Many Members have talked about matters relating to the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011 (the Bill). Therefore, I think I also have to spend some time responding to this, even though our discussion today is mainly on the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order). I wish to reiterate that the government proposal to increase the First Registration Tax (FRT) for private cars in the Budget this year is intended to curb the growth in the number of private cars. This is not the only means but one of the means in a multi-pronged approach to ease traffic congestion.

Some people hold that the growth in the number of private cars or in the total number of vehicles does not necessary mean that the traffic is more congested than before. As a matter of fact, this is really the situation revealed by the statistics reveal. The impact of the growth in the number of private cars on the traffic situation is reflected in the data on vehicle journey speeds. An overall decline in vehicle journey speeds on Hong Kong Island, in Kowloon and the New Territories was recorded in 2010 for the first time in five years. In addition to a drop of over 5% in the average vehicle journey speed on Hong Kong Island and in Kowloon (including a number of the access roads to the harbour

crossings), a drop of 7% in the average vehicle journey speed in the New Territories was also recorded. We must take decisive measures to curb private car growth before traffic congestion deteriorates to such a point that it could hardly be relieved even if more stringent measures are introduced.

The traffic congestion in Hong Kong is closely associated with the growth and use of private cars. This point has already been pointed out by some Members. First of all, in respect of the number of vehicles, in 2010, the annual growth in the number of private cars was 5.4%, which was a record high in a decade and its growth rate was 4% higher than those of all other vehicle types in the same period. The year-on-year growth rate as at February 2011 even reached 5.6%, which exceeded the level at the end of 2010. If this 5.6% growth rate continues, it would only take four years for the total net increase to reach 100 000 private cars, which is equal to the cumulative growth in the past 12 years. The rapid growth in the number of private cars will impose an immense burden on roads in Hong Kong and aggravate the traffic congestion problem.

Just now, a number of Members cited the views of some individuals, who said that having analysed the statistics on the vehicle kilometrage (VKM) in 2000 and 2009 — I wish to point out that the statistics are on the VKM, not the vehicle journey speed — the conclusion was that the increase in the VKM of private cars was not as great as those of taxis and public buses. I must point out one thing: What is the purpose of the statistics on the VKM? The statistics are mainly used to analyse the traffic accident rates of or road usage by various types of vehicles. Since many other factors, such as vehicular flow and the distance travelled, may also affect the VKM, simply looking at the VKM is not enough to draw any conclusion on the traffic situation. Moreover, the statistics cannot reflect the positive effects of new road networks, traffic management measures, intelligent transport systems, and so on, on the traffic situation. Therefore, the annual VKM cited by Members is not an appropriate indicator of traffic congestion.

Vehicle journey speed is widely used in the international community to reflect the degree of traffic congestion. Cities like Singapore, London in the United Kingdom and Copenhagen in Denmark have all adopted vehicle journey speed as an indicator of traffic congestion. All along, the Transport Department also studies the traffic congestion in Hong Kong with the help of vehicle journey speeds. Therefore, the statistics cited by us are well-founded and in line with international practice. Members can ask academics in the transport, transport

planning or engineering fields and they will tell you the kind of statistics that are more suitable for evaluating our current traffic congestion situation.

In addition, in respect of road usage, the VKM of private cars over the past 10 years from 2000 to 2009 was over 4 billion km each year, which accounts for about 40% of the VKM of all vehicles. It can thus be seen that private cars are the main road users in Hong Kong.

The aforementioned statistics reveal that the number, VKM and speed of private cars are all higher than those of other types of vehicles. In particular, their VKM is higher than other vehicles. Private cars are the main road users and of course, their growth is closely related to traffic congestion in Hong Kong.

In terms of the efficient use of road space, private cars are a less efficient mode of land transport. Among all passenger journeys taking road based transport modes, less than 15% use private cars, while all the remainder (that is, 85%) use public transport. Nonetheless, public transport only has a road usage of 30%, whereas private cars account for 40% of road usage. In other words, the efficiency of public transport is eight times that of private cars given the same amount of road space. In the 10 years between 2001 and 2010, the sizes of the vehicle fleet and private car fleet had expanded by about 15.7% and 21.8% respectively, while the number of franchised buses had recorded a drop of 9.4%. As such, the growth in the number of private cars will directly reduce the overall efficiency level of vehicles on roads and affect the traffic condition. The resulting negative impact on other road users — that is, the 7.2 million passenger journeys taking land based public transport other than railways — should not be overlooked. Therefore, I believe that Members have to be accountable not only to private car owners but also to members of the public using buses, minibuses and taxis who make 7.2 million passenger journeys daily.

The increase in private car ownership and usage produced an increased level of road congestion and created a greater need for new road infrastructure. However, new infrastructure is becoming increasingly expensive and difficult to construct in Hong Kong's unique geographical conditions. Apart from such considerations as price, space constraint, cost-effectiveness and sustainable development, we also cannot construct transport infrastructure infinitely. Therefore, we need to control the growth of private cars to ensure that they will

not impose a greater burden on our major trunk roads, which in turn will reduce the efficiency of our public transport services.

Such fiscal measures as the FRT to contain private car ownership have proven to be effective in controlling the private car fleet in the past. In the past, the Government increased FRT rates on a number of occasions, leading to a reduction of about two to three percentage points in the year-on-year growth rate of private cars, or even a decrease in the total number of private cars. We believe that the Bill can also achieve the expected result.

Apart from the proposal to increase the FRT to contain private car growth, the Government has all along made reference to the actual situation and adopted a multi-pronged approach to improve traffic condition. These measures include integrating transport and land use planning to reduce the public's reliance on road-based transport; actively pursuing the policy of using the public transport system as the main transport mode and encouraging the public to make use of the efficient mass transit system and other public transport services, implementing appropriate traffic management schemes, developing intelligent transport systems, employing regional traffic control systems, expanding our road network, and so on. Our approach is multi-pronged, rather than simply relying on increasing the FRT to ease traffic congestion. However, I must stress that even more transport improvement measures will only be fruitless if private cars are allowed to increase at a high speed.

The proposals of the Bill were put into effect as from 11 am on 23 February in accordance with the Order signed by the Chief Executive. Just as I have told Members, repealing the Order will cause significant inconvenience to car buyers and the trade. This view is agreed by a number of Members. Even if subsequently, the Legislative Council sets new tax rates different from those proposed in the Bill, or if the Bill is not passed in the end, we will still adjust the tax to be charged according to the legislation, so car buyers and the trade will not incur any loss. Of course, just as the Deputy President said earlier on, if the Order is successfully repealed today, the price would be paid not by Members but by the trade, potential buyers who are going to buy new cars and current car owners.

For these reasons, once again, we urge Members to vote against the Resolution on repealing the Order in order to avoid causing inconveniences to car

buyers and the trade. We note that there are other proposals in respect of the Government's proposal to increase the FRT for private cars. We hold that any suggestion has to be consistent with the premise of containing vehicle growth, so that it can tie in with the government measures and policy objectives. Otherwise, the intended effect of the Government's proposal would be undermined. Also, any suggestion should not lead to loopholes in the law or administrative confusions. We will continue to discuss pragmatically with the Bills Committee on increasing the FRT for private cars.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now call upon Mr KAM Nai-wai to reply. This debate will come to a close after Mr KAM Nai-wai has replied.

MR KAM NAI-WAI (in Cantonese): Deputy President, first of all, I am going to respond to the argument advanced by the Secretary, that the FRT is an effective measure to control the growth in the number of private cars. When I spoke earlier, I also made it clear from the outset that the past decreases in private car numbers were not due to the FRT but the Hong Kong economy. Economic prosperity or take-off was the major cause that pushed up the number of private cars, not the FRT.

Second, I wish to say that I hope the Secretary will submit as soon as possible the policy direction on ways of easing traffic congestion to the Legislative Council for discussion. At present, the Government adopts the approach of making car owners pay more taxes (tax on owner) but we demand that it requires road users to pay more taxes (tax on user). Regarding these two policy directions, which one is actually the more effective measure for easing traffic congestion? We should put this on the agenda for discussion as soon as possible instead of introducing a stopgap approach rashly to cure the symptoms but not the problem at root by increasing the FRT, as is the case now.

Just now, a number of Members have spoken but I could not hear any Member agree — Mr WONG Sing-chi has already pointed this out, saying that just now, the great majority of Members I have left for a while but the great majority of Members who spoke all cast doubts on whether this policy of using

the FRT to ease traffic congestion is effective. The DAB pointed out that this would be an all-lose situation; the Civic Party said that this was actually not an effective measure and the Liberal Party also pointed out that this would have a great impact on the relevant trade. Just now, the Deputy President — I know you cannot speak again now however, I think the Secretary has done some scaremongering, saying that this would cause confusions in the trade. Is there a united voice in the trade? Several days ago, some trade members also joined the rally in relation to cars organized by the Democratic Party and expressed their support for my repeal of the Order. There is no united voice in the trade voicing opposition to my proposal to repeal the Order.

(THE PRESIDENT resumed the Chair)

However, I only wish to point out that I am not a prophet and I do not have a crystal ball that can let me see if the Legislative Council will negative the relevant bill in its discussion in the future. However, if 60 Members are present today and 59 of them vote — not all 60 Members can vote as the President cannot — if 59 Members vote and the voting result is in favour of repealing the Order, may I ask how, when the relevant bill is discussed four or six weeks later, this legislature would change to supporting it? How can anyone make a volte-face a few weeks later? I really cannot figure this out.

I really do not quite understand by what sort of logic or rationale can such a deduction be made. If you do not agree, as a matter of principle, that the FRT should be used to ease traffic congestion, you have to repeal the Order and you have to vote against the relevant bill. One thing naturally follows from the other. How can one be inconsistent? However, it is likely as Mr WONG Sing-chi suggested just now, this may be the role that has been played by the royalist camp frequently in the past, that is, to chide a little but give a big helping hand, saying that they have to fight for the trade and car owners. However, when it comes to the defining moment in this fight, they would get weak legs and change course. Will it be like this? As a green horn in the legislature, I think what some Members have said is specious, for example, the idea that confusions will occur in the trade. I really do not understand why even the representative of the trade could make such a remark. If this motion to repeal the Order — say, if the voting result today is 50 votes to 10 votes, with 50 votes in favour; four weeks

later, will these 50 votes drop to 29 votes? How could it be like this? I cannot understand at all how such a situation could occur.

Therefore, in a nutshell, as in the past, we will give our support to the very end and this is what matters most. Therefore, we will continue to move the motion on repealing the Order and when discussing the relevant bill, the Democratic Party will also propose the repeal of the bill. We will make efforts consistently.

Finally, I also wish to point out that concerning the relevant bill, I heard friends from the DAB make three requests. The first one is — Mr Paul CHAN has left — that regarding those people who have paid their deposits for the purchase of their cars before 23 February, as in the case of Mr Paul CHAN, they should be exempted; the second is that the replacement of old cars with new ones should also be entitled to a waiver, that is, if an old car is scrapped and replaced by a new one, a waiver should be granted; the third is that the purchase of environmentally-friendly cars, that is, low-emission or hybrid cars, should also be entitled to exemption from the FRT increase. I wish to remind Members that even though these three exemptions have been proposed, does it mean that increasing the FRT can ease traffic congestion? Members have to answer the original and most fundamental question that will take us back to square one. This is the question that you have to answer.

The Democratic Party said earlier on that even if the Government really proposes these exemptions that amount only to tinkering, the Democratic Party will still vote against the bill relating to the FRT. Therefore, I call on Members to stick to their original position and vote for my proposal to repeal the Order.

I so submit. Thank you, President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr KAM Nai-wai rose to claim a division.

PRESIDENT (in Cantonese): Mr KAM Nai-wai has claimed a division. The division bell will ring for three minutes.

(While the division bell was ringing)

PRESIDENT (in Cantonese): I think it is unlikely that the remaining items on the Agenda can be finished before midnight. I will thus suspend the meeting at about 10 pm until 2.30 pm tomorrow.

(While the division bell was ringing)

(Dr PAN Pey-chyou raised his hand)

PRESIDENT (in Cantonese): Dr PAN Pey-chyou, what is your point?

DR PAN PEY-CHYOU (in Cantonese): President, I have to declare my interest. I have bought a new car recently but I will follow my Honourable colleagues of the FTU in voting against this motion to repeal the Order.

PRESIDENT (in Cantonese): Rule 84(1) in the Rules of Procedure provides that a Member shall not vote upon any question in which he has a direct pecuniary interest. However, he is not subject to the restriction if his vote is given on a matter of government policy. Now, since this vote is obviously on a matter of government policy, it is not bound by Rule 84(1).

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Dr PAN Pey-chyou and Dr Samson TAM voted against the motion.

Ms LI Fung-ying and Mr CHEUNG Kwok-che abstained.

Geographical Constituencies:

Mr James TO, Ms Emily LAU, Mr LEE Wing-tat, Mr KAM Nai-wai and Mr WONG Sing-chi voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted against the motion.

Mr Frederick FUNG, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG and Miss Tanya CHAN abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, one was in favour of the motion, 14 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, five were in favour of the motion, 11 against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

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

PRESIDENT (in Cantonese): First motion: Enhancing the My Home Purchase Plan.

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

I now call upon Mr CHEUNG Hok-ming to speak and move the motion.

ENHANCING THE MY HOME PURCHASE PLAN

MR CHEUNG HOK-MING (in Cantonese): President, a couple of days ago my assistant told me that the topic of this motion that I proposed for debate today is very similar and close to a song in Hong Kong. The name of this song is "Snail House". Regrettably, I do not know how to sing it and I can only read out the lyrics. Here are the lyrics:

"Contributing all my savings

I work overnight without complaint while you painstakingly attend to household chores

Building our blissful home in an expensive flat

We struggle through hardships together, spending lifelong efforts in exchange for the bricks of our home

Toiling for a lifetime climbing up and up

Every time we fight, we fight over finances

The narrow snail house is a confined space where you and I are shut out farther away

The best ever marriage is buried in a dilapidated flat"

President, the lyrics of this song are probably a description of the helplessness felt by a young couple towards home ownership. I believe the lyrics have also spoken the minds of many Hong Kong people. But I think the couple in this song is already doing not bad because although their hard work is rewarded by a "snail house" only, they still manage to buy their first home. In reality, a lot more Hong Kong people still cannot buy their first homes, and even a "snail house" is what they desperately dream of buying.

To the community, the most reassuring, the most easily-understood and the most direct way to help the public buy their first homes is the Home Ownership Scheme (HOS). But regrettably, the authorities have consistently turned a blind eye on this consensus of society and refused to resume the construction of HOS flats and instead, it has only introduced the My Home Purchase Plan (MHPP) in October last year.

What is the response of the public to the MHPP? The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) carried out a telephone survey last week. Before we mentioned the details of the policy, we already found that over one third of the interviewees have not heard of the MHPP. May I ask the Government what it has done to promote the MHPP? Is there a need to enhance its publicity? If the public do not even know what it is all about, how can we promote discussion in the community? We have also found that over the six months since the introduction of the MHPP, the public response has been far from satisfactory indeed. Whether in respect of the number of flats to be made available, the way that subsidies will be provided and

the time frame prescribed under the "rent-and-buy" scheme, the public consider that there is still plenty of room for improvement.

The MHPP is certainly not as reassuring as the HOS. Nor is it as user-friendly and direct as the HOS. Worse still, the MHPP has a number of fatal defects. But since the authorities are willing to make one step forward, we, being Hong Kong people, should still cherish it. I believe the MHPP, if enhanced, can help more people in the lower to middle class to achieve home ownership by buying their first homes.

President, the first fatal defect of the MHPP is inflexibility of the "rent-and-buy" arrangement. We propose that the measure of "rent-and-buy" under the MHPP be revised to become "rent-or-buy" to give the public greater flexibility to choose freely whether to buy or rent a flat according to their financial conditions.

As Members all know, under the "rent-and-buy" arrangement of the MHPP, applicants can exercise their right to purchase a flat only from the third year after their admission. If some members of the public have accrued a certain amount of savings or some young people may have been given a sum of money by their parents for the down payment, do they still have to meet the three-year tenancy requirement before they can buy a flat? A "rent-or-buy" approach can allow these people who have the means to buy their first homes earlier, making it more convenient for them to achieve home ownership.

President, as for other members of the public, for instance, if, in a family which is applying for the MHPP, only the father has a job and the son will graduate within two years, they can choose to rent the flat for two years and buy it when the son can make an income from work after graduation to share the responsibility of mortgage repayment. Or, some people who do not have sufficient savings for the down payment can choose to rent their flat first and buy it only when their conditions permit. President, in the survey conducted by us, 70% of the public supported the "rent-or-buy" proposal made by the DAB.

The second fatal defect is that the price of the flat is fixed at the market price. Market prices are fluctuating all the time. Can we possibly know the prices of property five years down the road? How can we help the public buy their own homes? What if property prices will surge continuously five years later and the refunded subsidy for down payment cannot catch up with the hikes

in property prices while the flat prices are beyond their affordability, but if they do not buy their flats, they cannot receive the subsidy which is equivalent to half of the rental paid by them for five years? What should the tenants do then? If the prices and rents of the flats can be determined right from the beginning, the public can have a clear goal and make their own plan for buying a flat accordingly to achieve home ownership step by step.

Third, the subsidy provided under the MHPP can hardly help the public buy their first homes. Under the MHPP, a purchase subsidy being half of the total rental paid will be refunded to the tenants. In the survey conducted by us, over 50% of the public consider this arrangement far from attractive. For instance, in Tsing Yi district with which we are more familiar, the old buildings in the neighbourhood cost around \$5,000 to \$7,000 per square foot. In the 25-year-old Tsing Yi Garden, a flat of some 400 sq ft costs \$2.3 million. Based on a monthly rental of \$6,000, the rent to be refunded after the five-year tenancy period will be about \$180,000 only, which is roughly equivalent to a mere 10% of a \$2.3 million-worth flat. What about the other \$500,000 required for the down payment? How can they conjure up this amount of money out of thin air?

Therefore, the best way to help the public buy their first homes most directly is to offer discounts on flat prices, but since discounts are offered on flat prices, I think it is necessary to impose restrictions on resale. For example, a restriction can be imposed to the effect that the public cannot resell their MHPP flats for a period of time after purchase, or owners of MHPP flats can resell their flats only to eligible buyers, in order to prevent these flats from flowing into the free market.

President, the fourth fatal defect is inadequate supply of flats. Again, let us look at the survey conducted by us. As many as 90% of the public consider the provision of 5 000 flats grossly inadequate. This response of the public is very reasonable. According to the statistics of the Government, in the second quarter of 2010 there were 178 000 households which met the income limit in order to be eligible for the MHPP. President, there will only be 5 000 flats, compared to 178 000 eligible households. This is far too inadequate indeed. In view of this number of flats, some people told us that it is even more difficult to get a MHPP flat than winning the Mark Six Lottery. I think this is quite true.

The authorities should allocate additional land resources to the development of the MHPP. For instance, some sites on the Application List can be selected for constructing MHPP flats. I have particularly checked the Application List this year and found a number of sites which should be quite suitable, including a Residential (Group A) site in Ap Lei Chau and four residential sites in Area 66, Tseung Kwan O. These sites can produce 2 000-odd to 3 000-odd flats altogether.

The authorities can consider putting in place a mechanism whereby sites not intended for development of luxurious flats involved in aborted auction or aborted tender can be converted for developing MHPP flats. As I have said before, a site on Lin Shing Road in Chai Wan is also quite suitable for the purpose. These sites being put up for auction have completed the primary preparatory works, which means that construction and development can commence expeditiously. This can greatly increase the supply of MHPP flats and the speed of their production. We hope that at least 2 000 flats can be made available in the first year of the implementation of MHPP, and the subsequent supply of flats can be adjusted according to the demand and conditions in the market.

President, another fatal defect is that the MHPP is slow. The first batch of flats will be made available only in 2014, which means that the public will have to put up with a long wait. The authorities can review and expedite the various procedures of the MHPP, so as to shorten the time between planning and completion. For example, the Government said last month that the project in Siu Lik Yuen, Sha Tin, and the project in Tsing Yi can be combined in inviting applications for tenancy in 2012 but regrettably, a few days later the Housing Society (HS) said that this might not be possible and that a decision has yet to be made. This shows that their statements are contradictory and information is made public before a consensus is reached, and this has precisely highlighted the problem in the communication and co-ordination between the Government and the HS. While it may be considered a minor issue as to when tenancy will be invited, the lack of co-ordination in their work may seriously affect the progress of the MHPP anytime.

Some time ago it was reported that the completion of the project in Sha Tin may have to be deferred due to a problem arising from the responsibility for natural slopes and that this may result in an upward adjustment of the flat prices.

In view of these problems, the authorities should conduct a review to identify ways to address them more effectively, in order not to cause delay to the progress of the MHPP at the expense of public interest.

Prices in the private property market have already exceeded the level in 1997. The Government is indeed duty-bound to provide options and support for the public to buy their first homes and solve their housing problem. A housing ladder that starts from public rental housing (PRH) and then moves onward to HOS flats and ultimately to the private sector used to be a proven practice adopted by the Government. It is worthy of reconsideration by the Government. There is now the addition of this new MHPP. If it can be enhanced and implemented in parallel with the increased provision of PRH flats and resumption of the HOS, I believe this will be a very good opportunity, so that the public no longer have to listen to this song of "Snail House" every day, feeling completely helpless.

President, the MHPP aside, I would like to say that the DAB also considers it necessary for the Government to increase the provision of HOS flats subject to a limit. Besides, I would like to take this opportunity to express our views on PRH. The Government is still dragging its feet on the provision of PRH flats. In the long term, land supply will remain inadequate while comprehensive planning is lacking; and in the short term, it often has to take eight or 10 years for projects on planned sites to be completed, and this is lagging far behind the demand of the public. Through this motion debate today, I hope to call on the Government to enhance the MHPP and also resume the construction of HOS flats and continue to expedite the production of PRH flats.

President, I so submit.

Mr CHEUNG Hok-ming moved the following motion: (Translation)

"That the Government put forward the My Home Purchase Plan ('MHPP') in the Policy Address announced in October last year, under which a total of 5 000 small and medium flats will be made available to eligible people to 'rent-and-buy', yet the community generally considers that there are still inadequacies in MHPP; in this connection, this Council urges the Government to resume the construction of Home Ownership Scheme flats, build additional public rental housing flats and enhance MHPP; the relevant enhancement measures should include:

- (a) to make MHPP more flexible, and enhance the measure of 'rent-and-buy' to become 'rent-or-buy', thereby enabling applicants to purchase their flats at any time;
- (b) to offer discounts on flat prices and impose restrictions on the resale of flats to prevent speculation;
- (c) to increase the quantity of flats to be launched in the first year to 2 000;
- (d) to allocate additional sites, including studying the use of some suitable sites on the Application List for constructing MHPP flats, with a view to increasing the supply of flats; and
- (e) to review and expedite the various procedures of MHPP, so as to shorten the time between the planning and completion of projects."

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

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

I will call upon Mr Frederick FUNG to speak first, to be followed by Mr Ronny TONG, Mr LEE Wing-tat, Mr WONG Kwok-hing and Mr Paul CHAN respectively; but no amendments are to be moved at this stage.

MR FREDERICK FUNG (in Cantonese): President, what is the My Home Purchase Plan (MHPP) all about? Why was this measure introduced? I remember that before the delivery of the Policy Address last year, the public had strong views on the problem of housing in Hong Kong. Both the public and the media had strongly demanded that the Government should take actions directly, whether by way of intervention in the market or provision of Home Ownership

Scheme (HOS) flats. The public hoped to have a secure home, a home of which the mortgage payment was affordable to them.

However, despite the strong impetus of public opinions, the Government was still unwilling to take any action. The Government proposed to conduct consultation first and so, about four months were subsequently spent on consultation, but it took six months before the Government announced that there would be a four-month consultation. Results of the consultation showed that a majority of the people still demanded the resumption of the construction of HOS flats by the Government, and in the Legislative Council, I believe we also hold the same view. We hope that the Government can resume the provision of HOS flats for the public to live in an assured way.

However, the Government insisted that the moratorium on HOS construction would continue once their production had been suspended. It was only until the delivery of this year's Policy Address by the Chief Executive that the MHPP was espoused. What is the objective of the MHPP? I think the MHPP may probably aim to create two effects: First, to balance the market in the hope that through the provision of more flats, property prices will drop in tandem with an increase in supply; second, housing units provided by the Government should be affordable to the public.

But is this the case in reality now? President, let me try to explain this to Members with some latest figures. First, in the first two months of this year, property prices in Hong Kong registered an aggregate increase of 7.2%, while the overall property prices in February even exceeded the peak in 1997. The Financial Secretary could only admit last month that property prices had already exceeded the levels in 1997.

The second set of figures is that a site in Ko Shan Road was sold last week at \$1.525 billion which was at the upper end of market expectations. The selling price was 70% higher than the opening bid of \$900 million. Property prices in the district have been further driven up.

Third, a lot allocated for "flats with limited floor areas" in Yuen Long was sold some time ago at a price which was also at the upper end of market expectations. Some real estate agencies forecast that the new residential flats to be completed there will cost as much as \$6,000 to \$7,000 per square foot. Based

on a flat with a gross floor area of about 500 sq ft, the flats will be priced at \$3 million at least.

Fourth, following an increase in property prices, the number of flats priced below \$2 million has been dwindling. Added to this is the special stamp duty which has not only driven away the speculators but also led to a reduction in the supply of small-and medium-sized flats. The reason is that even if the speculators have acquired a certain number of small-and medium-sized flats, they will not choose to sell their flats during this period and instead, they will choose to let them out. Many real estate agents have told me that there are less small-and medium-sized flats available for sale in the market now, and people who have purchased such flats will not sell them within a short time due to the increase in stamp duty.

Fifth, the interest rate risk is rising. The Government has been issuing messages and warnings, cautioning that liquidity is swelling in the market and the low-interest-rate environment will not exist permanently. The Chief Executive of the Hong Kong Monetary Authority even stated last week that it is possible for the interest rate in Hong Kong to rise without following an interest rate hike in the United States, calling on the public to be careful about the impact and risks that they will face in the event of an increase in the interest rate.

Sixth, the Government is now working in the fundamental direction of increasing land supply, and it has announced that it will take the initiative to put to auction or tender nine residential sites between April and June, which are expected to provide 2 650 flats in the market. It is also hoped that the property market will be stabilized through increasing the supply of flats.

Seventh, the current figures show that the property market remains heated. During the Labour Day holiday just passed, first-hand property transactions were still booming. Take Lions Rise in Wong Tai Sin as an example. The developer launched this development at unit prices which are substantially higher than those of other residential developments in the same district and yet, long queues were seen outside the show flats on the site. The developer has even launched an additional 179 flats successively, setting the price at an average of \$11,400 per square foot, which is 14% higher than the prices of the first batch of

flats put up for sale. The number of flats being made available for sale added up to 239, and over 100 transactions were recorded during the three-day holiday.

President, I have cited these figures and information to show that if the MHPP is expected to help balance the property prices, or if the MHPP is intended to allay the concern of the public about home ownership, then the Plan is a fiasco as it has entirely failed to create the intended effects. I have quoted the eight sets of figures or situations just now to tell members that if the existing housing policy aims to address the housing problem faced by the people through the MHPP, the people are not going to feel at ease.

The original motion and amendments proposed by a number of Members today have suggested the enhancement of the MHPP. To put it plainly, they actually do not seek to enhance it but to turn it into HOS, hoping to include the restrictions of HOS in the MHPP in phases, or to turn the MHPP into an alternative version of HOS. In fact, we all hope that the Government can reintroduce HOS flats.

But what is the view of the Government? Regarding the view of the Government on HOS, Members can clearly see it from the statements made by the Government. The Government pointed out that the objective of its housing policy is to provide PRH for families in need — President, the Government has stressed PRH — while insisting on its withdrawal from housing subsidy schemes other than PRH, in order to minimize its intervention in the market. As to the question of whether or not the public can successfully buy their own homes, that is purely a matter of their personal choice.

This so-called policy objective, to put it plainly, actually means to make the market the prime consideration, handing over the responsibility to the market and leaving it to the market. This is precisely the mindset of the Government in its real estate policy. If this mindset remains unchanged, the demand for the reintroduction of HOS that we have made to the Government will forever remain as a demand only, because the Government is not going to change.

As I have reiterated time and again, housing is different from other commodities. To the public, housing is a two-sided coin. It is a commodity and also a necessity of human beings. The "shelter" as in the four basic

necessities of "clothing, food, shelter and transport" precisely refers to housing. If we make the market responsible for supplying a majority of housing flats, it means allowing the market to decide how many flats will be provided and also what types or styles of flats will be provided. For instance, should they be ordinary units, middle-class housing flats or luxurious apartments (that is, housing for the rich)?

Certainly, the number of flats supplied in the market can be influenced by adjustments to land supply, but we can see that on the contrary, the Government has not made use of land supply to influence the supply of housing and flat prices. Why do I say so? What the Government has said at most is that housing land will be made available to provide an annual average of 20 000 flats and there may even be an increase recently, but it maintained that only some 20 000 flats will be provided. I would like to provide another set of figures to Members. In the past decade, the private sector and the HOS provided an average of 46 000 flats and when the 20 000-odd HOS flats are deducted, we can see that only about 26 000 private residential flats were provided. This is only the number of completed flats, not the quantity supplied by the housing land. For the past two decades, the average production was 52 000 flats, and for the past 25 years, it was 56 000 flats.

In other words, the number of sites provided by the Government now is smaller than that provided a decade, or two decades, or 25 years ago. Furthermore, we can see that even with the number of sites provided at that time, property prices continued to rise and eventually reached the peaks in 1997, 1998 and 1999. Therefore, I do not see how the supply of a small number of sites — which is smaller than that in the past — can cause property prices to come down instead, for this is against the market logic of the greater the supply, the cheaper the prices. But since the supply of land is reduced now, how can we expect property prices to come down? Coupled with the impact of the United States, Europe and even Mainland China starting to make changes to their policies and continuously injecting capital into the market, so in view of the abundant liquidity generated by the influx of hot money, how can we expect the market to be able to help address the housing problem of the public?

Therefore, President, I think that in order to address this issue effectively, we must draw up plans in two aspects. First, plans should be made from the commodity perspective. What is the reasonable quantity of land to be supplied

annually to ensure adequate provision in the market, in order to balance the prices of private residential flats? Plans must be made comprehensively on this policy because even if we start considering it and identifying land for the purpose today, it may take seven years for a building to be completed. So, we are actually making plans on what will happen seven years from now.

Second, we must take into consideration the well-being of Hong Kong people. The housing issue concerns the demand of human beings. If we ignore the housing needs of people in the middle and lower classes when planning is lacking, thinking to rely only on the market To the market, the less the supply of flats, the better, for this will cause property prices to rise and the profit that can be reaped in the market to increase. Therefore, this issue has to be dealt with by the Government, and it can be dealt with only by actions taken by the Government. At present, only 15 000 PRH flats are provided annually. This is far from adequate. *(The buzzer sounded)*

I so submit.

MR RONNY TONG (in Cantonese): Compared to the SAR Government's housing policy after the reunification, the colonial government's housing policy was undoubtedly more focused, logical and mobile and better meets the community's demand and cost-effectiveness.

From the resettlement areas built by the colonial government in the 1950s and the 1960s to the low-cost housing launched in the 1970s and the HOS introduced in 1978, there was a consistent goal and adequate mobility. I believe many colleagues in this Council besides me may have benefited from the mobility of this housing policy. From a cubicle apartment in Wan Chai, I moved to a low-cost housing unit in Ma Tau Wai and finally to a private flat in Mei Foo Sun Chuen. Such mobility could be felt and benefited by the entire community. After the reunification, however, there has been a complete lack of foresight and drive for mobility in the SAR Government's housing policy.

After the Government's suspension in 2002 and 2003 of the construction of HOS flats for economic reasons, the housing mobility in Hong Kong has nearly come to a halt. According to the figures last year, there were approximately 300 000 HOS units, and their monthly turnover was a mere 0.3%. Compared to

the monthly turnover of 0.8% in Taikoo Shing, 1% in Mei Foo Sun Chuen, 1.3% in Kingwood Villas and 2% in City One Sha Tin, the mobility of HOS flats lags far behind that of private buildings in general.

Given that HOS flats lack mobility, how does the Government cope with the increasing housing demand? The Government has two absolute fallacies. The first fallacy is that the Government seems to believe that constructing more HOS flats or resuming the construction of HOS flats will produce an adverse impact on the property market. As I mentioned just now, from the colonial era to the period after the reunification, we can see from history that an appropriate and focused housing policy will actually not affect the development of the property market in a substantial manner.

The second fallacy is that the SAR Government believes that, with the so-called non-intervention policy, the market will naturally produce some sort of mobility which can adequately respond to the public demand for housing. From the perspective of either history or figures, this is an obvious fallacy.

Insofar as the supply of public housing is concerned, information recently provided by the SAR Government to this Council reveals that the number of waitlisted households was approximately 85 000. According to the objective of the housing policy made public by the SAR Government, the authorities can honour the pledge of allocating public housing to applicants within three years. The Secretary often plays word games. When he says allocation of public housing in three years' time, he means that the applicant will be given a choice within three years, not allocated a public rental housing (PRH) flat. Of course, only bureaucrats can play such word games. For ordinary people waiting for public housing, this is definitely not a game but humiliation.

Let us look at the figures provided by the Government. The number of units expected to be completed is a mere 11 200 in 2011-2012, 15 800 in 2012-2013 and a mere 10 400 in 2013-2014. In the next five years, only approximately 75 000 units are expected to be completed at the most. How can these units satisfy the demand of the 80 000-odd waitlisted households? Moreover, the queues of elderly or young singletons have completely not been factored into these 85 000 units. In other words, there is simply no way for the existing construction programmes of PRH flats or the quantity of these flats alone to address the housing demand of the grassroots. Furthermore, regarding the

mobility of HOS flats we mentioned just now, the turnover of HOS flats has been close to zero since 2003. Given that the people cannot afford private flats, what will the Government do to address their demand for housing?

The Government tells people not to worry because the MHPP launched by the Government can enable Hong Kong people to face their housing problem with peace of mind. But actually, can we have peace of mind? We can tell from the number of units proposed to be launched by the Government and the MHPP objective of assisting its tenants to acquire their homes five years later that the MHPP is entirely not viable. But strangely enough, why does the Government still wish to launch the MHPP to give people peace of mind even though it is not viable? Is it an excuse or a scam?

President, these figures are pretty obvious. Let us use a two-person family for calculation. According to the Government's present requirement, the family income must not exceed \$39,000 and the asset ceiling is \$600,000. Supposing the total income of the two-person household is \$30,000, which is already higher than the minimum wage, if it rents a

(Someone talked in the Chamber)

Sorry, I thought some colleagues questioned my point. President, I will continue now. Let me cite a figure which is simple and easy to compute as an example. Supposing a two-person household has a total income of \$30,000, which is already far higher than the minimum wage, and rents a 500 sq ft flat under the MHPP. Presuming the monthly market rent is \$10,000 — this market rent is actually very conservative as the rent of a 500 sq ft flat in the Telford Gardens in Kowloon Bay currently ranges from \$13,000 to \$15,000, and the Government makes it clear that the rent is based on market rate — supposing the rent is \$10,000, and if we use half of the rental value for calculation, the household can only save \$60,000 in one year, or a mere \$300,000 in five years. If we assume that the household can save up \$7,000 monthly, it will have \$1 million in savings five years later, thus enabling them to make an 30% down payment for a \$3 million property. Now let us do some computations. Deducting \$10,000 for rent payment and \$7,000 for extra savings, only \$13,000 will be left every month. President, this sum of money is not enough to feed a family, not to mention meeting the education expenses of their children, their own transport expenses for trips to and from their workplaces, clothing, and so on. The goal is simply unattainable. Such being the case, why does the SAR

Government still insist on implementing the MHPP, thinking that this Plan can give people peace of mind and adequately answer the demand of the community for housing?

President, let me make myself clearer. I believe the vast majority of Hong Kong people, probably including the Secretary and the Government, do not believe this undertaking can give people peace of mind. It is nothing but a scam.

I have still not mentioned the situation five years later because it is very difficult for us to ensure the market rent can maintain at its present level. History tells us that property prices will definitely rise higher five years later. But can the income of wage earners be increased to such levels? Obviously, the MHPP does not command our faith. To truly tackle the housing problem, the Government should continue to build more PRH flats and resume the construction of HOS flats. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I know that you write newspaper articles to teach English. I recall that you once taught an English word "phobia" and another one "philia". President, I am one of your readers. I think I have a phobia for the MHPP, why? Because the more I talk about it, the more frightened I feel.

It gives people the most terrible headache when they have expectations. Because of their expectations, they hope to achieve some results. But sometimes one will get a terrible headache when he or she has expectations for something. If I said to Mr Abraham SHEK, "Abraham, I have expectations for you. You will win an Oscar." He would laugh and say, "Ah Tat, you must be kidding me! How can I have acting skills and a pretty face? I am not George CLOONEY; neither am I Tom HANKS."

Now the Administration is creating an expectation, saying that a small fraction of people have difficulty in acquiring homes. Because of its sympathy with public sentiments, the Government has come up with the MHPP. My phobia gets even worse the more I hear it. The crux of the matter is whether the problem can be resolved. The Government cannot even provide psychological relief, not to mention solving the problem.

President, people have a lot of expectations. Some of their expectations are material, such as the need to eat and various other needs. But some expectations are psychological, such that people can enjoy a sense of stability. President, a lot of things have happened recently. There is a need to preserve stability not only for the Chief Executive, but also for the sake of health. In fact, "stability preservation" refers to psychological comfort, because no one can define what "stability preservation" means.

Fine. What is the purpose of the MHPP in "preserving stability"? The answer is that the MHPP cannot preserve stability. Since matters have come to this pass, I have a growing feeling that although the question under debate is certainly meaningful, the Government is not sincere in getting it done. So, what is the point for us to conduct this debate and put forward so many views when the Government is not sincere in getting it done? This was why I hesitated to express too many hopes or demands during the discussions on the housing problem recently.

When I think of HOS let us not pin any hope on the incumbent Chief Executive. Instead, we should talk to the candidates for the next Chief Executive. Let us talk to those who will run for the next Chief Executive office. Honestly, the present Government is indifferent and apathetic. I say this because the Government does not listen to the people.

Except for a very small number of Members — I do not want to do any counting — it seems that the whole Council, with the exception of just a few colleagues, supports the construction of HOS flats. The findings of a survey conducted by the Democratic Party show that 90% of the people support the construction of HOS flats. I cannot think of any special reasons for the Government not to construct HOS flats. This really makes me not too comfortable. But unlike Canada, there are no general elections here in Hong Kong. There is no way to replace the Government through general elections. Therefore, we can only appeal to or beg the Government. But sometimes, I find it a waste of energy to do so because the Government has already decided not to construct HOS flats. So, the people can only pin their hopes on the next Government.

But, what is the problem? Despite the small effort made by the Government during the past couple of months, has the entire property market stabilized? In fact, there are still risks amid the stability, that is, our property

market is still on the rise. In particular, the secondary market recorded a rise of approximately 7% in the first quarter. According to the data provided by the Centaline Property Agency Limited, the rise was somewhere between 7% and 10%. However, the Government's data lag far behind, and there is a lag of more than a month in its data. The market seemed to stop rising for a while after the Government's introduction of a special stamp duty and the "verbal coercion" made by Norman CHAN, Chief Executive of the Hong Kong Monetary Authority (HKMA), to appeal to people to pay attention to possible rises in interest rates. But after a while, the "verbal coercion" no longer worked, and the property market began to rise again.

I hope the Government can ponder over this question. What does it really want to do? If the Government does not answer this question, our debates, whatever they are, will not bear any fruit, because the Government simply does not pay much attention to the conditions of the market. It is very frightening if during the past year, or the whole year of 2010, the secondary market as a whole rose by nearly 20% and another 15% this year. This means the property market might rise by more than 50% in two to three years. In other words, any people who buy properties in these one or two years will face extremely high risks.

Of course, the present situation is slightly different from that in 1997, when there was a frenzy for purchasing properties. We know that the HKMA is discussing with banks about plans to tighten the mortgage percentage. This I agree. However, the Government still needs to consider if there is absolutely nothing it can do should the market continue to rise. Should it continue to rely on "verbal coercion"? This is the first question. I hope the Administration can answer it.

Second, regarding the supply of land we are talking about, honestly, the Government has made some effort, though it is very small. Basically, no one will bother about the so-called dual-track system of land sale and the Application List. Probably, the supply of land will rely mainly on regular land sale programmes. However, only 2 600 units can be built on the land sold in the first quarter, so what purpose can be served? However, the Financial Secretary has mentioned that at least 30 000 to 40 000 units will be completed this year. This means at least 5 000 to 6 000 or 6 000 to 7 000 units should be made available per quarter. So, what message will the 2 000-odd units send out to the market? I hope regular land sale can be conducted in a steady and more frequent manner.

The Government should not sell land which can only build 2 000 to 3 000 units. Perhaps it should sell land which can build 4 000 to 5 000 units to bring home to property developers, speculators and investors the message that it is dealing with this issue solemnly. Or to put it rudely, the Government is being serious; it will not stop after a while. We will not tell the market that the supply will be increased until a year later when 10 000 to 20 000 units can really be built on the land and the number of units reaches 20 000 to 30 000 through such channels as a change in land use by developers.

As for the third point, which I have mentioned before, the Secretary is not entirely convinced that there is a need to deal with it. Recently, more and more estate agents have begun talking about the fact that, of the new property buyers, the percentage of buyers from the Mainland has been on the rise. In the past, those property buyers, investors and speculators we mentioned generally targeted luxurious flats at the Mid-Levels priced at tens of thousands of dollars per square foot. Now, the situation seems to be different. According to some estate agents, nearly 30% to 50% of the buyers of some property developments, including Festival City in Tai Wai and Lions Rise in Wong Tai Sin, come from the Mainland. Currently, the Government is adhering to the principle that economic activities should not be subject to any restriction of capital flows. This is not entirely correct. Some countries and regions do impose restrictions on the purchase of ordinary housing by non-local residents. This is the case in Australia, and seemingly in Macao. According to the general practice of these places, they will not bother about the speculation on luxury homes, commercial buildings and industrial buildings. However, buildings relating to the general public will be handled differently.

The Government often says that it is very difficult to regulate the origin of capital and define local residents. This I do not understand. It is indeed very easy to define local residents — people with three stars on their identity cards are defined as local residents. Of course, the Government will again ask this question: What should the Government do should those people purchase properties in the future under the auspices of companies? When we dealt with the special stamp duty last year, we already reminded the Government that, although the number of properties bought in the name of a company or a so-called overseas company was very small according to the account made by the Inland Revenue Department to this Council, I think such figures will definitely rise. Frankly, for someone who can afford to buy a \$20 million property, there is a

very great incentive to purchase a property in the name of an overseas company in order to evade the payment of stamp duty or other taxes. If the Administration does not give consideration to making effort on this front, it can only crack down on or restrict local small-capital speculators. Its effort to combat major speculators engaging in speculation under the auspices of companies or companies registered in British Virgin Island will never bear fruit.

Hence, I would like to remind the Government once again that it must study these several issues and then come up with some counter-measures. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, the major thinking behind the amendment proposed by me is my hope that the Government can restore its housing policies to order and fully reinstate at all levels the proven long-term housing policies and measures.

I will explain my intention of proposing the amendment in four major aspects. As my first intention, I hope the Government can address squarely the mainstream demand of the people of Hong Kong for living in peace and working with contentment. Should the Government fail to address this demand squarely, the people will definitely be driven to revolt because of oppressive government. I will illustrate the mainstream demand of the people with three sets of figures. The first set of figures concerns property prices. Insofar as the price index of flats in the private market is concerned, the price movement of small and medium units under 100 sq m can be described as continuing to rise rather than fall. The index was 119.8 in 2009 and surged by 44.7 to 173.3 in February 2011, representing a 16% rise compared with the index of the entire year of 2010. The second set of figures concerns rentals. Likewise, I am talking about small and medium residential flats under 100 sq m. The rental index was 99.4 in 2009 and surged by 27.3% to 126.5 in February 2011, representing a 6.4% rise compared with the index of the entire year of 2010. Hence, both property prices and rentals have continued to rise rather than fall.

What about the income of the people? According to the relevant statistics, the average median monthly household income was \$17,500 in 2009 and slightly rose by 2.9% to \$18,000 in 2010. As for the median income of households in private buildings, it was \$22,680 in 2009 and rose by 3.8% to

\$23,550 in 2010. We can thus see that the income of the general public lags far behind property prices. Among the 325 cities around the world, Hong Kong occupies the top spot in terms of property prices.

President, I moved to Tuen Mun after I had become a Member of the Legislative Council in 2008, and I witness for myself the spiralling property prices there. I can cite an example to illustrate my point very clearly. In early 2009, the property prices of Siu Hong Court, situated near Siu Hong Station of the West Rail, ranged from \$600,000, through \$700,000, \$800,000 to \$900,000, which was more or less enough to buy a HOS flat in the secondary market. However, during the period from late last year to early this year, "1" must be added before the prices of all the flats there. In other words, one must pay \$1.6 million, \$1.7 million, \$1.8 million or even \$1.9 million to buy a flat, which means an increase of \$1 million. How can wage earners catch up with the property prices? This is why the Government must address squarely the urgent demand of the people for living in peace and working with contentment. Otherwise, it will only trigger even greater grievances among the people.

The second issue I would like to raise is that the Government must build additional PRH flats, as this is the basic need of the community. Regarding the Government's plan to build 75 000 PRH units in the coming five years, I think this number falls far short of the demand because, after the income and asset limits on public housing applicants were raised in 1 April this year, there will be an estimated 25 000 additional applicants. The original plan of constructing 75 000 PRH units in the coming five years simply falls far short of the increase in the number of PRH applicants. Only through raising the annual production to approximately 20 000 PRH units can the Government better meet the objective needs. Hence, in a question and answer session on the Budget, I clearly made a request to the Government to build 20 000 PRH units per annum, with a view to providing 100 000 PRH units rather than 75 000 PRH units within five years. I hope the Government will make a positive response to this request and refrain from merely saying that the waiting time will be maintained at three years. Without building additional PRH units, where do the flats come from? The housing demands simply cannot be met. So I hope the Government can increase the supply of public housing.

Thirdly, I urge the Government to relaunch the Tenants Purchase Scheme (TPS). Should the Government claim that the MHPP has the "rent-and-buy" and

"rent-or-buy" features, was the TPS, formerly launched and proven to be effective, not a reality and historic version of a "rent-or-buy" and "rent-and-buy" housing scheme? After the implementation of the repositioned housing policy by the Government in 2002, the TPS was scrapped. The result of the TPS can be described as excellent for some 110 000 units were sold under it, representing 64% of the flats subscribed under the Scheme. Not only can the TPS tackle the problem of well-off tenants occupying PRH flats, it can also resolve the problem of ageing public housing. What is more, the family income of PRH tenants can be improved as a result. Young people who cannot afford the prices or rents of private buildings and, as a result, cannot get married despite much delay can thus find a way out. Under such circumstances, why should the proven and well-intentioned TPS be shelved and not be relaunched?

In fact, not only has the Government shelved the TPS, which has proven to be effective, it has also failed to fulfil its pledge to residents. Why were such a large number of residents willing to be relocated to Yat Tung Estate in Tung Chung, Fu Tai Estate in Tuen Mun and even On Yam Estate? It was precisely because they believed in what the Government said, thinking that they could purchase the flats in which they lived because they expected their income to improve when flats in these housing estates were offered for sale by the Government in the future, though the rents in these housing estates were quite expensive. This was why they still chose to move into these flats despite the several-fold increase in rents. However, the Government did not honour its pledge in the end. So, I hope the Government can maintain its integrity. It must honour its words and refrain from indulging in empty talk without any action.

Lastly, I would like to say a few words about the resumption of the construction of HOS flats. The MHPP currently proposed by the Government is, according to the Secretary, an enhanced version of the HOS. However, I consider this just a trick to "substitute a dud for the real thing". After all, a dud is a dud; the real thing is the real thing. While the MHPP is pegged to land prices, the HOS does not factor land premium into the prices, which means that premium has to be paid only when a HOS flat is sold in the future. This is why I put forward in my amendment the proposal of post-sale premium payment. Moreover, measures have to be taken to ensure no speculation. Even if an HOS flat is to be sold in the future, there must be priority selling-back to the Government. Can the Government consider all this? If the MHPP does not take market land value into the calculation, its flats will naturally be sold at a very

attractive price. This will naturally give buyers great peace of mind. Why do we not have peace of mind at the moment? This is precisely because the MHPP is pegged to market prices as well as land premium. The problem is that when buying MHPP flats, people have to pay for land premium in addition to construction costs, whereas land premium will fluctuate constantly in tandem with the market conditions. The HOS formerly implemented by the Government has been winning the hearts of the people, so why does the Government not restore this immensely popular policy?

The reason for me to propose constructing 3 000 to 5 000 flats in the first year and making available 3 000 to 5 000 flats annually thereafter is entirely based on the experience gained from the subscription of surplus HOS flats. Under the Scheme to sell the surplus HOS flats in the last phase in July 2010, the number of flats offered was 3 200, and yet the number of applications reached 39 000, which means an oversubscription rate of 11 times. These figures show that only through constructing 3 000 to 5 000 flats in the first year and making available 3 000 to 5 000 flats annually thereafter can the Government cope with the market demands.

I have also proposed in my amendment that the Government should adopt the systems of green forms and white forms under the HOS because the two systems have proven to be effective and can serve as the ladder to effectively help the grassroots achieve home ownership. After buying an HOS flat or enhanced HOS flat from the Government, a green form applicant will surrender the flat he or she is occupying, thereby giving the Government one more flat for allocation, so what is the sense of not doing that? Hence, I have proposed an amendment to Mr CHEUNG Hok-ming's motion in the hope that the Government can address squarely the reality and the mainstream opinion expressed by Members from different political parties and groupings and non-affiliated Members. Thank you, President.

MR PAUL CHAN (in Cantonese): President, the objective of the amendment proposed by me today is to point out that both the My Home Purchase Plan (MHPP) and the provision of "flats with limited floor areas" by the Government through specific restrictions to be imposed in the Conditions of Sale should enable Hong Kong citizens to purchase flats which are affordable to them, so that they can live in peace and work with contentment. As long as they can make

careful consideration in the beginning and are confident that they can afford the down payment, and if they can accrue savings as planned to meet the mortgage repayment, they do not have to worry about the rental rising continuously to a level beyond their affordability in future. Nor do they have to worry about being forced to move out at any time, and when they grow old, they can have a place to live and this will make their retirement life easier. It is because among the basic necessities of clothing, food, shelter and transport in Hong Kong, any person is free to decide how much he or she is going to spend on clothing and food, and as long as the housing need is met, the other expenses of living can be met more easily.

In this connection, Hong Kong people, especially the middle-class people, would wish to buy their own homes not simply for making an investment to yield a return. Rather, this is the wisdom of living drawn from experiences over the past three to four decades. Over the past few decades, Hong Kong has weathered a lot of financial turmoils and despite the ups and downs in the property market, purchasing a flat to live in it has remained the most secured and proper thing to do, as it means making responsible planning for the secure living of oneself and his family. I think the Government must understand this point correctly. Otherwise, its policies will be out of focus, not being able to respond to the needs of society. Moreover, it is actually not too much to ask for a place where one can live in peace and sleep well at night.

President, I would like to use the Home Ownership Scheme (HOS) to briefly explain this point. According to the figures provided by the authorities, of the 330 000 completed HOS flats, 260 000 are flats with premium not yet paid and they are not available for resale in the market. In other words, only 20% of the HOS flats have paid the premium and can be resold in the market. What do these figures tell us? I think they point to the fact that an overwhelming majority of buyers of HOS flats purchased their flats for self-occupation. Their chief objective is not to make an investment to yield a profit. Therefore, the construction of HOS flats by the Government for sale to the public for self-occupation is not a subsidy for them to make investment or engage in speculation. This is also the case for the MHPP and "flats with limited floor areas".

After I had proposed an amendment to the motion, some colleagues asked me who I refer to by "Hong Kong citizens" in my amendment. What I mean is that the eligibility for purchasing or reselling flats under the MHPP should be the

same as that for HOS flats and PRH flats and that is, they should be restricted to Hong Kong people who have resided in Hong Kong for seven years and whose right of abode in Hong Kong is not subject to any condition. I propose that even if the flats have to be resold, they should be resold only to these people. The objective is to curb speculation, and I will further explain this point later. In other words, I hold that the target of the sale or resale of flats under the MHPP should be restricted to Hong Kong Permanent Residents, so that these "no-frills" flats intended to be purchased by first-time home buyers will not fall into the hands of speculators.

Under the Government's proposal, the MHPP aims to provide assistance to first-time home buyers and so, there will be more stringent criteria for application, including the requirement that applicants and other family members on the application forms should not have owned any residential properties for a period of 10 years prior to the closing of the pre-letting application period. But if the buyers are not restricted to Hong Kong people, which means that other people can also purchase these flats, the Plan is not going to benefit Hong Kong people. The reason is that the number of flats to be supplied is too small indeed as only 1 000 flats will be made available in the first year and not many flats will be supplied in subsequent years either. To Hong Kong people who wish to buy their first homes, this is like "seawater to chickens reared by boat dwellers", as they cannot drink the seawater even though they see it.

Let me again draw a comparison with the HOS. Since the introduction of the HOS in 1978, the average annual production was about 15 000 flats. Under the MHPP, the total number of flats to be provided in the next few years will only add up to 5 000 flats. This is an insignificant number which is far from adequate to meet the demand of the public for home ownership.

Although Secretary Eva CHENG said at the special meeting of the Finance Committee some time ago that the Government would speed up the MHPP with the target of supplying 1 700 flats in the first year, but can the Housing Society (HS) cope with this speed proposed by the Secretary? It is because any development project has to go through certain procedures, which include site identification, submission of plans for the Town Planning Board for consideration and approval, and so on. A huge amount of financial resources will be involved to support the development of the project.

Moreover, under the MHPP, tenants can have a tenancy period of up to five years. In other words, the HS cannot immediately recover the funds spent on developing the MHPP flats. Such being the case, is the HS financially capable of sustaining the development of the rest of the flats at a faster speed? Some time ago it was reported that the HS would like the Government to adopt suitable measures in respect of the payment of premium, in order to solve its cashflow problems. I hope the Government can actively consider this.

At this juncture, President, I will talk about the practices adopted in Australia. I would like to point out that the Australian Government has set the following two requirements: First, any person who is not a permanent Australian citizen is not allowed to purchase any second-hand residential property in Australia; second, even in respect of newly-completed residential flats, only some of the flats are allowed to be sold to non-permanent Australian citizens and when these buyers resell their flats, they can resell them only to permanent Australian citizens. Why does the Australian Government have to do this? I think its objective is to prevent foreigners from stirring up troubles in the local property market. As property purchases made by local citizens are unlikely to deviate too far from their affordability or purchasing power, the requirement that these flats can be resold only to Australian citizens can prevent property prices from soaring frantically even if prices do go up. These requirements made by the Australian Government are actually intended to deter speculators, with a view to preventing speculation from becoming excessive.

Through the experience of Australia, I wish to point out that in a free market, I believe we all agree that the speculation on luxurious residential flats is an investment act, and we do not need to be too concerned about it. But small- and medium-sized flats involve the people's livelihood and since they concern the people's livelihood, the Government is duty-bound to protect the public and should not allow any person to easily stir up troubles in this aspect which would otherwise plunge the people into dire straits.

The MHPP aside, I also made the same proposal when I followed up an oral question on "flats with limited floor areas" in this Council at the end of March. I proposed that "flats with limited floor areas" can be sold only to Hong Kong people and purchases by non-Hong Kong people must not be allowed, and when these flats have to be resold, they can be resold only to Hong Kong people.

The same logic that I have just explained applies here, and I am not going to repeat it.

However, according to the Government, the purpose of providing "flats with limited floor areas" is neither to assist the sandwich class to buy their first homes nor to provide reasonably-priced flats. The only purpose of providing these flats is to increase the supply of small- and medium-sized flats. President, if this is truly the sole objective of providing "flats with limited floor areas", the Government's policy is indeed lagging too far behind the reality, as it cannot resolve the difficulties faced by the people and fails to sense the urgency of the people. If the supply of small- and medium-sized flats is increased not to assist the sandwich class to buy their first homes, what other flats are there for them to buy as their first homes? Can we simply rely on the MHPP? Please do not deceive the public because this is too laughable indeed.

Regarding the Tenants Purchase Scheme, I have some reservations about it. As some residents are tenants whereas some flats are owner-occupied in the same housing estate, this will create a lot of conflicts in management. For example, when there is a need to carry out repair works, some residents will have to pool funds for the purpose whereas some others are not required to bear any responsibility. But as I support the overall spirit of the motion, my concern about this minor detail will not inhibit me from voting in support of this motion.

Thank you, President.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, thanks to Honourable Members for their valuable views on enhancing the MHPP and their views on other measures implemented under the housing policy.

Before speaking on the progress of the MHPP, I wish to reiterate that the Government's subsidized housing policy is to provide public rental housing (PRH) flats for low-income households which cannot afford to rent private accommodation and to keep the average waiting time for general Waiting List applicants at three years. We will continue to identify suitable sites and monitor the progress of supply of land for public housing to ensure sufficient land for public housing development.

Besides providing PRH flats, the Government will continue to ensure a stable land supply and maintain a fair and stable environment to enable the private property market to develop healthily. The Government will continue to strive to withdraw from subsidized housing programmes other than public housing, with a view to reducing to the minimum its interference with the market. We will also do our utmost to enhance the transparency of the sale of first-hand private residential properties and the fairness of property transactions with a view to protecting consumer interest.

The Government has been monitoring closely the development of the private residential property market and on the alert to prevent the risk of bubbles forming in the asset market. In this connection, the Government has warned members of the public at all times that they must carefully evaluate their risks and avoid over-stretching themselves financially in making decisions of home purchase. In February, April, August, October and November 2010, the Government implemented a number of measures in four directions, including such basics as increasing land supply, curbing property speculation, enhancing the transparency of property transactions, and preventing excessive expansion of mortgage loans, with a view to ensuring the healthy and stable development of the property market. The Financial Secretary once indicated that, if necessary, he would step in again by taking appropriate measures.

To ensure the healthy and stable development of the property market, the Government has set its land supply target to provide in the next 10 years land sufficient for building an average of approximately 20 000 private residential units annually. It is estimated that approximately 35 000 units can be built next year on the lands which can be used for private housing development. Lands for residential development will come mainly from the MTR Corporation Limited (MTRCL). The authorities have decided to invite public tender for five residential sites this year for the construction of approximately 3 000 small and medium units. The first site put up for sale in this manner was already sold in March 2011.

The Government appreciates the importance of living in peace and working with contentment. It also fully understands the public's wish to improve their lot and move upwards through acquiring their own homes. Insofar as the general direction is concerned, we fully appreciate the proposals put forward by Honourable Members because the notion behind all these proposals is the hope of

providing opportunities for members of the public to purchase affordable homes. However, I wish to emphasize that all subsidized home purchase schemes regardless of their forms can only provide a cushioning effect. In the long run, we must start from the basics by increasing supply to provide affordable home ownership opportunities. I therefore cannot subscribe to the views put forward by Members just now on, for instance, pegging the provision of subsidized housing or the number of subsidized flats to adjustments of property prices. I wish to reiterate that we certainly do not have such a trick whereby we can casually press a button to adjust property prices, upward or downward. Hence, in order to tackle the problem with the property market, we must start with land supply, and it will take quite a while before the effect can be felt. Now that we have already set a very specific target, we will move towards this target in a pragmatic manner. In the long run, besides starting from the basics by increasing supply, I think a more desirable approach to take in the face of short-term market fluctuations is to provide relief measures for prospective home buyers who are financially capable of flat purchase in the long run to enable them to amass capital over a certain period of time for the purpose of acquiring their homes.

The Government has introduced in collaboration with the Hong Kong Housing Society (HKHS) the MHPP which is premised on the concept of "rent-and-buy" in response, in a targeted manner, to the aspirations of those with the ability to service mortgages in the long run, but who cannot afford the down payment because of prevailing short-term fluctuations in property prices, such that they can be enabled to amass capital over a certain period of time for the purpose of acquiring their homes.

Under the MHPP, the Government will provide land for the HKHS to build "no-frills" small and medium flats for lease to eligible applicants at prevailing market rent. The tenancy period will be up to five years, within which the rent will not be adjusted. Within a specified time frame, tenants of the Plan may purchase a flat under the Plan at prevailing market price, or a flat in the private market. They will receive a subsidy equivalent to half of the net rental they have paid during the tenancy period, and use it to meet part of the down payment.

The MHPP have all the merits of subsidized housing and private housing. First of all, the Plan is flexible in that even if the sandwich class have not saved enough money for the down payment, they can still rent the flats under the Plan

so that they can acquire their own homes more quickly and have more ample time to consider their home ownership plans. Moreover, given that the tenancy period will be up to five years and the rent will not be adjusted during the period, the Plan can facilitate its tenants in making savings for the down payment. Should they purchase a flat under the Plan or a flat in the private market within two years after the termination of their tenancy agreements, they can receive a home purchase subsidy equivalent to half of the net rental paid. Although flats under the Plan will be sold at prevailing market price, the price will still reflect the "no-frills" nature of the flats and their age. As the Plan has no premium payment requirement as is the case of conventional HOS flats, the opportunities for owners to switch flats and move upward in the property market in the future will be increased. Furthermore, although the quota will largely be reserved for white form applicants, part of the quota under the Plan will still be allocated to PRH tenants, thereby retaining a channel through which green form applicants can switch from public housing to acquiring their first homes, like the channel provided by traditional HOS flats, and this will also facilitate the turnover of PRH units. Moreover, we will specifically offer a certain quota under the Plan to single applicants. I have often heard Members make calculations for applicants to ascertain whether they have sufficient money to make the down payment, but I have also heard that they assume the applicants will start saving only after they have moved into these flats. I think this assumption is not entirely compatible with the reality. If an applicant has already accrued savings for a certain period of time, the subsidy provided under the Plan, which is equivalent to half of the net rental paid, can definitely help in some measure. Meanwhile, they can also amass savings over a period of time steadily. Perhaps Honourable Members can adopt more pragmatic methods to make calculations for these applicants.

The Government has already earmarked sites in Tsing Yi, Sha Tin, Diamond Hill, Tai Po, Tuen Mun and other areas for the construction of a total of some 5 000 flats under the Plan.

Since the Government's announcement in October 2010 of the implementation of the first MHPP development project at Tsing Luk Street, the project has been making good progress. The HKHS has completed the building plans and submitted them to the Buildings Department, which has already approved the relevant plans. As regards land use, there is a need for the HKHS, currently the grantee of the site, to modify the relevant land lease because of its implementation of a development project premised on the concept of

"rent-and-buy" on the site. The HKHS is currently negotiating with the Lands Department on the modification of the land lease. In addition, over the past few months, the HKHS has been actively negotiating with the Transport and Housing Bureau on the specific arrangements for implementing the project. The progress has been excellent since the HKHS will start inviting tender for the project during the second half of this year. The authorities will also consult, in collaboration with the HKHS, the district on the lease modification in respect of the site at Tsing Luk Street.

According to our plan, approximately 1 000 small and medium "no-frills" units will be provided at Tsing Luk Street. We expect to invite applications in 2012 and the project will be completed in 2014. We are now studying with the HKHS ways to expeditiously accept applications for the Tsing Luk Street project.

The second MHPP project will be at Sha Tin Area 36C, near Siu Lek Yuen. Depending on the actual flat sizes, about 700 small and medium flats will be built on the site. We will work out the implementation details for the Sha Tin project with the HKHS as soon as possible.

As for the other development projects under the MHPP, we will strive to expedite the relevant preparatory work to enable the relevant projects to commence expeditiously.

President, we very much appreciate the home ownership aspirations of the public. However, I wish to remind the public once again that they must avoid over-stretching themselves financially. Recently, the factors affecting the property market have become increasingly complicated, the change in the global environment has brought uncertainties, different regions outside Hong Kong have seen their interest rates adjusted upward, and local banks have also tightened their terms of mortgage loans. As warned by the Chief Executive of the Hong Kong Monetary Authority last month, it is generally anticipated in the market that the Federal Reserve Board will begin increasing interest rates in the first half of next year. As the interest rate environment in Hong Kong might see further or even earlier adjustments, people must beware and carefully manage the risk of rising interest rates and avoid excessive borrowing, with a view to preventing themselves from experiencing pressure on loan repayment.

President, after listening to the speeches by Honourable Members on the relevant motion, I will make a consolidated response. Thank you, President.

MS LI FUNG-YING (in Cantonese): President, the festive period of Labour Day has just ended. On Monday, this headline was splashed across the front page of a financial newspaper: "Mainlanders snatching up flats in Hong Kong; number of inspections by prospective buyers increased by 20% during the May 1 holidays". The news report gave an account of the Hong Kong properties purchased by mainlanders, including 5% of the flats of the Maison Rosé in Sham Shui Po, and the first-hand flats at the Avignon in Tuen Mun and the Aria-Kowloon Peak in Kowloon Bay also attracted the patronage of mainlanders. The article cited members of the property sector as saying that the proportion of Mainland buyers in the total number of transactions had risen to 30%.

President, I do not know how the actual situation of mainlanders buying properties in Hong Kong is like, but after reading such a report, I am worried about the future direction of Hong Kong society. If the trend of Mainland people buying properties in Hong Kong continues to develop, what they buy will no longer be confined to the luxury properties intended for high-ranking officials or business tycoons alone, and they will also buy flats in housing estates in Sham Shui Po, Tuen Mun and Kowloon Bay. At a time when properties in Hong Kong have been priced out of the reach of the public in terms of their purchasing power and become a cause of internal conflicts in society, the growing trend of mainlanders buying properties in large housing estates is no doubt adding fuel to the fire. The implication is not just confined to the aggravation of the internal conflicts in society only, for even the positive interactions between China and Hong Kong are being jeopardized. I believe the Government cannot just turn a blind eye to this.

If we look at today's motion debate on "Enhancing the My Home Purchase Plan" from this angle, I believe that such proposals as resuming the construction of HOS flats, building additional public housing units and enhancing the My Home Purchase Plan (MHPP) raised in the motion and the amendments can all serve to solve to some extent the problem of the grassroots having difficulties in acquiring their own properties. However, I am not optimistic about these

measures being able to resolve the conflicts between property prices and people's living. The reason that I am not optimistic is that Hong Kong society is facing a completely new challenge of a large number of Mainland consumers with enormous buying power coming to Hong Kong to buy services and assets. From a positive point of view, they have promoted economic development in Hong Kong, for example, the turnover of the retail industry has increased significantly. At the same time, some services and assets related to public living, such as the gynaecology and obstetrics services, also run into a situation of demand outstripping supply due to the patronage of Mainland consumers, thus making it necessary for Hong Kong women to deliver their babies in private hospitals as it is difficult to get a hospital bed. The latest development is that the Department of Health has to intervene in the operation of private hospitals in admitting pregnant Mainland women. This is the situation in healthcare services and another matter closely related to public living — the housing problem being discussed by us today, is also like this.

Of the numerous proposals in the original motion and the amendments, Mr Paul CHAN proposes that future flats under the MHPP should only be resold to Hong Kong residents and my view is similar to his, but there are also some differences. If non-Hong Kong residents are not allowed to buy MHPP flats, the effect in helping the public buy their own properties is rather limited but if the restriction on purchase is extended to other private properties, this will violate the principles of free market in Hong Kong. President, I propose that the Government impose an additional tax on residential properties worth less than \$5 million sold to non-Hong Kong residents and the tax rate should be a certain percentage of the price of the property concerned, just like the present 15% of Special Stamp Duty, with the aim of dampening the desire of non-Hong Kong residents in coming to Hong Kong to buy flats in middle-to-lower-priced housing estates.

President, in the past, the Government had stressed time and again that mainlanders came to Hong Kong only to buy big-ticket luxury flats and that the general public were not affected in buying their own properties. I hope the Government can give a clear account of whether any change in the trend of mainlanders coming to Hong Kong to buy properties has occurred. However, even if it is true that mainlanders only buy big-ticket luxury properties, I believe that given the almost sky-high prices in the property market at present, it is still worthwhile to introduce an additional tax on the purchase of middle-to-lower-priced

properties because this will deliver to society the message that the Government will not turn a blind eye to high property prices or public grievances. If there is really a growing trend of mainlanders buying middle-to-lower-priced properties, it is all the more urgent and necessary to impose an additional tax on such flats bought by mainlanders.

President, I so submit.

MISS TANYA CHAN (in Cantonese): President, today is 4 May, the anniversary of the May Fourth Movement and the Youth Day in the Mainland. On this day which belongs to the young people, I would like to discuss the motion on enhancing the MHPP proposed by Mr CHEUNG Hok-ming from the angle of the young people.

First of all, I must clarify one point. According to my understanding, young people are most concerned about housing, not home ownership. The "shell-less snails" sleep-in protest staged by the Young Civics last month aimed to highlight the housing problem faced by young people. We wish to tell the Government that the young people are not aiming too high; nor do they wish to buy a flat after working briefly for just a few years. The truth is that even though young people nowadays do wish to stand on their own feet, there is no way for them to get a dwelling which is stable and continuously affordable to them.

Frankly speaking, many young people do not mind renting a flat, as their concern is only about solving their housing problem. All they hope is that they can budget for their monthly expenses on housing. But the cruel reality is that it is basically impossible for young people renting a flat to budget for their expenses on housing. For instance, the rent of a 20-odd-years-old small- and medium-sized flat of about 400 sq ft in Tsuen Wan has risen from some \$6,000 or \$7,000 a year ago to the current level of \$8,000 or even more, representing a 20% increase in rental over a period of one year.

How many jobs are there of which the pay can increase by 20% a year? So, tell me, how is it possible for the young people to rent a flat? Even though the young people wish to rent a simple suite, the rental can cost almost \$4,000 a month. So, how can this be affordable to them?

Consequently, home purchase has become a way out for the young people aspiring to improving their living environment. But faced with soaring property prices nowadays, how many young people have the means to buy a flat? Last week, the first lot with tightened restrictions on "inflated areas" was auctioned. This site on Ko Shan Road, Tokwawan, was sold at an average premium of nearly \$10,000 per square foot. When the cost of construction and profit of the developer are factored in, the flats may cost \$15,000 or \$16,000 per square foot when they are put up for sale. To young people who wish to buy a flat, such prices are simply beyond their wildest dream.

The situation is not much better for flats said to be specifically developed for first-time home buyers (which are commonly referred to as flats enabling the buyers to "get on the train"). Recently, a new residential development launched for sale in Yuen Long costs \$5,000 to \$6,000 per square foot, which means that a flat of 500 sq ft can cost \$2 million or \$3 million, and some \$500,000 to \$600,000 are required for the down payment alone. It may be possible for them to take out a loan of \$500,000 for pursuing studies, but if it requires \$500,000 for the down payment, can these flat for first-time home buyers truly enable the young people to buy their first homes? I am afraid they cannot even see the tail lights of the train, let alone getting on it. Renting a flat is costly and buying a flat brings a heavy burden. Do our young people really have to become "shell-less snails" for the better part of their life?

President, the MHPP is unable to solve these housing problems faced by the young people disregarding from which angle we look at it. First, the entire MHPP can provide only 5 000 flats which are absolutely inadequate to meet the demand for housing among the public. Moreover, even if the MHPP is implemented, the first batch of flats will become available only in 2014 the soonest. Considering the feverish property market now, this is too distant a solution that cannot solve the immediate problem at all. For how much longer do our young people have to wait before they can have a chance to build a comfortable home of their own?

Another structural problem of the MHPP is the rental of the flats. While the Government has adjusted upward the income limit of a two-person family to \$13,410 for applying for PRH, many young couples whose income has exceeded the limit cannot benefit from PRH flats, and they can only look to the MHPP as

one of the options to meet their housing needs. But it is another problem as to whether they can afford the rental of MHPP flats.

In introducing the MHPP, the Government said that the rental of the flats will be fixed with reference to the market rate. If the rental is set according to the level of market rate, the rental of these new flats may be well over \$10,000. Assuming a young couple makes a monthly income of \$25,000, a rental of \$10,000 is equivalent to 40% of their income. Given the surging prices nowadays, how much will be left for them to save up each month?

The rental level is already a big problem, but an even bigger problem will emerge after the expiry of the five-year tenancy period. According to the Government, under the MHPP, the tenant of a flat can receive half of the total rental that he has paid after five years and use it for down payment. Assuming the rent is \$10,000, a tenant will receive \$300,000 five years later. In view of the feverish property market nowadays and the serious imbalance between supply and demand, do Members think that \$300,000 will be enough for the down payment five years later?

At the end of the five-year tenancy, if the young people eventually choose not to buy the MHPP flats or they basically cannot afford them, they will have to rejoin the private residential market and start paying expensive rental five years later. So, the MHPP cannot in the least put their minds at ease. To the young people, the MHPP can only defer the days that they have to pay a high rental to a few years later. The housing problem of the young people has primarily remained unresolved.

Lastly, I wish to respond to a proposal made in the motion of allowing the public to choose whether to rent or immediately buy the flats under the MHPP. If the "rent-or-buy" option is provided, I believe a great majority of applicants will choose to buy a flat straightaway. If that happens, the entire MHPP will turn into a replica of HOS which is a subsidized housing scheme and in that case, those young people with a lower income and who do not have the means to pay the down payment may probably be shut out of the MHPP. The Government said that the MHPP is an alternative HOS, but this is basically out of the question.

President, the many questions that I have raised all point to the structural problems plaguing the MHPP. Indeed, the Government should consider more

options and more effective measures, such as resuming the construction of HOS flats, increasing the provision of PRH flats, further relaxing the eligibility for PRH flats, and so on. If policies which have been proven effective over the years can provide solutions to the existing problems, why should we be carrying coals to Newcastle by introducing the MHPP?

I so submit. Thank you, President.

MR CHAN KIN-POR (in Cantonese): President, the Legislative Council debated a motion relating to the property market in November last year and at that time, Honourable colleagues expressed grave concern about the continual rise in property prices in Hong Kong. Little did it occur to them that a few months later, property prices in Hong Kong would return to the level in 1997. The Financial Secretary also said a couple of days ago that overall property prices in February had already surpassed the peak in 1997.

As I pointed out in my speech at that time, not only had an alarm been sounded in respect of the property market, this issue had also become a pressing crisis for the SAR Government. Overall property price has reached a historical high and no matter if it continues to rise or a significant drop occurs, they may both pose a risk of social instability to Hong Kong. In particular, in the event of a drastic fall in property prices, members of the public who have bought their properties at high prices will likely become a new group of negative-equity asset owners. The Government should prevent the continual deterioration of the situation. I think the Government should adopt a more open and active attitude and deal with the housing problem with new thinking.

In order to curbing the rising trend of property prices, the Government has taken a number of resolute and bold measures in succession, including the measures to clamp down on property speculation and increase land supply. Although the trend of rising property prices cannot be arrested in full, the relevant measures have already achieved some effect and they even have great significance for the property market in the long term. However, on such housing issues as those relating to PRH, the HOS and the MHPP, the Government appears to be somewhat complacent and conservative and has not responded actively to the relevant voices and views in society. Today, the motion and

amendments proposed by various Members precisely reflect the problems in housing policy and it is really worthwhile for the Government to listen carefully.

The MHPP was proposed by the Government in response to the demand in society for the resumption of the HOS. Since it is a completely new plan, whether the idea is practicable and can meet the needs of the public will have to be tested in the market. However, at this stage, quite a lot of views in the legislature and society consider that there are many inadequacies in this plan and that it has to be enhanced, and the views include those put forward by various Honourable colleagues today, such as whether or not the number of flats is adequate, whether or not the pace of launch can be speeded up, whether or not concessions on flat prices should be offered, whether or not there should be restrictions on the resale of the units, whether or not only Hong Kong people should be allowed to buy the units, and so on. Generally speaking, I agree that there are inadequacies in the MHPP and I also agree with most of the suggestions put forward by Honourable colleagues. I hope the Government can study them seriously and put forward proposals to enhance the MHPP in earnest.

As regards issues relating to the HOS and PRH, all along, I believe that the Government should seriously consider the resumption of the HOS. The aim of resuming the HOS lies not in curbing property prices but in improving the living environment of eligible members of the public in the middle-lower income group who cannot afford private properties, particularly residents of PRH. After they have used Green Forms to buy HOS flats, they have to surrender their PRH units, so this can shorten the waiting time for PRH. In addition, I also think that the Government should speed up the construction of PRH to enable members of the grassroots living in poor conditions to be allocated PRH as soon as possible, so as to ease the mounting public grievances.

In addition, a Member also proposed the relaunch of the Tenants Purchase Scheme (TPS). I think we have to consider this carefully. Recently, the Government has decided to raise the upper income limit for applying PRH significantly, so as to include more members of the public in the "PRH net". However, in respect of the supply, the Government is still keeping to its plan of building 15 000 PRH units in each of the next five years and recovering about 10 000 PRH units each year. As a result, the demand has increased but not the supply. This may put pressure on the target of a waiting time of three years for

PRH allocation. If the TPS is also relaunched, ultimately, this may lead to a fall in the number of PRH units recovered, thus making it impossible to recover some 10 000 units each year. In that event, it will be even more difficult to attain the target of PRH allocation within three years. Moreover, the pricing under the TPS is ultimately determined with reference to the market price. Although discounts are offered, I personally think that since at present, property prices are at a historical high, the prices set under the TPS will also be very high. If the interest rate rises significantly in the future, thus leading to a fall in property prices, to PRH tenants who have bought their own units, the downside may outweigh the upside.

Finally, I wish to point out that in recent years, more and more mainlanders have come to Hong Kong to buy properties. According to the reports of the mass media, in the recent sales of new properties, the proportion of mainlanders has increased to 20% or 30% of all buyers, so this situation is indeed a cause for concern. In fact, the trend of mainlanders coming to Hong Kong to buy properties may become a long-term one. Apart from the fact that the rich on the Mainland like to invest in properties here, Members may have overlooked the fact that each year, some 30 000 to 40 000 pregnant Mainland women would come to Hong Kong to give births. It is expected that some of these children born in Hong Kong will surely come to Hong Kong to receive education and live here. Generally speaking, their family circumstances are better off and naturally, they will want to buy properties in Hong Kong, so the demand for residential properties will surely be stimulated in the future. Therefore, the Government should re-assess the future demand for residential properties from various quarters and plan the supply of land accordingly, so as to solve the long-term problems relating to property prices.

President, I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, last year, the My Home Purchase Plan (MHPP) was proposed in the Policy Address and it was announced that sites would be reserved in such places as Tsing Yi and Sha Tin for the construction of 5 000 no-frills small and medium flats for the sandwich class to "rent-and-buy". The Government insists that the Plan will enable more

members of the middle-lower class to acquire their own properties. After the announcement of this Plan, its reception was mixed. Some people agreed that this can help the public join the property owners' club, but still more criticized this Plan as comparing less favourably with the HOS and not being able to give people peace of mind.

I believe that whenever a new policy is introduced, the public generally will be skeptical and this is only normal because they know little about the newly launched product. In this connection, after the delivery of the Budget, we also put forward six proposals to the Financial Secretary and while three of them were accepted, the Government did not respond to one of them, that is, we believe that the HOS should be resumed by building an appropriate number of HOS units and a rent subsidy should also be offered to the sandwich class. Why do we think that the MHPP cannot meet the needs in the market? We believe the MHPP and the HOS are actually just like two different brands. The MHPP is a new brand and the HOS is an old one.

Let me talk about the old brand first. Since the introduction of the HOS in 1976, countless members of the public have been helped in acquiring their own homes and of course, the public are very familiar with the HOS and know what it is. However, regarding the MHPP, apart from its different name, it is also very different from the HOS in its specific details. Therefore, to the public, it is a most unfamiliar brand and coupled with the fact that most political parties and groupings have placed their stakes on building more HOS units, so as soon as the MHPP was introduced, it has encountered many twists and turns.

I believe the public have quite a lot of reservations about the MHPP and not only do they have reservations, as Mr LEE Wing-tat said just now, they may even have some phobia about it. Why such phobia? I think the success of a brand mainly hinges on confidence. Just like handbags, many people have confidence in such brands as Gucci and LV. When Mainland visitors come to Hong Kong I once went to Causeway Bay to buy a handbag but it turned out that I could not queue up to buy any because it was Christmas and mainlanders were waiting in a long queue at a certain shop to buy those handbags, so there is no need to worry about those handbags having no market at all. They are very familiar with those two brand names but if one talks to them about Hermès, they know nothing about the brand and even if they give them to their friends as

presents, their friends will not appreciate them. This explains why it is necessary to market brand names.

Coming back to the HOS. It is an old brand, which, although not necessarily the best one, has won the confidence of Hong Kong people. In contrast, frankly speaking, the MHPP is not totally undesirable but I think it is a different brand and one that the public are not familiar with. If the Government wants the public to try this unfamiliar new brand, some time will be needed. Some people may have very favourable views about this Plan after joining it, concurring that the MHPP can let the public rent and then buy their flats with peace of mind without making a mistake by joining the property owners' club immediately. In fact, if the Government does not want the public to make a mistake by joining the property owners' club immediately when prices are very high, as Mr CHAN Kin-por said, and wants the public to buy time, I think this is not at all undesirable.

However, at the moment, this Plan really cannot meet the great demand in the Hong Kong market. Even if this Plan is feasible, only 1 000 units will be offered in 2014, so this distant solution really cannot meet the immediate and pressing needs. Just now, many Honourable colleagues said that mainlanders had enormous spending power. I have just looked at some figures and found that apart from attracting Mainland buyers, the properties in Hong Kong have also attracted many Japanese buyers after 11 March. They would buy the flats immediately after inspection. Maybe they have great confidence in the management and quality of the properties in Hong Kong. Furthermore, Hong Kong is also quite close to Japan. At present, properties in Hong Kong are well-received by all sorts of people, so the Government may as well consider the relaunch of the old brand in parallel if the newly launched brand cannot win the confidence of the general public or even that of Members, so as to meet the prevailing great demand in the market in Hong Kong.

Therefore, I also agree with the proposal on "rent-or-buy" put forward by Mr CHEUNG Hok-ming, so that this new brand called the MHPP can be made more flexible. Another point is that from the viewpoint of realistic politics and the Government's position, it is definitely infeasible to demand that the Government scrap the MHPP, so we may as well think together about how the MHPP can be enhanced and the Government can be persuaded to adopt a dual-track system. In respect of the MHPP, I agree that a price ceiling should be

imposed, in particular, the sale price should be capped in the future to prevent speculation. Some Honourable colleagues proposed that 2 000, 3 000 or 5 000 units should be provided each year but I only want to say this: Be it the MHPP, the HOS, the delivery of babies, education, hospitals, matters relating to birth, the elderly, illness or death, or the problem of columbarium niches, the most important issue is that all along, the Government has not carried out any population planning properly. If there is population planning, no matter what the measures are, there will be scientific data to back them up and any fear of causing the property market to collapse would hence be out of the question. No matter how many mainlanders come to Hong Kong to buy flats intended for no matter what class, and no matter how many Japanese move to Hong Kong, we welcome them but we also have to be prepared. Therefore, I have all along held that the HOS and the MHPP are two different brands and today, I will not totally negate the latter. I do not rule out the possibility that it will become a popular brand one day. However, given the prevailing needs in the market, the two brands should be launched at the same time to let the public make their own choices.

I so submit.

MR CHAN KAM-LAM (in Cantonese): President, first, I wish to talk about the thinking behind this motion proposed by the DAB. What role should the Government play in the property market and housing policy? Given the development of the property market thus far, if the Government still insists on following a policy of non-intervention, is it being principled or stubborn? All these issues merit our discussion.

Immediately after the reunification in 1997, Hong Kong encountered the Asian financial turmoil and the property market went into a deep recession together with the economy. Some people blame this on the housing policy of 85 000 flats but in the final analysis, the DAB cannot agree with this view. Back then, the cause of the property market crash was very simple. The property bubble had reached the point of bursting in 1997 and it so happened that it was then subjected to the hammering of the Asian financial turmoil, with the property markets in various Southeast Asian countries bearing the brunt. Even without the policy of 85 000 flats, it was possible that the property market in Hong Kong still could not have been spared. In 2002, the property market was in a prolonged recession, so the Government decided to withdraw from the

market and refrain from building more HOS units. Since property prices were very low, basically, the public were able to find suitable units in the market. However, times have changed again and the property prices nowadays have risen to a point where the bubble will burst at any time, but the housing policy of the Government has not been adjusted in any fundamental way. Although the Government has made efforts in various areas in the last couple of years by introducing measures and increasing land supply continually to curb property speculation, the effect is still minimal and property prices have remained very high. The public still have difficulty in acquiring their own homes.

Some members of the sector and economists have even predicted that due to the small volume of completed flats, the supply of flats will remain at a low level in the next 18 months. We are worried that for some time to come, the property prices will still rise. In that event, the burden of housing borne by the public will be even more onerous. It is obvious that property prices in this single market are rising with the tide and be it luxury or mass-market properties, their prices are all rising and have risen beyond the reach of the public.

In the face of such a state in the property market, most members of the public are feeling helpless, so there are strong calls in society for resuming the HOS. Last month, the DAB conducted a public opinion survey on housing policy, in which 88% of the respondents supported the resumption of the HOS. However, all along, the Government has failed to give a direct response to the strong demand in society for the resumption of the HOS. Instead, it keeps stressing that it will not play any part in the market, so as to avoid causing any impact to the property market. The Government adopts such a policy because it regards buying a property as being just like making other investments in general and considers the property market to be just like any other market, and this is why it insists on the self-regulation of the market.

However, we all know that housing is an essential part of people's living, so the development of the property market is not simply an economic issue but an important issue of public living. The thinking of Hong Kong people is ultimately traditional in nature and in the final analysis, they think that they must have "a roof over their heads" and own a flat before they can consider themselves to have a secure home. Therefore, among issues of clothing, food, housing and transport, if the Government does not resolve the most important issue of

housing, it will be difficult for the public to live in peace and work with contentment. Solving the housing problem of the public, in particular, the housing problem of the middle-lower income class, is the primary responsibility of the Government. Housing policies like the resumption of the HOS to regulate the property market are policies on people's livelihood and welfare, not an economic policy to regulate the market.

The Government always thinks that building more PRH can solve the housing problem of the grassroots. However, after the upper income limit for the application of PRH has been adjusted upwards, the upper monthly income limit for a two-member family is now \$14,100 and that for a three-member family is \$15,560. Many families with incomes exceeding the upper income limit for applying PRH are still leading difficult lives. Not to mention families with a monthly income of only \$10,000, even if a family earns an income of more than \$20,000 and even if we do not factor in the education expenses of a child, for a family with several members, there is little left of this sum of \$20,000 after deducting the rent and the monthly expenses, so how can it spare any money to buy a property? How can the Government neglect this group of people? Resuming the HOS and enhancing the MHPP are precisely intended to solve the housing problem of this group of low-income people.

We believe that the units under the MHPP should only be sold to eligible local people and even the second-hand units should only be sold to eligible people and should not be put on the free market for resale. In this way, speculation can be prevented, nor will there be any impact on the free market. This can also put the mind of the Government at ease as it would obviate the need to impose any restriction on resale and the number of years before resale. The key feature of the MHPP is "rent-and-buy", but we believe that it should be enhanced to "rent-or-buy", so that eligible applicants can have choices and the aim of enabling them to acquire their own homes with peace of mind can truly be achieved.

President, the housing policy is partly an economic policy but to an even greater extent, it is a policy on people's livelihood. The Government must keep in view the situation and developments, carry out reviews and make adjustments

from time to time, so as to foster the healthy development of the market, such that the public, be they rich or poor, can all buy their own homes for a peaceful living.

I so submit.

MS MIRIAM LAU (in Cantonese): President, in the face of high property prices, although the authorities have introduced a series of measures since early last year and also tried to increase the supply this year, at the end of the day, they have failed to arrest the rising trend of property prices, so people without a "shell" can only sigh and yearn for a flat, not knowing when they can buy their first homes. For this reason, we believe that it is necessary for the Government to introduce additional measures in response to the public's aspiration for home ownership.

Regarding the original motion moved today to enhance the My Home Purchase Plan (MHPP), of course, the Liberal Party has no reason to oppose it and it can even be said that we just could not welcome it enough because basically, this Plan has adopted the concept of the "Rent Saving from Interim Public Housing Scheme" proposed by the Liberal Party, only that the Government has adopted the element of "rental housing fund" without the mobility element. However, we think that in the final analysis, the MHPP is designed to offer to the sandwich class another choice in making their first home purchase, so that they can have the opportunity to save their down payment through rent rebates and realize their dream of home ownership. Therefore, although this Plan has its drawbacks, it is always better to have such a plan than otherwise, so we think it is also worthy of our support.

However, on the proposals in the original motion to introduce discounts on flat prices and restrictions on the resale of flats, which are very similar to the measures under the HOS, the problem is that if, in addition to the rent rebate, discounts are also offered, will this not be double benefit? We do not want to use the term "copycat HOS flats" to describe this enhancement proposal, but we have this question for the Government. If it adopts this proposal and in the future, the Government decides to resume the HOS, does it also have to make reference to this mode? Will there be any query on whether this mode is an appropriate way of using public funds? However, at any rate, we also agree that greater flexibility can be offered, so that tenants can choose to buy their units

during their period of tenancy in the light of their needs, so we agree that the Plan can be further enhanced in this direction.

The Liberal Party also agrees that it is necessary to increase the supply of units under the MHPP because the number of units for the entire tenure of the Plan is only 5 000, so it is not enough to meet the expectations of the public. Moreover, the first batch of 1 000 units will be completed only in 2014 at the earliest and the quantity is too small, thus it is only right that the Plan should be speeded up and the supply increased.

Nevertheless, the Liberal Party believes that the fundamental way to stabilize the property market is to find ways to increase the supply. Unfortunately, the Government has failed to inspire enough confidence in the market. For example, when the Financial Secretary, John TSANG, delivered the Budget in February this year, he tried to cool down the property market by the so-called measures to increase supply. What is the result? In February this year alone, in a number of "blue-chip estates", including City Garden and Tai Koo Shing, the price per sq ft of properties surged past that in 1997 and last month, when summing up his Budget, the Financial Secretary also admitted frankly that overall property prices in February had already exceeded the peak in 1997.

Last week, that is, in the first land auction after the introduction of measures to impose restrictions on "inflated buildings", a residential lot in Hung Hom was auctioned off at a high price close to the upper limit of market expectation, so the price of the "flour" is as high as \$10,000 per sq ft. Indeed, the trend of increase in the property market has not yet lost steam.

The Liberal Party believes that the reason is the insufficient determination of the Government in increasing the supply of residential properties. Although the authorities have also accepted some of the Liberal Party's proposals, namely providing more flats with limited floor areas, and they also plan to take the initiative to announce the details of land sales in each quarter, so as to increase the supply of land and small and medium flats, the strength of such measures is still a far cry from that advocated by the Liberal Party.

The claim made by the Financial Secretary, John TSANG, in the Budget that the supply of new sites this year can be used to build 30 000 to 40 000 private residential flats is an inflated one because the Secretary for Development, Mrs

Carrie LAM, said subsequently that the supply actually in the Government's control is only about 18 000 to 19 000 units, so the inflated claim of 30 000 to 40 000 units made by the Financial Secretary is double this figure.

Take the supply of "flats with limited floor areas" as an example, initially, the Budget said that land supply for 3 000 small and medium units would become available this year and subsequently, the measure of active land auctions was announced last month. Based on the 2 650 flats put on sale in this quarter, since 70% of them are small and medium units, even if the figures for the other three quarters are all added together and the additional land supply is also factored into this, the land supply for the whole year can only provide not more than 11 000 units. Moreover, it is possible that only 70% of them are small and medium units, so this is a far cry from the annual supply of 12 000 flats with limited floor areas proposed by the Liberal Party.

President, we believe that apart from having to increase the supply in earnest, if we want sandwich-class families to fulfil their wish of owning their own homes, the authorities must take one step further, that is, as we stated in our open letter addressed to the Financial Secretary with the heading "Administer the right cure and introduce measures immediately" before the publication of the Budget, the authorities have to require through the conditions of land sale that this batch of units be sold only to Hong Kong residents buying their first homes. We believe that it is only with the safeguard of restricted sale that sandwich-class families acquiring their first homes can hope to find suitable units among the 12 000 small and mediums flats offered each year, without having to compete with people from outside Hong Kong, thus realizing their dream of acquiring their own homes for a peaceful living.

President, I so submit.

PROF PATRICK LAU (in Cantonese): President, the public housing policy implemented by Governor McLEHOSE since the 1960s was undoubtedly the best policy in Hong Kong that made it possible for the disparity between the rich and the poor to take a turn for the better. As everyone knows, many students are living in public housing — many Members here might have lived in public housing before, too. Thanks to the low rents, they have a chance not to live in

public housing anymore after graduating from universities and entering society. Such a "revolving door" is the best policy. Therefore, should we wish to continue to promote this core value in Hong Kong and complete this mission, we should consider ways to enhance public housing.

For this reason, if the MHPP can be enhanced to achieve the actual effect of "an enhanced version of HOS", as stated by the Government, and really help the public acquire homes, I will definitely support it. Just now, the Secretary explained how the MHPP should give people peace of mind in many ways. But the biggest question is that we must look at the prices and rentals, the same issues facing public housing. Even if the Government undertakes to rebate half the rental paid to enable the people to make their home purchase, judging from the current rates of rise in property prices, I think the people's greatest concern is whether or not the rental rebate three years later will be sufficient — of course, it will not be sufficient to cover the 10% down payment for purchase of these MHPP flats.

Therefore, the public concern is not unfounded. We can all see that although the Government has already stepped in, property prices have continued to rise, with the property price in the New Territories reaching \$8,000 per sq ft. Even the property price in Tsing Yi, where the MHPP will be launched, has already risen to \$7,000 per sq ft. Given these property prices, a 600 sq ft flat will cost \$4.5 million, which means that more than \$1 million will have to be paid for the 30% down payment. If, unlike the HOS, discounts and 90% mortgage guarantees will not be provided under the MHPP, how can ordinary people afford the MHPP flats?

Despite the public concern that property prices will spiral to an even more outrageous level, the Government compels the people to rent for three years first and then buy a flat within the remaining two years. Will the Government let the people continue to live in the flat should they decide not to buy it? This is yet another problem. Should property prices spiral to a level that is unaffordable to the people who also find it impossible to rent a flat and neither will they receive a rental rebate, how can they have peace of mind? This is the biggest problem.

I therefore support a "rent-or-buy" MHPP to flexibly allow the people to "purchase their first home" or continue to rent their flat. However, a restriction

on resale must be imposed to require that flats bought back by the Hong Kong Housing society (HKHS) can only be resold or rented to Hong Kong residents eligible for making applications under the MHPP, with a view to helping people with housing needs in endless cycles. This is what sustainable development means.

Regardless of whether the public choose to rent or buy the flats under the MHPP, I think it is most imperative for the Government to make clear the land premium arrangements. Whether the land will be granted at a concessionary premium or "premium-free", like the arrangement for HOS flats, will be the most decisive factor determining the prices of flats provided under the MHPP. If the premiums of land provided for the MHPP are as expensive as market prices, a lot in Hung Hom was recently sold for \$10,000 per sq ft — this view was shared by a number of Members just now — if even the flour alone is so expensive, the bread produced in the future will be even more expensive together with the construction cost. Even if property developers do not make profits, I think the flats are still unaffordable to members of the public.

President, what we are talking about is that it is most important to allocate more land and construct more subsidized housing. Apart from increasing the number of flats under the MHPP implemented by the HKHS, the Hong Kong Housing Authority (HA) should respond to the demands of the community by building additional PRH flats, resuming the construction of HOS flats, and reconsidering the Tenants Purchase Scheme. All this is part of the contents of the motion today.

In order to help more people in need to acquire their homes, I think the authorities should scrap the premium payment mechanism while resuming the construction of HOS flats. Moreover, only eligible green form or white form applicants should be allowed to purchase HOS flats bought back by the HA and resold with a view to preventing market speculation from pushing up the prices of these flats, for otherwise the flats would become unaffordable to the general public and the HOS market will cease to exist.

According to some data published by Mr Marco WU, former Deputy Director of Buildings, in a newspaper, more than 30 000 HOS flats were resold to green form applicants without payment of premium during the past two decades or so. Coupled with 65 000 HOS flats with premium paid, the total turnover of HOS flats reached 100 000. So we can see that this approach can also lead to

turnover of HOS flats. Hence, although 80% of the HOS flats have still not paid premium, the total turnover in the market demonstrates that the demands for HOS flats have been high.

Nevertheless, a restriction should be imposed on HOS flats to be built in the future so that they can be resold only to eligible applicants or bought back by the HA. The premium payment mechanism, if abolished, can ensure there is adequate subsidized housing to provide a "first home ownership" option to the people.

Meanwhile, additional PRH units should certainly be built to ensure the pledge of three-year waiting time for PRH allocation. As pointed out by Members just now, now that the upper ceiling has been raised, is there a definite need to provide additional PRH units? Miss Tanya CHAN, who represents young people, pointed out just now that young people have housing needs, too. So should the scoring system be improved for single applicants under the age of 30?

Lastly, during our trip to Vancouver, I observed that excellent work had been done in Vancouver on this front. Developers carrying out housing construction projects in Vancouver are required to build public housing. In other words, they must construct public housing while constructing private housing. During the construction stage, no one can tell the difference between public housing and private housing. I think the problem can be resolved with this approach. Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm tomorrow.

Suspended accordingly at four minutes past Ten o'clock.

Annex I

SECURITIES AND FUTURES AND COMPANIES LEGISLATION
(STRUCTURED PRODUCTS AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial
Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the clause.
4(3)	In the proposed section 103(2)(e), by deleting "or structured products" and substituting "(excluding securities that are structured products)".
4(3)	In the proposed section 103(2)(e)(i), by adding "(excluding securities that are structured products)" after "securities".
4	By deleting subclause (9).
15(5)	In the proposed paragraph (g), in the Chinese text, by deleting "屬或載有邀請公眾作出本條例第103(1)(a)條提述的作為的任何廣告、邀請或文件，已根據本條例第105(1)條獲認可" and substituting "載有請公眾作出本條例第103(1)(a)條提述的作為的邀請(或屬該等邀請)的廣告、邀請或文件，已根據本條例第105(1)條獲認可，".

- 15(6) By adding "in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance" after "structured product".
- 15(7) In the Chinese text, in the proposed definition of "貨幣及利率掛鈎票據", in paragraph (a), by deleting "結合參照以下因素" and substituting "參照以下因素的組合".
- 15(8) By deleting the proposed section 11 (f) and substituting -
- "(f) a product under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is -
 - (i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation; or
 - (ii) a spouse, widow, widower, minor child (natural or adopted) or

minor step-child of a person referred to in subparagraph (i);”.

New By adding -

“Securities and Futures (Fees) Rules

30. Schedule 1 amended (Fees)

(1) Schedule 1 to the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) is amended, after item 5, by adding -

“5A. Fee payable on \$2,000
an application
under section
104A(1) of the
Ordinance for
authorization
of a structured
product

5B. Fee payable in \$1,000”.
respect of
authorization
of a structured
product under
section 104A of
the Ordinance

(2) Schedule 1 is amended, in item 8, by
adding -

"(d) any structured \$3,000".
product