

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 11 May 2011

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.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 LEE CHEUK-YAN

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

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, G.B.S., J.P.
SECRETARY FOR DEVELOPMENT

MR GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

MR LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.
UNDER SECRETARY FOR SECURITY

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, 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/Instrument	<i>L.N. No.</i>
Tramway Ordinance (Alteration of Fares) (Amendment) Notice 2011	63/2011

Other Paper

Report No. 21/10-11 of the House Committee on Consideration of
Subsidiary Legislation and Other Instruments

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Private Property Developments Taking up "Residual Plot Ratio"

1. **MR ALBERT CHAN** (in Cantonese): *President, it has been reported that recently some developers have planned to take up the "residual plot ratio" of private property developments to construct high-density buildings in the vicinity of some large housing estates, such as Mei Foo Sun Chuen and Riviera Gardens in Tsuen Wan, which seriously affects the living environment of the residents of the housing estates. In this connection, will the Government inform this Council:*

- (a) *regarding the applications by developers of construction plans to take up the residual plot ratio of private property developments in the past 10 years, of the respective locations, heights and floor areas of the buildings, and the time when such applications were submitted to and accepted or rejected by the authorities (set out in table form);*

- (b) *whether the authorities will consider requiring developers to submit afresh applications in respect of construction plans approved years ago to take up the residual plot ratio of private property developments but the construction had not commenced (for example, within 10 years), so as to facilitate the authorities in reviewing afresh whether such applications meet the existing planning standards; if they will, of the details; if not, the reasons for that; and*
- (c) *whether the authorities will consider the options of land exchange with the developers (for example, using vacant government premises or sites on the Application List) and allowing developers to convert the land use of their agricultural land reserve, in exchange for the land on which those highly controversial property developments are located, so as to settle the disputes among the developers and the residents; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, land development has often been a sensitive issue in Hong Kong involving substantive interests. Such issue has to be handled very carefully. In recent years, in response to concerns of the public over development density and aspirations for a quality living environment, the Administration has formulated new policy measures as well as re-examined some government development projects. However, when carrying out such work or when handling public requests regarding individual projects, the Government must respect private property rights and uphold the rule of law as well as fairly process all development projects in strict accordance with the legislation and established policies. For a private development project which complies with the land lease and statutory requirements, the Government, without sufficient justifications, should not make any recommendations to stop the project.

Some members of the public have recently raised concerns over the land use and development rights of individual lots. The major cause is believed to have originated from the queries raised by the residents of Phase 8 of Mei Foo Sun Chuen over a development project at a site of a former liquefied petroleum gas storage near their housing estate. On this subject, representatives of the Development Bureau and departments have held a number of case conferences with Members of the Legislative Council, attended meetings of a working group

established under the Sham Shui Po District Council on this issue several times, and met with the representatives of residents of Phase 8 of Mei Foo Sun Chuen to respond to the residents' queries. To enhance the understanding of the relevant parties on the issue, we have consolidated the relevant information and have issued a document last week to explain in detail the development background of the concerned lots as well as the Administration's policy considerations and justifications. Members who have participated in the Legislative Council case conferences should have received this information document.

I am mindful that while the question raised by Mr Albert CHAN today might have originated from the case of Phase 8 of Mei Foo Sun Chuen, the content it touches on is generalized. This is conducive to my replying and following up the supplementary questions, as the developer and residents involved in this case are separately taking legal actions and the Government should not make too many comments.

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

- (a) Any land development project undertaken in Hong Kong is controlled by the Town Planning Ordinance (Cap. 131) and Buildings Ordinance (Cap. 123), and must comply with the lease requirements of the lot to be developed. In approving a proposed development project, the relevant authority will mainly consider the project from planning, building as well as land lease aspects. Comments from other departments will also be suitably adopted. If a development project fully satisfies the relevant requirements of the land lease, Outline Zoning Plan (OZP) as well as Buildings Ordinance and its subsidiary legislation, the relevant authority will have to grant its approval in accordance with the established procedures. "Residual plot ratio" is not a concept enshrined in the abovementioned statutory requirements and lease conditions. A developer will also not submit an application with "residual plot ratio" as the basis. As such, I cannot provide the information requested by Mr CHAN.
- (b) Under the Buildings Ordinance, after the approval of building plans, the relevant party has to obtain a written consent from the Building Authority before construction works (including foundation or

superstructure works) can be commenced. If the building plans were approved many years ago but the consent to the commencement of any works has not yet been applied for in the past 10 years as described in the question asked by Mr CHAN, then, generally speaking, when the relevant party applies for the commencement of works, the Buildings Department (BD) will scrutinize the relevant plans again in accordance with the Buildings Ordinance. If the building works shown on the plans do not comply with the prevailing requirements of the Buildings Ordinance and its subsidiary legislation, the BD may refuse to grant its consent to the commencement of building works. Nevertheless, objecting the commencement of works does not mean that the Administration can deprive the land owner of the title of land or the right to develop the lot through re-submitting building plans.

In addition, the BD has recently adopted more lucid measures in relation to the validity of approved plans. The Department issued a document to the industry on 21 October 2010, stating that plans with "modifications or exemptions" (such as those enjoying gross floor area concessions for green and amenity features) granted in accordance with section 42 of the Buildings Ordinance on or after that date, will have a time limit of generally two years. Developers will be requested to commence the superstructure works within this time limit. If such works have not been commenced upon the expiry of the time limit, the BD may refuse to grant its consent when the developer applies to commence superstructure works thereafter. This measure will ensure that development projects with "modifications or exemptions" granted by the BD will comply with the requirements under the latest building policies.

In addition, under the existing mechanism, if major amendments are to be made to building plans approved by the BD, the Department will require the proposed amendment plans to be in compliance with the prevailing planning, building and other relevant standards.

As can be seen from the above, the arrangements suggested by Mr CHAN have largely been in place under the existing regime.

- (c) "Non-in-situ land exchange" between the Government and a land owner is a very solemn and sensitive arrangement. It generally requires the approval of the Executive Council on a case-by-case basis. The Executive Council will only consider adopting the method of "non-in-situ land exchange" under very special circumstances, such as when there are sufficient policy justifications and when the case concerns overall public interest. An example is the protection and preservation of a historic building under Hong Kong's heritage conservation policy. If the development project of a developer complies with the planning and building legislation and the development's land use is permissible under the land lease, then the Government should not, because of objections of local residents in the neighbourhood of the lot of the project, interfere with private property rights, such as proposing a "non-in-situ land exchange" to stop the development.

As for allowing developers to convert the land use of their agricultural land reserve, it involves the statutory town planning process, in which the Town Planning Board (TPB) will independently consider each application for change of land use. As such, there are no circumstances under which the Administration can achieve certain objectives with a private developer through changing the land use of a piece of land. I have to point out that under the existing town planning regime, in the conversion of a piece of agricultural land into one feasible for development purposes, the TPB will have to consider various objective factors, such as the location of the land, its neighbouring environment, the infrastructure, and so on; collect opinions through the established public consultation process; and be premised on public interest. This planning tool is not suitable for handling disputes between developers and residents over the development of a certain lot.

MR ALBERT CHAN (in Cantonese): *President, concerning "residual plot ratio", developers may not have filed applications using these wordings but many applications are related to this ratio. I am not sure if the Secretary will exercise discretion and provide this Council with supplementary information later, stating that while this is not the only reason given by developers, applications have been*

made in the past 10 years to take up the residual plot ratio, so that we can have a clearer picture about the actual situation of such applications, and the Council's right to know will not be compromised because of these wordings.

President, I would like to follow up the Secretary's reply concerning equitable development. In part (c) of my question, I ask the Secretary to consider the options of land exchange with the developers, and so on. The Secretary has replied that special arrangements are made under very special circumstances. I would like to remind the Secretary that the Government made special arrangements for the present Cheung Kong Centre when the Hilton Hotel was redeveloped years ago. It was finally approved by the Governor-in-Council that the adjacent government sites would be allocated for the development of the Cheung Kong Centre, without having to undergo open tender. Of course, these were special arrangements. I proposed land exchange with the developers in cases similar to Mei Foo Sun Chuen. As to whether public interests are involved, waterfront landscape is precious because there is not much waterfront landscape left in other areas. Similar to heritage conservation, waterfront landscape has public values and interests. Will the Secretary take this into consideration? If precious land or natural resources are involved, the sites are as precious as cultural assets. Will the Secretary consider the issue from the policy angle and make careful considerations so that the precious land resources of Hong Kong people will not be sacrificed because of approved development projects, and that the living environment of the public will not be undermined and adversely affected?

SECRETARY FOR DEVELOPMENT (in Cantonese): Mr CHAN has asked a supplementary question and made a request. He requested if the approved plans in respect of "residual plot ratio" in the past 10 years can be provided after the meeting. I am sorry to say that I have much reservation about this request. In the past 10 years, the BD received 4 050 applications for approval of general building plans and 2 920 of these applications were approved. Concerning this non-existent concept of Mr CHAN, according to my understanding, Mr CHAN wants to know how many applicants for approval of general building plans in fact owned the lot, and the lot had been developed even though there is still undeveloped space or residual plot ratio. We really need to check these plans before responding to this question. During discussions at another Panel meeting this morning, Members understood very well the enormous pressure faced by the

BD for it had to handle issues related to the removal of illegal structures and building safety. That is why I have reservation about this request. At present, I do not have any data and I can only respond to this demand after my colleagues have checked thousands of plans submitted in the past 10 years. If Members find it necessary to grasp more information about certain cases or policies, I would be happy to explore these issues with Members.

Two proposals have been made in part (c) of Mr CHAN's question; first, "non-in-situ land exchange"; second, making use of town planning as a tool. I am very strongly against using town planning as a tool because we cannot use this tool for administrative convenience. A town planning application cannot be approved by an agreement made between me, the Administration and the developer. So, I am definitely against that. I must say that "non-in-situ land exchange" is a very solemn and sensitive subject which has to be supported by strong justifications, and has to undergo many approval procedures. I have quoted the heritage conservation policy as an example. If, according to the explicit policy, a place is regarded as having high values or even as statutory monument, we will try to handle such cases by means of "non-in-situ land exchange".

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

MR ALBERT CHAN (in Cantonese): *President, can natural landscape, such as the waterfront landscape, be considered as a factor for consideration, that is in fact equivalent to cultural values.*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, for the time being, we have not yet made "non-in-situ land exchange" arrangements in such cases. However, I can also share with Mr CHAN that the Bureau is now considering the waterfront on both sides of the Victoria Harbour. Some Members have pointed out at meetings of the Subcommittee on Harbourfront Planning that some waterfront areas have been blocked by private development projects undertaken many years ago; thus it was not possible to have the extensive stretch of public promenade along the waterfront that we have been

anticipating. Under this situation, my stance for the time being is to carefully consider the issue because only in this way can we restore the views on both sides of the Victoria Harbour.

MS STARRY LEE (in Cantonese): *President, residents of Mei Foo Sun Chuen not only worry about the development of the site of a former liquefied petroleum gas storage, they are also concerned about the sudden development of other local areas, such as the community hall (Foo Yau Tong) or other public facilities. The residents have requested the Development Bureau to rezone the existing locations of these public facilities as sites not for the construction of buildings; for example, rezone the site for GIC or other uses. After reviewing the relevant papers, we found that the Planning Department has expressed similar views. Can the Secretary respond to public opinion and instruct the Planning Department to conduct re-planning, so that the lots for the existing community halls and public facilities are rezoned as lots not for the construction of buildings; in this way, the residents will feel at ease?*

SECRETARY FOR DEVELOPMENT (in Cantonese): I can just give a general response. All along, the Planning Department has, in conducting regular reviews of OZPs, incorporated the development parameters and areas of some developed projects in new OZPs. For instance, many sites which are designated as Comprehensive Development Areas (CDAs) may later be developed for purely residential or commercial uses, or we would include projects including government use and open space in the OZPs. Nevertheless, the work is not only undertaken by the TPB, community groups, the general public and residents concerned can also file applications under section 12A of the Town Planning Ordinance, and the TPB will handle such applications according to the relevant statutory procedures.

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

MS STARRY LEE (in Cantonese): *The Secretary has not answered whether she would respond to the demands of the residents and take the initiative to instruct*

the Planning Department to plan anew the lots that the residents are worried about.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Planning Department should not be instructed to do so, because the term "instruction" implies that the Department is unwilling to do what it should and thus instructions have to be given. Procedurally speaking, the Planning Department undertakes that work regularly but there are priorities to be followed when it is requested to undertake certain tasks by the Bureau. The highest priority at present is to deal with the OZPs. We promised this Council in 2007 to include height restrictions in 58 OZPs and the work has not yet been completed. So, there must be stronger reasons before I would disrupt its priority and ask the Department to handle another task first. Even if the relevant situations are reflected afresh in the OZPs, the residents' demands as conveyed by Ms LEE will not be satisfied and attention should be attached to the actual circumstances of the cases.

MS AUDREY EU (in Cantonese): *President, I would like to follow up on part (a) of the main question because the Government is requested to provide details of the applications filed in the past 10 years. As the Secretary has said in the main reply, "'residual plot ratio' is not a concept enshrined in the abovementioned statutory requirements and lease conditions", thus she refused to provide details of such applications. Nonetheless, one of the causes of the disputes arising from Phase 8 of Mei Foo Sun Chuen is related to the residential land, that is, the site of a former liquefied petroleum gas storage. The site was not approved by the Government at the initial stage of development. One of the reasons is that part of the site coverage has been fully developed under Phase 8 of Mei Foo Sun Chuen. As such, the application was not approved by the Government. However, the developer later filed an application again, reducing the area of the site coverage of the former liquefied petroleum gas storage where Phase 8 of Mei Foo Sun Chuen is currently located. Hence, the Government approved the existing site late last year. This illustrates that the previous location of the liquefied petroleum gas storage was using residual site coverage.*

The Government is asked in part (a) of the main question about the applications in the past; in other words, whether there are any developers who cannot make full use of the development potential of a site in the course of

development because the development of the adjacent sites has partially used the development potential. Can the Government inform this Council of the relevant applications in the past and provide information about the two sites sharing the development potential in the initial development of Phase 8 of Mei Foo Sun Chuen?

SECRETARY FOR DEVELOPMENT (in Cantonese): In answering Ms EU's question, I have to speak on the Mei Foo Sun Chuen case, but I have just responded that we should not make too many comments. Members should note that it is a very special case for us to issue an information paper of around 18 pages last week. Similar examples must also be special. Apart from re-utilizing the plot ratios, the plans submitted at that time covered the whole lot, but the lot was split before the completion of the construction works, which was a very special case. Thus, as I have just said, I can only provide the relevant information after a review of a large number of plans submitted in the past to see if they have similar specialties.

I hope that Members would understand that I will try my best to provide information and enhance the transparency of our work in co-operating with them. Nevertheless, given the limited manpower, if the question raised is difficult to handle and requires significant resources to provide an answer; and if the question may not be related to the core issue in our discussion of the forward development, I would like to ask Members if there are other alternatives so that my colleagues will not have to study 4 000-odd plans in search of the answer.

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

MS AUDREY EU (in Cantonese): *The Secretary has not answered my question.*

PRESIDENT (in Cantonese): Please concisely point out the part of your question that has not been answered.

MS AUDREY EU (in Cantonese): *President, even if the Government cannot go through the 4 000-odd plans submitted within the past 10 years, the problem at issue is that the two sites share the development potential, the Government should at least tell us whether there were similar cases in the past. If there were, what the cases were? I am not asking the Government to go through all the plans submitted within the past 10 years but I wonder if the Government is able to do so.*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): To show my sincerity in co-operating with Members, I think we can at least provide Members with information concerning the Carson Mansion case as mentioned by some Members. As this case had been examined by the Court, the relevant information and rationale were clear. Let us consider how we can share the information on this case with Members; perhaps we can do so at another meeting of the Panel. Yet, this case is in fact not a precedent; we have already said that the nature of the Carson Mansion case is different from that of this case, even though conceptually speaking, the two cases share some similarities, that is, the nature of shared development of the original lot.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. Second question.

Speculative and High-risk Financial Products

2. **MRS REGINA IP** (in Cantonese): *President, an eminent political economist has pointed out that since the financial tsunami in 2008, advanced economies especially Europe and the United States are increasingly stringent in their regulation of financial business (such as hedge funds, private equity funds and other alternative investment vehicles, and so on) which is of a high-risk and relatively strong speculative nature coupled with the fact that the markets in those places are already saturated, these funds will continue to flood the emerging markets, including China, so as to seek much higher investment returns. The*

political economist has further pointed out that Hong Kong will continue to be an important base for investing in China, given Hong Kong's low tax regime, mature legal system and geopolitical factors. In this connection, will the Government inform this Council:

- (a) whether it knows the total assets, turnovers and total profits in the past three years of the hedge funds, private equity funds and other alternative investment vehicles in Hong Kong at present, as well as the respective percentages of these amounts in the relevant total amounts of the local financial system (please provide annual figures and percentages of increase); how these percentages compare with the relevant figures of other international financial centres, including New York, London, Tokyo and Singapore;*
- (b) whether the financial institutions which issue the aforesaid investment products are regulated by the Securities and Futures Commission (SFC) under the Securities and Futures Ordinance (the Ordinance) at present; of the details of the policy objective and legislative framework for regulating these institutions; and*
- (c) given the gradual internationalization of Renminbi (RMB) and the development of Hong Kong as a RMB offshore centre, whether the Government has assessed if the investments in the Mainland market or RMB made through Hong Kong by those financial institutions which issue such high-risk and strongly speculative investment products which are of a high-risk and strong speculative nature will have impact on the national financial security?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, since the onset of the financial crisis, national authorities and international bodies, including the Group of Twenty (G20) and the Financial Stability Board (FSB), have taken action to review and reform the financial regulatory arrangements including alternative investment vehicles to reduce systemic risks and enhance financial stability. Hong Kong participates in the G20 as part of the China delegation and supports the implementation of the G20's initiatives on financial regulatory reforms. Besides, Hong Kong is an active member of the FSB, which plays a pivotal role in co-ordinating and monitoring

progress in the reforms of the international financial system commissioned by the G20.

Of particular relevance to the question raised is the G20 commitment to subject all systemically important financial institutions, markets and instruments to an appropriate degree of regulation and oversight; and to ensure that national regulators possess the powers for gathering relevant information on material financial institutions, markets and instruments. While the international discussions are still ongoing, the Government in collaboration with our financial regulators have been taking part in relevant information collection exercises and/or taking action to implement some of the key G20 financial regulatory reforms, such as those relating to the regulations of credit rating agencies, over-the-counter derivatives and hedge funds.

Hong Kong was among the first jurisdictions to have in place a licensing regime for hedge fund managers (HFMs), in line with the recommendations of G20. Hedge funds, if offered to the public, are authorized and regulated. Besides, HFMs, as with other market participants, trading in our markets are subject to the relevant regulation of that market, such as the Securities and Futures (Contracts Limits and Reportable Positions) Rules and the Securities and Futures (Short Selling Exemption and Stock Lending) Rules. Hedge funds or private equity funds making investments on the Mainland are subject to relevant regulations, such as those on approving remittances of funds into the Mainland and the use of those funds on the Mainland.

My replies to the different parts of the question are as follows:

- (a) According to the Report of the Survey on Hedge Fund Activities of SFC-licensed Managers/Advisers published by the SFC in March 2011, the number of hedge funds and the total Asset Under Management (AUM) in Hong Kong in the past three years are as Follows:

<i>As at</i>	<i>Number of hedge funds</i>	<i>Total AUM (USD billion)</i>
30 Sep 2010	538	63.2
31 Mar 2009	542	55.3
31 Mar 2008	488	90.1

Of the USD 63.2 billion of total hedge fund AUM in Hong Kong as at 30 September 2010, only USD 9.3 billion was invested in Hong Kong and USD 7.6 billion in China. The remaining 73% total hedge fund AUM in Hong Kong was invested overseas. Hedge funds were invested in various asset classes and instruments, the main ones being equities, corporate/sovereign bonds, convertible bonds and credit derivatives, and so on. Due to the dynamic nature of hedge fund investments across markets and geographies, a direct comparison between the total hedge fund AUM and any specific sector of the local financial market may not be appropriate.

The income and profit structure of HFMs differs amongst the firms, depending on such factors as allocation of fee and cost absorption basis between global offices, role of the HFM in Hong Kong (that is, advisory or asset management) and fee basis, and so on. Certain HFMs act as both advisors and managers, or concurrently manage both hedge funds and non-hedge funds. Therefore, the income and profit figures could relate to a number of activities. The total income (TI) and net profit after tax (NPAT) reported by the HFM in the past three years are as follows:

<i>As at</i>	<i>TI (HKD billion)</i>	<i>NPAT (HKD billion)</i>
December 2010	6.3	1.6
December 2009	4.7	1.1
December 2008	6.4	0.7

The hedge fund AUM information pertaining to markets outside Hong Kong is obtained from various public sources. The global hedge fund AUM was estimated at USD 1.7 trillion as at December 2010. Around USD 1.29 trillion in hedge fund AUM is managed in the United States, USD 0.27 trillion in the United Kingdom, USD 15.6 billion in Tokyo and USD 42 billion in Singapore.

We do not have data on the transaction turnover of hedge funds or their share of the local financial market.

- (b) Under the Ordinance, fund managers including traditional fund managers, HFMs and private equity managers are licensed and regulated. In respect of funds, they are authorized and regulated where the funds are distributed to the public.

On the international front, the G20 Leaders agreed that for hedge funds or their managers, they will be registered and will be required to disclose appropriate information on an ongoing basis to supervisors or regulators necessary for assessment of the systemic risk that they pose individually or collectively.

At present, the SFC periodically conducts surveys on HFMs. According to SFC's assessment, at this point the SFC has more information on the funds managed by SFC-licensed HFMs than most other overseas regulators do in respect of the hedge funds managed in their jurisdictions.

In consultation with financial regulators including the SFC, we would consider whether there would be a need to empower the regulator to gather information on alternative investment funds including hedge funds; whether there would be a need to develop criteria to identify systemically important intermediaries; and whether further regulatory requirements would be necessary, having regard to the discussions at the international arenas and the local market conditions.

- (c) Mainland authorities have expanded the cross-border use of RMB for trade settlement and investments. The development of Hong Kong's RMB offshore business follows the principles of steady growth and that risks are manageable. For the past year or so, RMB business in Hong Kong has developed rapidly, with total RMB deposits increasing to RMB 451.4 billion as at end-March 2011. The deposit base is expected to continue to grow steadily. National financial security has all along been our major consideration, we believe RMB business development in Hong Kong will not pose risks to financial stability on the Mainland, based on the following reasons:

- (i) total RMB deposits in Hong Kong was RMB 451.4 billion, which was equivalent only to 0.5% and 4.2% of total assets of Mainland's banking system (RMB 100 trillion) and Hong Kong's banking system (RMB 11 trillion equivalent) respectively;
- (ii) total RMB deposits for corporate customers was RMB 297.6 billion as of end-March 2011 (average balance per account was RMB 2.1 million). The deposits were mainly sourced from the net trade receipts from Mainland. These cross-border trade activities are genuine transactions which support real economic activities, and are conducted in accordance with the regulations of Mainland authorities and policies. We are not aware of any financial institutions making use of the conversion window of RMB trade settlement to conduct speculative activities;
- (iii) many hedge funds have established offices in Hong Kong to cater for increasing customer bases in Hong Kong and Asian regions owing to the promising business outlook. Many private equity funds have this kind of direct investments in corporations with potential growth. These are activities that are supportive of real economic activities; and
- (iv) at present, our country's capital account has yet to be fully liberalized. Overseas financial institutions including hedge funds are required to apply and obtain permission for the remittances of funds into the Mainland and for accessing investments on the Mainland. Meanwhile, as Mainland's financial market is segregated from that of Hong Kong, the activities of these financial institutions here in the RMB market are insulated from the Mainland. Hong Kong in effect is providing a firewall between onshore and offshore RMB market.

MRS REGINA IP (in Cantonese): *President, the Secretary mentioned in the main reply that, on the international front, the G20 Leaders agreed that hedge funds and their managers should be registered. May I ask the Secretary if he is*

aware of the impact of the new regime on Hong Kong's licensing system? Furthermore, when will the G20 complete the relevant study?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thanks to Member for her supplementary question. In respect of licensing, Hong Kong has already established a licensing regime to require all fund managers of funds operating in Hong Kong to apply for a licence from the SFC. As financial security has all along been our major consideration, relevant provisions have been implemented in Hong Kong much earlier than the G20.

In respect of supervision, discussion is now underway. Regulation of hedge funds, for instance, is being discussed and the primary objective is to facilitate the collection of information. As Members may aware, the leveraging, trading strategies and financial viability of funds are necessary information to be obtained by the regulatory bodies. Different countries are now discussing the relevant issues and exploring how a better regulatory regime can be established to collect information. Nonetheless, no consensus has been reached so far.

However, active investigations have been conducted under our jurisdiction to obtain the necessary information. It goes without saying that Hong Kong will follow the international regulatory trends, but judging from our past performance, we can even say that our regulatory approach was more aggressive than the rest of the world.

MR CHIM PUI-CHUNG (in Cantonese): *President, the problem lies in part (b). We understand that it has been the established policy of the SFC and the Hong Kong Stock Exchange (Stock Exchange) to adopt a disclosure-based regulatory principle towards hedge fund and its products. No matter what, take hedge funds as an example, the organizations concerned should be held responsible for their own products. However, both the SFC and the Stock Exchange have recently adopted a review approach to authenticate the disclosed content of a certain product.*

May I ask the Government and the Secretary, has the administration taken the appropriate steps to cope with the relevant changes? For example, will the

Government bear any responsibilities if the review proves unfavourable to investors?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, it seems that Mr CHIM Pui-chung's supplementary question is not related to hedge funds, but SFC's vetting and approving procedure of products on the whole. While our regulatory regime is definitely disclosure-based, we also noticed that after the financial turmoil, various governments (including that of Hong Kong) have stepped up their control over the regulation of financial instruments, disclosure requirements and their sales. If the market tightens the vetting and approving procedures of financial instruments, it may be attributable to a more stringent disclosure requirement.

MR PAUL CHAN (in Cantonese): *President, in part (a) of the main question, Mrs Regina IP requested the Government to provide three sets of data concerning hedge funds, private equity funds and other alternative investment vehicles. Nonetheless, only data on hedge funds could be found in the Secretary's entire reply. I note from the second last page of the main reply that the Government has yet to decide whether information on alternative investment funds should be gathered.*

As far as I understand, the Government has mentioned time and again in its policies that Hong Kong should be developed into an asset management centre. My supplementary question is: firstly, why has the Government not provided the other two sets of data? Secondly, is the Government ready to gather the relevant information; if not, how can it find out whether Hong Kong's asset development has achieved its goal?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I do not quite understand Mr Paul CHAN's supplementary question. In fact, the SFC has all along gathered information on hedge funds and asset management. Perhaps

MR PAUL CHAN (in Cantonese): *President, the Secretary indicated that he did not understand my supplementary question. My supplementary question*

concerns with Mrs IP's request for the Government to provide three sets of data on hedge funds, private equity funds and other alternative investment vehicles. However, only data on hedge funds has been provided in the entire main reply. The other two sets were missing.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, perhaps I will obtain further information about the breakdown after the meeting. According to my understanding, the SFC will conduct annual investigations on various funds, including the alternative fund mentioned by Member. Have some funds been included while some have been missed out? Detailed information will be provided after the meeting (Appendix I). Regarding the crux of the question put forth by Member about whether the Government has conducted investigation or kept track of the development of the fund industry in Hong Kong, the reply is that the relevant work is now underway and we will undertake the work.

MR CHAN KIN-POR (in Cantonese): *Given that hedge funds usually have complicated and aggressive investment strategies, the financial market will become more volatile. May I ask the Secretary whether it is conducive to attract more hedge funds to establish in Hong Kong? Furthermore, will government policies encourage more hedge funds to be established in Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, today's main question is indeed a very good one, I have to thank Mrs Regina IP and other Members for raising the questions. In general, hedge fund is pretty complicated and Members are divergent on this issue. Is it conducive to Hong Kong to develop into an asset management centre with a view to attracting overseas hedge funds? There are actually many different kinds of hedge funds, but I am not going to spend too much time on them. Not all hedge funds are like the macro hedge funds which we dealt with in the combat against major speculators. It may not necessarily be the same. At present, different funds may have different trading strategies. Undoubtedly, a high-risk investment strategy and a leveraging management approach will be adopted for such funds.

Although hedge funds only account for a small percentage in the world's overall asset distribution, they have guaranteed growth. Given that Hong Kong is an Asian market offering very good investment opportunities, we are not surprised to see various hedge funds rushing to invest in Hong Kong. In my opinion, the most important thing is how they should be regulated. Even if their headquarters are established in New York or London but not in Hong Kong, they can still engage in the trading of our stocks and options, or even short selling. Therefore, it makes no big difference where the headquarters are established or where the funds are managed. It is only that if management is exercised in Hong Kong, it would be easier for us obtain information from them. Through the licensing regime, we can obtain information from them or monitor their activities.

On the other hand, local market risk management has also been strengthened. For instance, there have been provisions on block transaction of uncovered futures contracts, which require that block transaction of uncovered futures contracts must be reported to the Stock Exchange to facilitate SFC's risk assessment of the local market basing on the said information. We have imposed more stringent requirements in this regard than anywhere else. Our next step will be to require all short selling activities in Hong Kong to disclose their reportable transactions, so that the SFC can gain a better understanding of the relationship between short selling or block transaction of options in the local market and market risks. We consider that by doing so, Hong Kong's financial security can be further enhanced.

PRESIDENT (in Cantonese): This Council has spent nearly 21 minutes on this question. Third question.

Proposed Measures to Improve Operations of Public Markets

3. **MR VINCENT FANG** (in Cantonese): *President, public markets of the Government were subject to criticisms by the Audit Commission because of problems such as long-term financial losses and low occupancy rates. In this regard, the Food and Health Bureau has proposed a number of improvement measures, including progressively increasing market stall rentals to "actual average rental" or "open market rental" and introducing service trade stalls at*

public markets with low occupancy rates. With regard to the aforesaid measures, will the Government inform this Council:

- (a) of the criteria for determining the rentals of public market stalls by the Government; whether it has taken into account the function of public markets to provide services to the general public, as well as other factors such as whether the services provided to the tenants are inferior to those provided by private markets;*
- (b) whether the authorities have assessed if the introduction of service trade stalls (including beauty care, manicure, postnatal care-taking, travel agent, real estate and financial services, and so on) at public markets will turn public markets into commercial premises; whether such practice violates the land use restrictions of the land granted for the construction of public markets, and whether it is not consistent with the function of public markets; and*
- (c) of the number of auctions held by the Food and Environmental Hygiene Department (FEHD) for the introduction of service trades; the results of such auctions (with a breakdown by the type of service trades, the number of stalls successfully let out through such auctions, and the level of rentals); how the rentals of such stalls compare to the highest and lowest rentals of other stalls at the same market; and when working out the "actual average rental" of stalls, whether the Government will make reference to or take into account in the calculation the level of rentals of service trade stalls at the same market?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, public markets serve important social functions in that they are major sources of fresh provisions for the public at large and provide employment opportunities for the grassroots. Over the years, the FEHD has been committed to formulating and implementing various measures to enhance the business environment and competitiveness of public markets. Such measures include:

- (i) with effect from February 2009, we have lowered the upset auction prices to 80% and 60% of the open market rental (OMR) for stalls left vacant for six months and eight months or more respectively in*

order to boost the occupancy rate of public markets. As at end of March this year, a total of 1 561 stalls had been let out through this arrangement;

- (ii) starting from July 2009, we have been gradually introducing service trades, light refreshment and bread stalls with a view to diversifying public market services. Furthermore, starting from October 2010, we have let out small stalls through short-term tenancy on a trial basis to allow more flexibility for prospective tenants. The two measures mentioned above were reported in the Government Minute submitted on 20 May 2009 in response to the relevant report of the Public Accounts Committee as well as the paper issued to the Legislative Council Panel on Food Safety and Environmental Hygiene for discussion on 14 December 2010;
- (iii) besides, we have carried out regular maintenance and improvement works in public markets. The scope of works includes improvement to the drainage, ventilation, lighting and fire services provisions, and replacement of wall and ceiling finishes and floor tiles. Over the past three years, the FEHD spent up to \$230 million on the improvement projects;
- (iv) we have installed in each cooked food centre a signboard listing all its stalls to facilitate the public in making their choices, and retrofitting public address systems in some public markets;
- (v) we continue to organize promotional activities (including celebratory activities for traditional festivals for example, Lunar New Year and Mid-Autumn Festival, talks on seasonal soup and dietetic therapy, and cooking demonstrations) from time to time to attract and broaden patronage; and install in each public market a board to display the weekly "Recipes of Chef's Daily Recommendation" to attract more people to shop in public markets; and
- (vi) we published a well-illustrated booklet in 10 different languages in mid-2010, listing over 500 common food items, goods and service trades available in public markets to facilitate and encourage patronage of public markets by members of various ethnic groups.

Currently, the overall occupancy rate of the FEHD's public market stalls stands at 85%.

In order to regularize the status of public market stall operators, the FEHD introduced in mid-2010 the "one-off tenancy transfer scheme" and adopted the "actual average rental" as the rental to be paid by successful transferees under the scheme. If there are more than 10 stalls of the same category in a market, one each of the highest and lowest rental-paying stalls will be excluded from the calculation of the actual average rental, lest it is unduly affected by an exceptionally high or low rental of a single stall. The adoption of "actual average rental" in the "one-off tenancy transfer scheme" was supported by Legislative Council Panel on Food Safety and Environmental Hygiene. My reply to various parts of the question is set out as follows:

- (a) The OMR of public market stalls is assessed by the Rating and Valuation Department (RVD). In assessing the OMR of public market stalls, the RVD mainly makes reference to the open auction results of stalls in the same market and other similar public markets. The RVD also takes into account the unique features of the market in question (for example, location, business environment, facilities, patronage, and so on). Other factors for consideration include the trade permitted for operation, the size and layout of the stall and the location of the stall within the market.
- (b) According to the definition used by the Town Planning Board (TPB) in interpreting the planning terms in statutory plans, "market" means any public or private market in which foodstuffs and commodities are sold and services are provided, generally by small traders. It also includes any site or area set aside as hawker centre/hawker bazaar. In this connection, the introduction of service trade stalls in public markets is in full compliance with the use designated by the Government for the land granted and defined by the TPB for markets.

The introduction of service trade stalls is aimed at enhancing the variety of public market services and boosting occupancy rates, with a view to increasing patronage and improving the overall business environment. The Government has consulted the relevant Market Management Consultation Committees before identifying

appropriate vacant market stalls for conversion into service trade stalls. Its primary consideration is that the existing market services provided for the public will not be adversely affected.

- (c) President, since the introduction of service trade stalls in July 2009, the FEHD has been putting up vacant service trade stalls in its public markets for open auction every month. As at end of March this year, 52 of the total 79 service trade stalls have been let out (that is, about two thirds). The monthly rentals of these stalls ranged from the lowest of \$620 to the highest of \$4,350. The service trades mainly include interior design/renovation, beauty parlours, computer and related services, domestic services and Chinese medicine practitioners/bone-setters' clinics. The rentals of these service stalls and the highest and lowest stall rentals in the same markets are set out in Annex.

As the actual average rental of stalls of a particular category of business is the average actual rental paid by stalls of the same category of business in the same market, the rentals of service trade stalls will not affect the actual average rentals of stalls of other categories of business, such as meat stalls and dried goods stalls, and so on.

Annex

Rentals of Service Trade Stalls and
Highest and Lowest Stall Rentals in the Same Markets
(As at 31 March 2011)

<i>Name of market</i>	<i>Number of service trade stalls let out</i>	<i>Rentals of service trade stalls (\$)</i>	<i>Maximum and minimum rentals of stalls in the same market (\$) (Category of stall)</i>
Aldrich Bay Market	4	2,040-3,800	1,700 (non-food-related wet goods); 35,000 (fresh meat)
Sai Wan Ho Market	8	1,680-4,350	109.34 (non-food-related dry goods); 14,000 (fish)
Java Road Market	2	1,300-2,450	111 (food-related dry goods); 21,000 (fish)

<i>Name of market</i>	<i>Number of service trade stalls let out</i>	<i>Rentals of service trade stalls (\$)</i>	<i>Maximum and minimum rentals of stalls in the same market (\$) (Category of stall)</i>
Quarry Bay Market	2	620-720	380 (fruit); 6,600 (fresh meat)
Centre Street Market	2	1,850-2,750	1023.8 (non-food-related dry goods); 7,050 (cooked food)
Yee On Street Market	7	840-1,600	600 (food-related wet goods); 6,600 (light refreshment)
Po On Road Market	1	2,400	111 (fruit); 17,500 (fish)
Kowloon City Market	2	1,200-1,350	111 (food-related wet goods); 23,000 (cooked food)
Plover Cove Road Market	10	2,700-4,200	290 (fruit); 10,000 (light refreshment)
Heung Che Street Market	2	790-1,350	420 (food-related wet goods); 6,510 (siu mei)
Luen Wo Hui Market	11	1,100-1,900	720 (non-food-related dry goods); 17,250 (cooked food)
Tai Kiu Market	1	3,900	81.7 (non-food-related dry goods); 21,000 (fish)

MR VINCENT FANG (in Cantonese): *President, in relation to the introduction of service trade stalls, I would like to ask the Secretary whether the Administration has ascertained from the tenants if there is any difference between their expected and actual businesses after operation? I raise this question because I am highly doubtful about its effectiveness.*

Market is a place for people to buy food, and not all housewives will go there. I also believe that even some market-goers may not be aware of the provision of beauty or postnatal care-taking services in the market. In this respect, how can the people learn about the provision of such services in the market? I would like to ask the Secretary what measures will be adopted by the FEHD to enhance publicity in this regard?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have already explained in the main reply that in order to boost occupancy rate and increase patronage through publicity, we have made great efforts to implement a series of measures. In fact, we have consulted the 70-odd self-organized consultation committees, and we note that the occupancy rate now stands at about 70% (that is, more than two thirds). According to our initial assessment, business is good at the stalls that are let out and patronage has also improved. Hence, the FEHD will continue its efforts on publicity and promotion. As this is a new initiative, I think as more and more people know about the existence of these service trade stalls in the market over time, coupled with word of mouth and our ongoing publicity efforts, their businesses will be pretty good.

MR WONG YUNG-KAN (in Cantonese): *President, people who go to the market want to buy value-for-money goods and better quality foodstuffs. When the relevant policy was last reviewed, the Government said that lower market rental was a benefit. In that case, I would like to ask the Government whether it will consider setting rental at a below-market level permanently so that the people can truly enjoy this benefit through actual implementation by the Government?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Thanks to Mr WONG for the supplementary question. We are all aware of the clear position of public markets. First, we hope to provide a choice for people and allow the preservation of the value-for-money characteristics of public markets. Second, besides allowing this choice for the general public, employment opportunities are also provided for the grassroots. President, the resource we allocate in this regard is by no means small. The subsidy provided this year amounts to more than \$200 million. Hence, the position of public markets is very clear. Regarding the issue of concern about OMR just raised by Mr WONG, the rental of over 60% of public market stalls has yet to reach the OMR as assessed by the RVD. In other words, the rental of most of the public market stalls is below the OMR. Generally speaking, out of the 12 000 to 13 000 public market stalls, the average rental is \$2,700-odd, and some can be as low as several dozen dollars. But there are also cases (particularly cooked food stalls in cooked food markets) where rental can be as high as several tens of thousands dollars. We hope to keep rental at a minimum so that the so-called operating environment of tenants

can be optimized, and a win-win situation achieved to bring benefits to stall owners and ultimately the public at large.

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

MR WONG YUNG-KAN (in Cantonese): *President, the Secretary just said*

PRESIDENT (in Cantonese): Mr WONG, you can only repeat the part of your question that has not been answered by the Secretary.

MR WONG YUNG-KAN (in Cantonese): *..... In his answer just now to my supplementary question about whether rental would be set at a below-market level, did he mean that market rental would be increased? I asked the supplementary question not because I wanted him to increase market rental. I was only asking him whether rental could be lowered further so that market rental*

PRESIDENT (in Cantonese): Please repeat the part of your supplementary question that you think the Secretary has not been answered.

MR WONG YUNG-KAN (in Cantonese): *OK. Just now, I asked him whether he would set rental at a below-market level, but he replied that the current rental was lower than market rate. Hence, I would like to ask him whether he intends to further increase market rental in future?*

PRESIDENT (in Cantonese): This has become a follow-up question. However, I notice that just now, Mr WONG asked the Government whether there was any long-term initiative or policy to keep rental at below-market level. That is the question raised by Mr WONG earlier. Secretary, is the Government going to adopt this measure as a long-term initiative?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the Government's policy is very clear, and I have already mentioned it in the main reply. Regarding the level of market rental which Mr WONG is concerned about, Members would know that, as set out in the paper we presented to the Legislative Council last month, we would further extend the rental freeze of public market stalls for 18 months. Hence, public market rental and air-conditioning charges will be maintained at the current level.

MR FRED LI (in Cantonese): *President, I would like to follow up on paragraph (iii) of the main reply which mentioned that the Government had spent \$230 million on regular maintenance and improvement works.*

Secretary, I was told yesterday that Tai Sing Street Market in Wong Tai Sin This market has operated for 10-odd years, and it is not too dilapidated. However, incidents involving the bursting of effluent pipes have happened time and again, causing total loss of stocks on the part of vegetable stall owners. However, nobody contacted them afterwards about the matter. The supplementary question I would like to put to the Secretary is that, given the large amount of money spent on maintenance, how come incidents happened repeatedly in some markets resulting in losses incurred on the small stall owners who have no channels to redress their grievances?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): We are very concerned about the management and maintenance of public markets, especially the maintenance of hardware facilities. Mr LI is also well-versed with the situation because he has been following up on this issue closely.

Regarding individual cases including that of Tai Sing Street Market, I believe that follow-up actions have already been taken by the FEHD. According to the information I have, the FEHD is highly concerned about the case. Immediate actions were taken by the FEHD on the same day to gather more information about the case, and the defective pipes were shut down to carry out emergency repair.

Although we have spent over \$200 million annually on maintenance, there is no absolute guarantee that such works can fix each and every problem. I think

it is quite difficult to ensure that no incidents ever happen. However, we will conduct checks periodically, and identify the areas in need of repair and set priorities of repair works in consultation with the consultative committee of each public market. In this connection, we will remain close to public sentiment. We will also join hands with the tenants in the hope that public markets can be revitalized and achieve better operation.

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

MR FRED LI (in Cantonese): *President, I think I must clarify one fact because it will be put on record. What I said just now was the bursting of effluent pipes, not water pipes.*

MS MIRIAM LAU (in Cantonese): *In the past, the stalls of many public markets were barely occupied and the situation was terrible. With the implementation of various rental reduction and revitalization measures by the Government and the introduction of other trade stalls, the present situation has seemingly improved. But I am somewhat disappointed by the fact that even with so many improvement measures, the overall occupancy rate of FEHD's public market stalls merely stands at 85%. We notice that in the past, stalls in upper levels of public markets were largely left vacant; even when they were let out, they were used as warehouses. I would like to know since the implementation of public market revitalization measures by the Government, how many of such stalls are still used as warehouse rather than for business purpose? If this situation still exists, will the Government implement further revitalization measures to phase out these so-called warehouses so that the stalls can genuinely be used for selling commodities?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, it is our established policy to allow the operation of public market stalls to sell foodstuffs or the recent practice of providing trade services to facilitate kaifongs and boost occupancy rate. All along, we do not tolerate any so-called irregularities involving the use of market stalls for storage purpose. We have been taking

increasingly stringent actions to enforce this policy. Hence, overall speaking, the occupancy rate of public market stalls now stands at 85%. For some cooked food centres or cooked food markets, the occupancy rate can reach as high as 93%.

I think Ms Miriam LAU is also well aware that with increased patronage, the attractiveness of stalls on second and third floors, as well as the overall business environment will improve as the entire market is revitalized with the operation of service trade stalls and other food stalls. In that case, the so-called irregularities involving the use of market stalls for storage purpose will gradually decrease. Nonetheless, we will absolutely not tolerate this situation when carrying out our enforcement actions.

MR CHAN KAM-LAM (in Cantonese): *President, a number of colleagues have mentioned just now that stalls on upper floors of public markets are left vacant. But our observation is that many stall owners have allowed foreign domestic helpers or foreigners to organize functions in their market stalls which are located on upper floors or in relatively obscure positions. Nonetheless, these activities are invariably prohibited by the FEHD because they do not fall within the Administration's definition of markets, that is, market is a place for selling commodities. I would like to know whether the Administration will change the existing policy so that the operation of markets can become more diversified to boost patronage?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, with the introduction of service trade stalls into public markets, we have observed some good results. Mr CHAN is very familiar with the operation of public markets and I am sure he understands the situation well. Nonetheless, under his suggestion, public markets will not only have service trade stalls, but also become community halls. I think this is not something the public or even stall owners hope to see. Hence, at this stage, public market stalls are all used for business operation such as selling foodstuffs and dry goods or the provision of trade services. We have not considered the idea of further extending the scope of operation of public markets to become community halls.*

PRESIDENT (in Cantonese): This Council has spent more than 20 minutes on this question. Fourth question.

Measures to Tackle Problem of Mainland Women Giving Birth in Hong Kong

4. **MR CHEUNG MAN-KWONG** (in Cantonese): *President, the Court of Final Appeal ruled in 2001 that children born in Hong Kong to Chinese nationals had the right of abode in Hong Kong. Since then, the number of babies born in Hong Kong to Mainland women whose spouses are not Hong Kong permanent residents has soared by more than 50 times, from 620 in 2001 to 32 653 in 2010. The authorities announced on 28 April this year that seven measures would be introduced to alleviate the pressure on the healthcare system caused by Mainland women giving birth in Hong Kong. Such measures include refusing the admission of non-local high-risk pregnant women, setting up a working group to determine the number of non-local pregnant women to be admitted next year and, starting from next year, determine at the beginning of each year the number of non-local pregnant women allowed to give birth in Hong Kong in the following year. In this connection, will the executive authorities inform this Council:*

- (a) *how they will, in implementing the aforesaid measures, stop agencies from arranging for Mainland pregnant women to illegally come to Hong Kong to give birth;*
- (b) *of the justifications for treating in the same manner mainland pregnant women whose spouses are and those women whose spouses are not Hong Kong permanent residents; in connection with these two types of pregnant women, whether the authorities will request public and private hospitals in providing obstetrics services to give priority to Mainland pregnant women whose spouses are Hong Kong permanent residents; and*
- (c) *of the expected number of Mainland pregnant women giving birth in Hong Kong this year, and how it ensures that this number will not exceed the capacity of the healthcare system in Hong Kong?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, it is the Government's policy to ensure that Hong Kong residents are given proper and adequate obstetric services. The Administration is very concerned about the surge of 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 and neonatal care services. We held a meeting with the Hospital Authority (HA), the Department of Health (DH), the concern groups on Hong Kong's obstetric and neonatal services, the Hong Kong College of Obstetricians and Gynaecologists, the Hong Kong College of Paediatricians and the representatives of 10 private hospitals that provide obstetric services to discuss the arrangements for provision of obstetric services to non-local pregnant women next year, with a view to alleviating the pressure on the overall obstetric and neonatal services in Hong Kong.

We have proposed a number of measures to ensure local pregnant women are given priority for obstetric services and all mothers delivering in Hong Kong and their babies are safe and given the best of care, as well as to maintain the high professional standard of our services and the sustainable development of obstetric and paediatric services in Hong Kong. Non-local pregnant women who intend to have deliveries in Hong Kong will be required to undergo antenatal checkups by obstetricians in Hong Kong at an appropriate stage for assessment on whether they are suitable to give birth in Hong Kong, and if so the issuance of a "Certificate on confirmed antenatal and delivery booking" which will be standardized by the DH. In addition, we will endeavour to combat the improper and unprofessional co-operation between individual local obstetricians and agencies. We will also set up a working group to determine in the first quarter of each year the number of non-local pregnant women allowed to give birth in Hong Kong in the following year.

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

- (a) It is not illegal for non-local pregnant women to receive obstetric services in Hong Kong through arrangements by an agency. However, if any local obstetrician co-operates with an agency in an improper and unprofessional manner with reckless disregard for the safety of pregnant women and their babies for the sake of profit, such as providing admission certificate to any non-local pregnant woman who has yet to undertake any antenatal checkup in Hong

Kong, changing the expected date of delivery, unnecessarily arranging early caesareans for the sake of bed availability, and so on, the doctors involved may be subject to disciplinary action for breach of the Code of Professional Conduct for the Guidance of Registered Medical Practitioners as stipulated by the Medical Council of Hong Kong (MCHK). Private hospitals are also obliged to terminate their co-operation with the doctors concerned and refuse to allow them to provide obstetric services at their hospitals. To our understanding, there is no collaborative relationship between local private hospitals and any agencies providing services to Mainland women delivering in Hong Kong. The DH, as the regulatory authority over private hospitals, will continue to monitor the situation closely.

- (b) At present, the public healthcare services in Hong Kong are heavily subsidized by the Government. It is necessary for the authorities to ensure our public healthcare services can meet public demand and at the same time can sustain in the long-term within limited financial resources. It has been our policy that public healthcare services are provided primarily for Hong Kong residents. Only "Eligible Persons" (EPs) (that is, holders of Hong Kong Identity Card and children who are Hong Kong residents and under 11 years of age) are eligible for the highly subsidized public healthcare services. Non-Hong Kong residents (that is, Non-eligible Persons (NEPs)) are provided with public healthcare services in emergency situations and they may seek non-emergency public healthcare services when there is spare service capacity. However, the rates of charges applicable to NEPs will apply. Fees for public healthcare services are currently charged in accordance with the status of the patients directly using the services and no consideration is given to family relationship. As in the case of obstetric services, fees are charged in accordance with the status of the pregnant women.

In 2003, we clarified the definition of EPs to the effect that non-Hong Kong residents who are the spouses or children of Hong Kong residents would be treated as NEPs and charged the NEP rates when using public healthcare services, including obstetric services.

We propose that non-local pregnant women should be checked and assessed by doctors in Hong Kong to see if they are suitable to give birth in Hong Kong, so as to ensure the safety of pregnant women and their foetus as well as to maintain the standard of our high quality services. To require non-local pregnant women to receive antenatal checkups by obstetricians in Hong Kong at an appropriate stage would help identify high-risk pregnancies, so that the pregnant women in questions, who in fact require additional attention and checkups, and their fetuses are not subject to risks associated with travels or other factors. We have invited the Hong Kong College of Obstetricians and Gynaecologists and the Hong Kong College of Paediatricians to give professional advice and guidelines for the checkups, so that obstetricians in the public and private sectors can make decisions and professional judgment consistently based on the guidelines. Obstetricians may exercise flexibility if they are convinced that individual non-local pregnant women can be followed up and provided with delivery service by obstetricians in Hong Kong.

- (c) Based on the number of bookings for deliveries already made with local hospitals, we anticipate that there will be a slight increase in the number of deliveries in Hong Kong this year in comparison with that of last year. The HA has already allocated additional resources and manpower to obstetric departments and neonatal intensive care units of public hospitals. It is anticipated that we are able to cope with the service demand this year.

In the long run, we endeavour to maintain the sustainability of our obstetric and paediatric services while continuing to provide high quality and professional services. We have reached consensus with the public and private hospitals providing obstetric services that measures have to be taken together to cap the number of deliveries in Hong Kong with regard to the overall capacity of our obstetric and neonatal care services. Based on such consensus, the working group to be set up will determine in the first quarter of each year the number of non-local pregnant women allowed to give birth in Hong Kong in the following year.

MR CHEUNG MAN-KWONG (in Cantonese): *President, in the main reply, the Government undertakes to "endeavour to combat the improper and unprofessional co-operation between individual local obstetricians and agencies". It is learnt that some agencies have blatantly claimed their capability in transferring Mainland pregnant women without a "Certificate on confirmed antenatal and delivery booking" across the border to be admitted for delivery via accident and emergency departments. May I ask whether the Government will adopt a two-pronged approach? On the one hand, will the Government request the Immigration Department (ImmD) to prevent illegal entry of Mainland pregnant women upon the introduction of the quota system next year, and set up a notification system with the Mainland to combat activities of illegal agencies? On the other hand, will the Government request obstetricians in private hospitals to declare their co-operation with these Mainland agencies, if any, with a view to stamping out collusion activities between Hong Kong obstetricians and agencies in making profit at the expense of the interest of Hong Kong pregnant women?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, it has been our policy to endeavour to ensure proper practice at the execution level. The two departments, the DH and the ImmD, will definitely do their level best and make joint efforts to deal with the problems upon the implementation of the mechanism. In respect of this policy, as mentioned by Mr CHEUNG earlier, some agencies may continue to make false claims that pregnant women who have never undergone checks in Hong Kong will still be issued the "Certificate on confirmed antenatal and delivery booking". In this connection, we will monitor closely the work on the issuance of certificates. Initially, the authorities consider that each certificate will be printed and handed out by the DH, where a separate code is assigned to each certificate indicating the hospital and medical practitioners responsible for the case and showing the identity of the pregnant woman. Hence, the relevant data of each code will be recorded clearly in the centralized data bank. We will work closely with the ImmD in this connection.*

Furthermore, concerning the relationship between private medical practitioners and agencies, I have explained in the main reply. A code of practice has been laid down by the MCHK, and if any medical practitioners engage in any unethical, unscrupulous or unprofessional conduct, they will definitely be subject to punishment in that regard.

As for private hospitals, if such cases are discovered, we will advise the private hospital concerned to adopt stringent approval procedures and check carefully for such co-operation when we accept the application of private medical practitioners for continual provision of obstetric services in the private hospital concerned. If such cases are discovered, as I stated clearly in the main reply, the private hospital concerned must handle the case, whereas the DH will co-operate with private hospitals to monitor the situation.

MR CHEUNG MAN-KWONG (in Cantonese): *President, he has not answered*

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

MR CHEUNG MAN-KWONG (in Cantonese): *..... part of my question. What if activities involving illegal entry, or even illegal arrangements for Mainland pregnant women to seek consultation at accident and emergency departments, are discovered, will the authorities set up a notification mechanism to deal with the problem in co-operation with the relevant Mainland organizations?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in the implementation of this policy, we hope to handle various aspects properly. I believe the ImmD has always maintained intelligence exchange of this kind with counterparts in the Mainland. Hence, in implementing this policy, I believe the ImmD and the DH are capable of exercising their duties properly.

PRESIDENT (in Cantonese): Since a number of Members are waiting for their turn to raise questions, will Members please make their questions as concise as possible.

DR LEUNG KA-LAU (in Cantonese): *President, many unscrupulous practices are resulted from the unbalanced supply and demand. The prevailing problem*

in obstetric services is caused by the insufficient supply of obstetric beds and manpower shortage. If the authorities cap the number of deliveries, will the situation aggravate? If stringent restrictions are imposed on the number of deliveries, the business of agencies will only thrive, for they may increase their charges to make more profits despite the decrease in the number of clients. Hence, may I ask the Government whether it should break the bottleneck as soon as possible in order to solve the problem? For instance, it may increase the number of beds, the manpower for obstetric services and the capacity of neonatal services, and so on.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in respect of manpower training, particularly the training of midwives and nurses, we have allocated additional resources to the HA this year to implement certain corresponding measures on neonatal care services and increase the supply of beds with a view to raising the capacity of services. However, in respect of the manpower on medical practitioners and other nurses, we have to consider whether unlimited expansion can be made within a short time to meet the demand for the relevant services. I believe there is great difficulty in doing so, for the number of Mainland pregnant women intending to give birth in Hong Kong is really enormous. As mentioned by Mr LEUNG earlier, it is exactly because of the demand in this respect that those agencies may increase their service charges substantially.

Hence, on this premise, we have two policy adjectives. First, we will endeavour to ensure that all local pregnant women are given priority for services, particularly in the public healthcare system in Hong Kong. Second, we will ensure the quality of service provided to local and overseas pregnant women, giving birth in Hong Kong and maintain the service quality at an extremely high level, with the safety of mothers and infants as the prime concern. Therefore, on the premise of these two aspects, we will surely continue with manpower training. Yet before the personnel concerned attain maturity and the required standard, and before relevant supporting measures can be provided, I believe the proposed measures are suitable and can cope with the need to balance supply and demand.

DR LEUNG KA-LAU (in Cantonese): *Will the Secretary inform us whether there is a timetable for manpower training in increasing service capacity?*

PRESIDENT (in Cantonese): As I said earlier, a number of Members are waiting for their turn, so if I consider the Secretary has already given his reply, I will not ask the Secretary to provide supplementary information.

MR CHAN HAK-KAN (in Cantonese): *President, I have a promotion leaflet of an agency at hand, which claims a number of major advantages for giving birth in Hong Kong. The first advantage is naturally the right to enjoy the Hong Kong permanent resident status. Second, they can enjoy benefits in areas such as welfare, education and healthcare in Hong Kong. These Mainland pregnant women giving birth in Hong Kong, whose husbands are not Hong Kong residents, will not only exert great pressure on our medical system, but will also have significant impact on our welfare, education and other social systems in the long run.*

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

MR CHAN HAK-KAN (in Cantonese): *I am going to put forth my supplementary question. Some people regard the practice of Mainland pregnant women giving birth in Hong Kong a de facto investment migration but a cheaper version, for they only need to spend tens of thousand dollars to obtain a permanent resident status. Some people propose targeting Mainland pregnant women whose husbands are not Hong Kong people by charging them heavy surcharges. May I ask the Government of its response to the proposal? If it does not respond to this proposal and considers that this is not a desirable approach, what measures will the authorities adopt to plug the loophole of the system?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in terms of medical services, what we can do at present according to the requirement of the existing laws in Hong Kong, including the Basic Law, and certain justifications clarified by the Court is to implement appropriate measures in service provision.

Regarding the consideration of the overall policy on population, the Government will definitely explore the issue continuously. I believe Members should recall the remarks of the Chief Executive in 2010 that the authorities would work on this aspect and consider the overall population structure in future, relevant subjects and the relationship between the two. I believe the authorities will continue to make good effort in this respect, and when it considers the issue in a holistic perspective, it will examine the issue raised by Mr CHAN earlier.

MR CHAN HAK-KAN (in Cantonese): *President, may I ask the Secretary to answer whether the authorities will levy surcharges?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, according to the existing charging scheme, NEPs giving birth in a public hospital have to paid \$39,000; for delivery in completely emergent cases, they have to pay \$48,000. However, apart from the two charges mentioned above, no additional charge is imposed at present.

MR CHEUNG KWOK-CHE (in Cantonese): *President, regarding the reply of the Secretary to part (b) of Mr CHEUNG Man-kwong's question on "the justifications for treating in the same manner Mainland pregnant women whose spouses are and those women whose spouses are not Hong Kong permanent residents", the explanation is regarded as extremely insufficient. The authorities have completely ignored the need of pregnant women whose spouses are Hong Kong permanent residents, and the number of this type of Mainland pregnant women is indeed decreasing year on year, which was only 3 000-odd last year. Now that the Government treats them identically with the 30 000 Mainland pregnant women giving birth in Hong Kong every year whose spouses are not Hong Kong permanent residents, the justification is indeed extremely insufficient.*

Regarding this type of Mainland pregnant women, which is only 3 000-odd in number every year and I believe the number is decreasing gradually, will the Government requires public hospitals to accept the delivery bookings of Mainland wives of Hong Kong permanent residents apart from pregnant women who are Hong Kong permanent residents, while the bookings of Mainland pregnant women whose husbands are not Hong Kong permanent residents will

not be accepted, so as to address the need of Mainland pregnant women whose spouses are Hong Kong permanent residents

PRESIDENT (in Cantonese): You have already raised your supplementary question. Secretary, please reply.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I mentioned in the main reply, in 2003, we clarified the charging arrangement for EPs and NEPs under the public healthcare system. The policy is considered effective over the time and is applicable to obstetric services. However, to give a more specific reply to Mr CHEUNG's supplementary question on obstetric service, I believe the number of this type of cases, obstetric service for NEPs, handled by public hospitals will not drop from 11 000 or 12 000 cases last year to zero this year. We hope that each hospital or each hospital cluster will maintain a certain service capacity, so that medical practitioners under training will handle an adequate number of obstetric cases to meet the requirement on professional examination on the one hand; and on the other hand, this will give them the opportunity to handle different cases. In obstetric care, though most pregnant women will have natural childbirth, there are some special cases. Hence, it is necessary to maintain the number of cases handled at a certain level so that there are chances to handle special cases.

So, will the number of cases handled by the public sector as a whole be less than 3 000? I do not think so. Regarding the consideration put forth by Mr CHEUNG, I have explained it in the main reply that for the safety of pregnant women and fetuses, if a high-risk pregnant woman who is usually staying in Hong Kong and the case can be followed up, I believe the medical practitioners will consider the case flexibly according to her clinical condition.

MR CHEUNG KWOK-CHE (in Cantonese): *President, he has not answered my supplementary question. I only asked him to tell if it was feasible, but he has not answered it at all, and his reply is*

PRESIDENT (in Cantonese): Mr CHEUNG, I understand that you are asking whether pregnant women should be treated differently depending on whether or

not their husbands are Hong Kong permanent residents. The Secretary replied earlier that different treatments were not applied, and that the relevant policy was laid down some time ago and the Government did not intend to change it for the time being. If Members are discontent with the policy, Members will have to follow up and discuss the issue on other occasions, such as the relevant panel.

MS CYD HO (in Cantonese): *President, the authorities have adopted an extremely narrow perspective in handling this issue, that is, from the service capacity of the private and public healthcare sectors, and this has aroused a lot of problems. On the one hand, the authorities prevent family reunion by raising service charges; and on the other hand, it allows private hospitals to develop their business unchecked, adding a large number of babies with no relationship with Hong Kong to our population. May I ask whether this is the population policy formulated by the authorities tacitly? If so, when was this policy formulated and who formulated this? If the authorities deny this being part of the population policy of Hong Kong, why it has never reviewed the existing measures from the perspective of promoting family reunion and preventing private hospitals from increasing Hong Kong population?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, within the purview I am responsible for, I have to monitor the service capacity available in the private and public healthcare sectors as a whole, and to achieve the two policy objectives I mentioned earlier. The first objective is to ensure that pregnant women giving birth in Hong Kong, regardless where they are from, are provided with quality professional service. The second objective is to ensure that local pregnant women and infants are given priority in services. There is no question of formulating a new set of population policy via the services provided by existing private hospitals. It is absolutely not the case.

MS CYD HO (in Cantonese): *President, my supplementary question is not directed against the Secretary. My question is about the Steering Committee on Population Policy set up by the authorities. Since Secretary Dr York CHOW is also a member of the Steering Committee, the Secretary is at least obliged to tell me the views of the Steering Committee on Population Policy on the issue.*

PRESIDENT (in Cantonese): Ms HO, the main question is about obstetric service. The main content of the main question has been clearly stated in the starting paragraph and the following three parts of the main question, and the Secretary for Food and Health is thus assigned as the official responsible for giving the reply. The Secretary has replied that obstetric services provided by the authorities do not involve a change in population policies, and this is a response to your question.

This Council has spent more than 23 minutes in this question. A number of Members who are still waiting do not have the opportunity to ask their questions, they will have to follow up the issue on other occasions. Fifth question.

Patent Registration in Hong Kong

5. **DR PAN PEY-CHYOU** (in Cantonese): *President, last year, I received a complaint from a small business proprietor alleging that he had submitted a patent application for his product in Hong Kong but had not obtained any effective protection, and the application procedures were cumbersome, and that Hong Kong lacks fair procedures for vetting patent products. In this connection, will the Government inform this Council:*

- (a) *given that under the existing Patents Ordinance, any member of the public who wants to submit a patent application for an invention in Hong Kong will first need to obtain the patent granted by one of the designated patent offices outside Hong Kong or submit a search report prepared by a designated searching authority, whether the authorities had, in the past three years, considered reviewing and revising the patent registration procedures under the Ordinance, such as introducing the "original grant patent system", so as to dovetail with the unique features of local industries and foster the development of creative industries in Hong Kong; if they had, of the details; if not, the reasons for that;*
- (b) *given that a number of economies such as the Mainland, Taiwan, Japan and Europe currently adopts "utility model patents" and give full authority to patent organizations or patent courts to vet and review patent rights, whether the authorities will consider*

introducing such system; if they will not, of the reasons; if they will, of the details; whether they will allocate additional resources to implement this plan; if they will, of the details; if not, the reasons for that; and

- (c) *whether the authorities will provide legal assistance to Hong Kong's small and medium enterprises in respect of the vetting procedures for patent rights and in the event of patent disputes so that they will not lose the opportunity of having fair arbitration due to huge arbitration costs; if they will, of the details, if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, insofar as the processing of patent applications is concerned, if a patent office were to conduct substantive examination, the relevant authority would have to establish a sizeable databank and employ professional experts from various fields before it is in a position to examine whether a certain invention is novel, innovative and susceptible to industrial application.

The patent system currently prevailing in Hong Kong was established in June 1997. Mainly due to considerations surrounding cost-effectiveness, the law does not require the patent authority to conduct substantive examination locally.

Our system is such that the Hong Kong Patents Registry merely conducts formality checking, namely verifying the documents submitted by the applicant to see whether the necessary information has been fully furnished, for the purpose of determining whether the registration requirements are met. Under the current system, two types of patents are granted in Hong Kong, namely standard patents and short-term patents.

Standard patents obtained in Hong Kong are based on a patent granted by one of three designated patent offices. All these three designated patent offices have adopted the original grant patent system. They are the State Intellectual Property Office, the United Kingdom Patent Office and the European Patent Office (in respect of patents designating the United Kingdom). The application process involves two stages. After the designated patent office has published the patent application, the applicant may, within the prescribed period, file a

"request to record" in Hong Kong. After the designated patent office has conducted substantive examination and granted the patent, the applicant may, within the prescribed period, file a "request for registration and grant" in Hong Kong. The Hong Kong Patents Registry would normally grant the patent within a few months after receiving the relevant certifying document from the designated patent office. A standard patent may remain in force for a maximum term of 20 years.

As for a short-term patent, the applicant may file his application direct with the Hong Kong Patents Registry without having to first go through a designated patent office. The applicant is required to submit a search report prepared either by one of the designated patent offices or any International Searching Authority appointed pursuant to Article 16 of the Patent Co-operation Treaty (the Treaty). The Hong Kong Patents Registry would grant the short-term patent after satisfying itself that the information required is fully furnished. The registration process could generally be completed within a few months. A short-term patent may remain in force for a maximum term of eight years.

As "substantive examination" is not a prerequisite for processing an application, the grant of a short-term patent cannot be regarded as proof of the patentability of the applicant's invention. A patent proprietor would have to prove the validity of his/her patent in court proceedings when enforcing the patent. Furthermore, if any person applies to the court for an order to revoke a short-term patent on the ground that the invention is not patentable, the patent proprietor will have to adduce evidence to prove the validity of his/her patent in the relevant court proceedings.

With regard to parts (a) to (c) of the main question, our reply is as follows:

- (a) We are about to launch a forward-looking review this year, with a view to ensuring that our patent system will effectively complement the future development of Hong Kong's economy on various fronts including innovation and technology.

We will listen carefully to proposals and views from all relevant sectors before deciding on whether and if so how the current system, including the granting of patent, should be changed.

To collect preliminary opinions from major stakeholders, we held a public forum in February this year. About 170 representatives from the legal, patent agent, industrial, academic and research-and-development sectors attended the Forum. At the forum, some participants suggested that Hong Kong should consider having its own original grant patent system with substantive examination outsourced to the patent office(s) in other jurisdiction(s), thereby allowing inventors and investors to apply for standard patents direct in Hong Kong. We will include this subject into the ambit of the review.

At the meeting of the Legislative Council Panel on Commerce and Industry on 17 May, we will seek Members' views on how to take forward this review of our patent system, including its scope and the work plan.

- (b) The short-term patent system in Hong Kong shares a number of similarities with the utility model or lesser patent systems in use in some overseas jurisdictions (including Mainland China, Australia and some European countries). For example, the protection period is shorter than that offered by standard patents (normally eight to 10 years) and the patent offices or registries will not require substantive examination to be conducted before granting the patent.

Should a dispute arise after a short-term patent or a lesser patent has been granted, it is generally for the local court to determine the validity of the patent.

Nevertheless, we also note that in some jurisdictions, holders of lesser patents or other parties who have doubts about the validity of the lesser patents may choose to request the relevant administrative department to conduct a substantive examination of the invention in question. Such a practice, by enabling the relevant parties to better ascertain patentability through scrutiny of the examination report, may help avoid unnecessary litigations.

In conducting the review exercise described above, we will consider the merits of introducing a similar mechanism.

- (c) To assist local companies and individuals in applying for patents, the Innovation and Technology Commission has launched a patent application funding scheme. Eligible applicants for the scheme include local incorporated companies, Hong Kong permanent residents and Hong Kong residents who are permitted to remain in Hong Kong for not less than seven years as long as they have not previously owned any patent in any country or territory. The maximum grant is \$150,000 for each approved application. Out of the grant, an amount of not more than \$120,000 may be used for patent-search-cum-technical assessment and other direct costs involved in the patent application process, for example, attorney fees, consultant fees (including charges incurred in dealing with objections raised by the relevant examination authority during the patent examination process) and fees relating to the filing of patent applications. The fund could not be used to cover fees incurred in handling disputes that arise after the relevant patent has been granted.

Where the patent has been granted, should a patent owner be involved in a dispute or legal challenge involving the patent, he/she may apply for legal aid for pursuing proceedings in the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. Provided that the applicant's personal financial position meets the statutory criteria and there are reasonable grounds for taking forward or defending the relevant legal proceedings, legal aid may be granted.

DR PAN PEY-CHYOU (in Cantonese): *President, to begin with, I welcome that the Government is willing to conduct a review, but I am dissatisfied about something the Secretary said in the main reply concerning legal assistance. It is because at present, legal aid does not cover fees incurred in handling disputes that arise after a patent has been granted, but this is precisely the predicament that many inventors find themselves in.*

The Secretary mentioned in the main reply that inventors who meet the criteria can apply for legal aid. However, more often than not, they do not meet the criteria. While their financial means may not be that bad that they need to

apply for legal aid, the costs that they have to bear for conducting legal proceedings are huge. I thus hope that the Secretary can explicitly say whether the review will examine the provision of a specific legal assistance for small inventors whose patent are challenged or in dispute, so that they can resolve the matter through court proceedings or arbitration. This is exactly what small inventors need now.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I thank Dr PAN for his question. I explained just now in the main reply that the \$150,000 granted under the patent application funding scheme of the Innovation and Technology Commission cannot be used for handling disputes that arise after the patent application is approved. However, should disputes arise, the patent owner can apply for legal aid, under which eligible persons are provided with the means needed in legal proceedings. Certainly, to be eligible for legal aid, the applicant must go through the means test and the merits test. At present, the statutory cap of the applicant's financial position is \$175,800, to be adjusted to \$260,000 on 18 May. Moreover, if the financial position of the applicant falls between \$175,800 and \$488,400, he can apply for the Supplementary Legal Aid Scheme. Similarly, with effect from 18 May, this cap will be adjusted to \$1.3 million. Hence, we will constantly review the situation to suitably adjust these legal aid schemes and process applications with reference to the means tests and merits test, so as to provide legal assistance to the needy applicants.

PRESIDENT (in Cantonese): Dr PAN, has your supplementary question not been answered?

DR PAN PEY-CHYOU (in Cantonese): *President, the Secretary's reply is clear, but he has not answered my supplementary question. My question is whether the review will cover the provision of legal aid?*

PRESIDENT (in Cantonese): I believe Members know very well the methods mentioned in the Secretary's reply and there is no need for the Secretary to repeat himself. Member now said that the Secretary has not provided sufficient

support and thus asked whether this issue will be covered in the review, so that new support mechanisms can be proposed. Secretary, please reply.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, in fact, we adopt an open attitude towards the review. A major purpose of the review is to see whether the patent system can dovetail with the future economy, including the development of innovation and technology. Thus, we are open about the review. At the present stage of the review, we will conduct different consultations in phases. The first phase review will centre on whether an original grant patent system should be established in Hong Kong. If this system is to be established, how outsourcing should be taken forward. Hence, the first phase of the review will concentrate on finding the system we need. Then, we will adopt an open attitude and see how this can dovetail with the development of the industry and cater for the needs of the applicants. We are open about this. Hence, the first phase of the review will cover the development of the original grant patent system, including short-term patents and standard patents.

MR WONG TING-KWONG (in Cantonese): *President, under the current patent system in Hong Kong, the results of examination conducted by recognized authorities in the Mainland, the United Kingdom and Europe are directly adopted. In order to apply for a patent in Hong Kong, the applicant must first submit an application to the authorities in these places or countries. Owing to the current Hong Kong system, Hong Kong lacks the technical capacity to conduct patent examinations on its own, making it difficult to foster local talents for the patent-related industries. It is also unfavourable to the promotion of innovation and technology industry and the development of technology financing business in Hong Kong.*

In relation to this policy, the Democratic Alliance for the Betterment and Progress of Hong Kong has maintained close exchanges over the past years with local patent-related legal counselling and patent agent sectors and gauged the views of the commercial and industrial sectors on the development of the patent system in Hong Kong. Our understanding is that Hong Kong does need to have a system which can directly conduct examination on standard patents locally. Will the authorities consider establishing a patent system in Hong Kong which can directly conduct examination and granting of patents locally, so as to

encourage the development of patent-related industries and enable profits generated from the industries to be retained in Hong Kong, as well as facilitating patent application by local enterprises which in turn can encourage invention and innovation and facilitate the development of technology financing?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mr WONG for his question. Mr WONG mentioned just now a system for directly conducting examination and granting of standard patents locally. I believe Mr WONG was referring to the original grant patent system which I mentioned in the main reply, that is, to establish a patent office in Hong Kong which has the capacity to conduct substantive examination. As I mentioned in the main reply just now, insofar as the processing of patent applications is concerned, in order to conduct substantive examination, the relevant authority will have to establish a sizeable databank and employ professional experts from various fields, which will involve a huge amount of resources. We consider that, under a user-pay system, if this huge cost is to be borne by the applicant, the fee will have to be substantially increased which may affect individual applicants. We do need to consider this.

Hence, the review is going to be multi-faceted and we will listen to views of different stakeholders. The direction of our review is to meet the need of the present and future economic development. Ideally, it would be desirable to encourage more investment from local enterprises and attract more overseas and local inventors to develop their businesses in Hong Kong in areas of innovation and research. Hence, we hope that in this consultation exercise, we can listen to views of different stakeholders, so that after we have considered their views, we can come up with a development blueprint which is conducive to the overall interest of Hong Kong.

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

MR WONG TING-KWONG (in Cantonese): *It is not unanswered. Sorry, President, I wish to clarify*

PRESIDENT (in Cantonese): Mr WONG, if you wish to put a follow-up, please wait for your turn again. I think that the Secretary has already replied your question.

MRS REGINA IP (in Cantonese): *President, the Secretary explained in his reply that the patent system in Hong Kong is based on the standard set by the patents examined by three designated patent offices. These patent offices include the State Intellectual Property Office, the United Kingdom Patent Office and the European Patent Office, in other words, the United Kingdom and the European Union are included. I believe this involves a historical factor because Hong Kong had been a British colony. Actually, the United States is one of the best in the world in granting patents, both in terms of quantity and quality, or in terms of economic value and science and technology content. If the patent of an invention is granted in the United States, how can it be recognized in Hong Kong? Can the invention be accorded protection in Hong Kong by the power of other articles, such as the articles under the Treaty?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mrs Regina IP for her question. In fact, several topics will be dealt with in the reviews we are going to conduct, one of which is whether an original grant patent system should be established in Hong Kong. Mrs Regina IP asked just now whether we would retain the system. This is also a topic which will be dealt with in the consultation. If we preserve this re-registration system, that is, allowing patents granted by the State Intellectual Property Office and other patent offices in the United Kingdom and Europe to be re-registered in Hong Kong, if we preserve this re-registration system, should we extend the scope of application to include patents granted by other jurisdictions? This is another topic to be looked into in the review.

Mrs IP asked just now whether the Treaty was applicable in Hong Kong. In fact, the Treaty has been given effect in Hong Kong since 1 July 1997. The only difference is that the Intellectual Property Department in Hong Kong is not a state patent office and the Treaty requires that only sovereign state can be a contracting party to the Treaty. Hence, despite the fact that the Treaty has been given effect in Hong Kong, we can only accept and recognize patents granted by the Chinese patent authority designated under the Treaty.

PRESIDENT (in Cantonese): This Council has used almost 21 minutes on this question. Last question seeking an oral reply.

Expenditure on Drugs of Clusters Under Hospital Authority

6. **MR IP WAI-MING** (in Cantonese): *President, it has been reported that a deficit of \$30 million in the expenditure on drugs was incurred by the New Territories East Cluster of the Hospital Authority (HA) in 2009-2010. I have recently received complaints from members of the public that the New Territories East Cluster has reduced the quantity of drugs prescribed to patients and also switched to use generic drugs, causing people to worry that the quality of the medical services and drugs received by patients has no safeguard. In this connection, will the Government inform this Council whether it knows:*

- (a) the overall balance of income and expenditure of various clusters under HA in the past five years, and their expenditure on drugs in 2010-2011;*
- (b) the quantity of generic drugs purchased by the various clusters under the HA and the percentage of such drugs in the total quantity of drugs in the past five years; whether the HA has laid down guidelines on whether the clusters should purchase brand name drugs or generic drugs; if it has, of the details; if not, the reasons for that; and*
- (c) how the HA monitors the procurement of drugs and drug treatment on patients by its various clusters at present; whether the HA knows if individual clusters have substantially reduced the quantity of drugs prescribed to patients because of deficits, and allows them to do so; if so, of the details?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the HA has put in place an established mechanism on the procurement of pharmaceutical products. In compliance with the requirements of the World Health Organization and the World Trade Organization, the HA procures drug items of

high volume or in large value with market alternatives through open tenders. All products of the suppliers must comply with all quality requirements, including pharmaceutical product registration with the Department of Health; accreditation of Good Manufacturing Practice of the manufacturing site; detailed product specific information, such as product master formula, method of assay, finished product specifications and stability data, as well as the bioequivalence data of generic drugs in comparison with the proprietary drugs to prove the generic drugs' efficacy, before the consideration of tender prices. In other words, the prices will only be considered after the quality of the products is confirmed in order to protect the safety of patients. This mechanism ensures that the efficacy of generic drugs selected and procured by the HA from the market is comparable to that of the proprietary drugs.

The HA Drug Formulary (the Formulary) has included drugs for the treatment of various diseases. Currently, the vast majority of drugs have been centrally procured, and hospitals cannot decide on their own to purchase drugs outside the Formulary.

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

- (a) Every year, clusters and hospitals under the HA will, in light of the HA's strategic planning and service development needs, draw up annual plans to specify the strategies, major initiatives and service targets to meet district demands. The HA will provide a block allocation to various hospital clusters, which may flexibly deploy the funding and adjust their expenditures, including the expenditure on drugs, having regard to actual service demands. The HA reviews the financial position of various clusters, including their expenditure on drugs, every three months through an established mechanism. In case of a possible deficit in the overall budget of individual cluster, the HA will discuss with the cluster the measures to address the situation under the existing mechanism.

In the past five years, various clusters could achieve an overall balanced budget. The expenditures on the procurement of drugs of various HA clusters are set out below.

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011*
	(\$M)	(\$M)	(\$M)	(\$M)	(\$M)
Hong Kong East	264	291	323	361	407
Hong Kong West	387	452	453	536	592
Kowloon Central	333	401	415	497	552
Kowloon East	214	249	240	244	284
Kowloon West	470	505	547	598	695
New Territories East	420	476	511	526	618
New Territories West	270	295	300	345	393

(*Projection based on the expenditures on the procurement of drugs as at end January 2011)

Note:

The above figures include the expenditures on the procurement of self-financed drugs of the clusters.

- (b) When the patent of a proprietary drug has expired and generic drugs are available in the market, the decision as to whether the HA will purchase the generic drugs or not will be made centrally and individual hospitals cannot decide on their own whether to purchase new generic drugs. As mentioned above, drugs currently selected and procured by the HA have met all the quality requirements. For generic drugs, their bioequivalence data in comparison with the proprietary drugs must be submitted to prove their equivalence of efficacy with the proprietary drugs. At present, the HA procures more than 3 000 items of drugs in different formulations such as ampoule, tablet, pill, capsule, granular, oral solution and injection fluid. Under such circumstances, the HA does not have detailed statistics on the quantity of different types of generic drugs procured by various clusters and their respective proportions to the total drugs procured. The annual percentage of expenditure on generic drugs procured through tenders by the HA (accounting for more than 80% of the total expenditure on drugs) in the past five years is set out below:

	2006- 2007	2007- 2008	2008- 2009	2009- 2010	2010- 2011
Percentage of expenditure on generic drugs procured (based on drugs procured through tenders)	16.87%	19.56%	18.64%	18.84%	14.57%

- (c) As mentioned above, the HA reviews the financial position of various clusters, including their expenditure on drugs, every three months through an established mechanism. In case of a possible deficit in the overall budget of individual cluster, the HA will discuss with the cluster the measures to address the situation through the existing mechanism. The consideration for the type and quantity of drugs prescribed to patients is based on the judgment of doctors having regard to individual patients' clinical needs and treatment outcome, and will not be affected by the overall financial position of the clusters.

MR IP WAI-MING (in Cantonese): *President, I asked the Secretary if he has information on the percentage of brand name drugs and generic drugs purchased by various clusters but I am very disappointed that the Government's main reply does not include such detailed statistics. As stated in the main reply, currently, the vast majority of drugs have been centrally procured while some drugs are procured by clusters or individual hospitals. Most importantly, the Secretary has mentioned in part (a) of his main reply that the HA may flexibly deploy the funding and adjust the expenditure on drugs. However, the ratio and quantity of generic drugs purchased have not been mentioned. Will this make the generic drugs that have been centrally procured upon the requests of some clusters or hospitals take up a very large percentage of the drugs they purchased? Can the Secretary provide any figures and deal with the matter?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, the procurement of drugs must comply with the requirement laid down under the Formulary; and as I have just said, the choice between proprietary drugs and generic drugs mainly depends on efficacy and bioequivalence data. Moreover, when the patent of a proprietary drug has expired, the suppliers of generic drugs who want their drugs to be procured must submit all bioequivalence data because*

prices are the last things that we considered in procurement. In other words, we must ensure the efficacy and safety of drugs before considering their prices.

As I have just mentioned, the annual percentage of expenditure on generic drugs procured through tenders by the HA accounts for more than 80% of the total expenditure on drugs. Why have some clusters purchased drugs on their own? Can various clusters arbitrarily make procurement decisions? The answer is no. Individual hospitals or clusters will only purchase drugs on their own for special reasons. For example, as individual hospitals are teaching hospitals, they need to purchase some drugs that will only be used for teaching certain subjects. In the procurement process, the drug lists must be reviewed by the pharmacy department at the head office before being screened under the relevant standards. For this reason, various clusters will not have different criteria for the procurement of proprietary and generic drugs.

MR CHAN HAK-KAN (in Cantonese): *President, when the Secretary responded to Mr IP Wai-ming's question, he has repeatedly said that, in case of a possible deficit in the overall budget of an individual cluster, the HA will discuss with the cluster about the measures to address the situation under the existing mechanism. I would like to know the specific details of the existing mechanism and whether the cluster would be asked to tighten its belt under the mechanism. Will the HA provide additional funding to the cluster in question? If additional funding is given, will the cluster spend extravagantly? Will the request to tighten the expenditure affect other services provided by the cluster?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the question that Mr CHAN has just asked has precisely reflected that we must make thoughtful and balanced considerations in various aspects. As I have mentioned in my main reply just now, the HA will provide a block allocation to various hospital clusters. Various clusters will make annual plans on the needs of different departments and hospitals and determine the amounts of resources to be used on patient services, manpower deployment and drug procurement in light of the relevant situations. This also explains why the clusters will flexibly deploy the funding and the HA will not instruct them to use a certain percentage on drug procurement each year.

If, in actual application of the funding after planning, the clusters find that a certain area or areas may be overspent, they will certainly find out the reasons and take the right remedial steps. There are too many possibilities in this regard and it is very difficult for me to explain in a few words. Nevertheless, does the HA provide the clusters with additional funding whenever there is overspending to help them tide over difficulties? We can give some relevant examples but I believe that, in most cases, the clusters can make adjustments in other areas and achieve a fiscal balance in the financial year concerned. As a whole, as shown in Appendix II, the clusters and hospitals under the HA managed to achieve a fiscal balance in the past five years.

DR LEUNG KA-LAU (in Cantonese): *President, Mr IP Wai-ming asked in part (c) of his question whether the HA knows if individual clusters have substantially reduced the quantity of drugs prescribed to patients because of deficits. I was a doctor in the New Territories East Cluster before working as a private doctor. During breakfast time, I occasionally overheard some colleagues say that the boss asked them not to prescribe so many expensive drugs because the drug budget had been exceeded. Are the HA and the Government aware of the situation?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, it is very difficult for me to prove what Dr LEUNG had overheard his colleagues during breakfast time was true or not, and hence I cannot say whether we are aware of the situation. Unless there is concrete information I am very pleased to discuss with Dr LEUNG after this meeting about the rumour he overheard during breakfast time.*

MR CHAN KIN-POR (in Cantonese): *President, development of new drugs is the largest expenditure item of a pharmaceutical factory, with hundreds of millions of dollars being injected into the project. It can only successfully develop a new drug that is approved for sale in the market after a lot of studies. However, when the patent of a drug has expired, other generic drugs with the same efficacy can compete with it and they are definitely cheaper alternatives. So, it is appropriate for the Government to use generic drugs as the prices may very often be many times lower.*

The present problem is that people consider that the quality of generic drugs is lower than that of proprietary drugs. How will the Government let the public understand through publicity or other channels that proprietary and generic drugs actually have the same efficacy and effects? Thus, there is no problem in buying generic drugs when the patent of proprietary drugs has expired. How is the Government going to promote this information? Upon the expiry of the patents of many expensive proprietary drugs, many cheaper generic drugs will certainly be launched to compete for a market share.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, Mr CHAN has rightly said that, when the patent of a proprietary drug has expired, even the prices of the proprietary drug will drop substantially because of competition. I believe that through the media report on the discussion of this question today, Hong Kong people would understand that there is actually no difference between generic drugs and proprietary drugs. I have to emphasize in particular that, under the policy that I have just mentioned, the HA pays attention to whether certain drugs are registered and it will also ensure that their medicinal properties and all bioequivalence meet our requirements. Lastly, we will also consider the prices. Hence, in the course of screening and procurement, our most important consideration is whether the drugs are safe and whether they have the relevant therapeutic effects. Therefore, Members can be assured that the generic drugs listed in the Formulary certainly have the same efficacy as proprietary drugs, and they will only be procured after they have been tested for safety.

DR PAN PEY-CHYOU (in Cantonese): *President, as Dr LEUNG has just mentioned, there are really cases where the management asked front-line doctors not to prescribe expensive medicines. I am a front-line doctor and I am also involved in administrative and management work; so I know that prescriptions should be made on the basis of the drug budget.*

Nevertheless, I think a more serious problem is that the types of drugs purchased by the clusters differ. In other words, if a patient who originally received treatment in Cluster A and was taking Drug A has moved elsewhere or is now receiving treatment in Cluster B for other reasons, he will not be prescribed

Drug A. This actually caused considerable clinical distress. Will the Government and the HA have discussions and co-ordinations with a view to resolving this long-term distress?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, it is right for Dr PAN to say just now that there may be such individual cases. Nonetheless, I would like to say that, the HA Head Office and the Chief Executives of hospitals or clusters will not specify which drugs listed in the Formulary should be purchased for individual departments, cases or diseases. Most of these decisions, even 100% of them, are made at the departmental level by department heads and more senior doctors. Dr PAN has just said that he is one of the consultant doctors of the HA; they discuss and decide upon within the clusters the types of drugs to be purchased. Although the decision of each cluster may not be the same, we still hope that there will be flexibility so that senior personnel in different departments of the clusters can make their choices based on their own arguments.

At the HA level such as the HA Head Office, I trust that Dr PAN is also aware that, there is a central co-ordinating committee for each discipline or department. President, we would like to achieve cross-cluster co-ordination at this level. For instance, when a patient needs to receive cross-cluster services after moving elsewhere, we would like to help him control his conditions by making referrals so that he and his conditions will not be affected when different drugs are prescribed.

MR IP WAI-MING (in Cantonese): *President, I would like to ask another question about the same issue because Dr LEUNG and Dr PAN have just touched upon part (c) of the main reply, that is, whether individual clusters have substantially reduced the quantity of drugs prescribed to patients because of deficits. In reply to Dr LEUNG's question a while ago, the Secretary said that he would discuss with him in private about these rumours and tried to find out more about them. Yet, the problem is that many of these rumours are not only spread among healthcare personnel, they are also frequently heard by the public. Many people often hear similar rumours when they visit the HA hospitals for consultation. I would like to find out if they still regard these as rumours, or*

they just bury their head and pretend not to have heard of them? Even if they are just rumours, will the Secretary consider conducting studies to find out if front-line doctors are under constraints in prescribing drugs, with a view to improving the situation?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the HA Head Office understands that and it will examine the situation from time to time to find out more about the prescription of drugs, especially drug delivery. The HA has substantially injected new resources in the past few years. As a whole, according to our projections and estimates, the HA will invest 9.8% of its recurrent expenditures in drugs, a considerable increase as compared with 7% or 8% a few years ago. Therefore, we have currently injected resources at a certain level.

As regards whether the heads of individual departments or units have failed to project an increase in certain types of patients when estimates are made at the beginning of the year, making it necessary to inject additional resources or resulting in some deviations in implementation, I believe that different divisions and departments will consistently review the situation. We will include the work in the standing agenda of the HA Head Office and the co-ordinating committees of the pharmaceutical service and different divisions.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Collection of Service Fees by Banks

7. **MR CHAN KAM-LAM** (in Chinese): *President, it has been learnt that some banks in Hong Kong have exempted the elderly from certain service fees at present, but some others still collect additional fees from accounts with an average balance below a specified amount and persons using counter services, causing the disadvantaged groups, including Comprehensive Social Security Assistance (CSSA) recipients, and so on, to be regularly charged these service*

fees despite their financial hardship. In this connection, will the Government inform this Council:

- (a) whether it knows which major banks in Hong Kong collect additional fees from low-balance accounts and persons using counter services at present; of the approximate amount of the fees collected (set out in table form); which of them exempt the elderly from such service fees, and which of them exempt CSSA recipients from such service fees;*
- (b) whether the Government and the Hong Kong Monetary Authority (HKMA) had received any complaint from the public in the past three years about service fees collected by banks; if they had, of the number and outcome of the complaints, with a breakdown by year; and*
- (c) whether the Financial Services and the Treasury Bureau and the Labour and Welfare Bureau had held any discussion or made any lobbying effort in the past three years with regard to urging banks to exempt CSSA recipients from service charges; if they had, of the progress and outcome of such work; if not, whether they will consider undertaking such work in the future?*

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

- (a) At present, banks which have larger branch network in Hong Kong include Bank of China (Hong Kong), HSBC, Hang Seng, Bank of East Asia, Standard Chartered, and DBS (Hong Kong). Altogether they have 675 branches, representing half of the total bank branches in Hong Kong. The vast majority of them exempt such disadvantaged groups as senior citizens and recipients of CSSA from service fees levied on Hong Kong dollar (HKD) savings accounts which do not meet the minimum balance requirement of banks. Please see table below for details:

	<i>HKD savings account low-balance fee</i>			
	<i>Minimum balance requirement (HKD)</i>	<i>Monthly fee (HKD)</i>	<i>Waiver for senior citizens</i>	<i>Waiver for CSSA recipients</i>
Bank of China (Hong Kong)	\$5,000	\$60	Yes	Yes (In addition, fees for recipients of the Government's Disability Allowance (DA) are waived.)
HSBC	\$5,000	\$50	Yes	Yes (Applicable to disabled CSSA recipients only. In addition, fees for recipients of the Government's DA are waived.)
Hang Seng	\$5,000	\$50	Yes	No (But fees for recipients of the Government's DA are waived.)
Bank of East Asia	\$5,000	\$50	Yes	Yes (In addition, fees for recipients of the Government's DA are waived.)
Standard Chartered	\$10,000	\$100	Yes	Yes (In addition, fees for recipients of the Government's DA are waived.)

	<i>HKD savings account low-balance fee</i>			
	<i>Minimum balance requirement (HKD)</i>	<i>Monthly fee (HKD)</i>	<i>Waiver for senior citizens</i>	<i>Waiver for CSSA recipients</i>
DBS (Hong Kong)	\$30,000	\$50	Yes	Yes (But only applicable to those who opened an account with the bank before 21 July 2003. In addition, fees for recipients of the Government's DA are waived.)

Source: Websites of individual banks

Apart from the abovementioned banks, the majority of the remaining retail banks in Hong Kong also offer HKD savings account low-balance fee waivers for such disadvantaged groups as senior citizens and/or CSSA recipients.

As for counter service fee, in general, when depositors use counter services such as withdrawals, deposits or transfers, banks will not levy a separate fee. In addition, to cater for the needs of low-balance account holders, some banks offer customers a choice of accounts with no minimum balance requirement. Banks offer these customers free automated teller machine (ATM) cards so that they can use ATMs for cash withdrawal or transfer. But if these account holders withdraw cash or transfer funds over the counter, the banks will charge around twenty dollars for each transaction.

- (b) The numbers of complaints on bank charges received by the HKMA from members of the public, on a yearly basis, were four (in 2008), 13 (in 2009), 17 (in 2010) and two (up to April 2011). These 36 complaints were not related to disadvantaged groups complaining about low-balance or counter service fees.

In addition, according to the HKMA's records, all these complaints were handled by the banks properly. The HKMA was also not aware of any violation of the requirements under the Code of Banking Practice relating to providing notifications and ensuring that customers were informed of the fees.

- (c) The Financial Services and the Treasury Bureau as well as the Labour and Welfare Bureau understand public concern about the impact that bank account charges may have on disadvantaged groups. In this regard, the HKMA has been in discussion with the Code of Banking Practice Committee to encourage banking industry to adopt appropriate policy on exemption of bank charges. The Hong Kong Association of Banks (HKAB) issued a circular to its members in 2007, pointing out that while it understood bank account charge was a matter of commercial decision of individual banks, it called for the adoption of appropriate exemption policy. The HKAB issued another circular in 2009, encouraging banks to ensure that their staff were able to readily provide details of their banks' exemption policies in response to customer enquiries. The HKMA will continue to closely monitor the situation and, if necessary, follow up with the industry.

Improvement to Services of West Rail Line

8. **MR TAM YIU-CHUNG** (in Chinese): *President, some members of the public have reflected to me that owing to the growing population in areas along the MTR West Rail Line in Tuen Mun, Yuen Long and Tsuen Wan in recent years, the demand for services of the West Rail Line and other modes of transport by local residents continues to increase. Yet, in reply to a question of a Member of this Council in January this year, the authorities said that the average loading of the West Rail Line was 58%, even at the busiest period of the morning peak hours, which showed that service was sufficient to cater for passenger demand, and as such, there was no need to increase the number of train cars at this stage. Regarding the service and safety of the West Rail Line, will the Government inform this Council:*

- (a) *whether it knows the average daily passenger trips and increases in the number of passengers of the West Rail Line respectively in the past three years;*
- (b) *if it knows whether or not the passenger trips in part (a) have included the number of people who changed to the West Rail Line at various interchange stations; if so, of the way of computing the number; if not, the reasons for that, and whether the MTR Corporation Limited (MTRCL) will review the computation of occupancy rates and include the number of people changing to the West Rail Line so as to truly reflect the actual passenger trips, and increase the number of train cars of the West Rail Line from the present seven cars to nine cars which is the original design standard with a view to ameliorating the crowded condition; if so, of the details; if not, the reasons for that;*
- (c) *whether, since October last year, it has looked into the reasons why cracks were found in a large number of bridge columns of the West Rail Line last year and taken follow-up actions on its safety and also requested the MTRCL to review whether safety reasons have resulted in the MTRCL not being able to increase the number of train cars of the West Rail Line to the original design standard of nine cars; if so, of the results; if not, the reason for that; and*
- (d) *if it knows whether in the near future the MTRCL will increase the train frequency of the West Rail Line from the urban area to the New Territories during nighttime so as to ease the crowded condition; if so, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, for the various parts of the question, our reply is set out below:

- (a) The average daily number of passengers entering the West Rail Line in the past three years is set out below:

<i>Year</i>	<i>Average Daily Number of Passengers Entering the West Rail Line</i>	<i>Year-on-year Change</i>
2008	223 000	-
2009	298 000	+34%
2010	333 000	+12%

(b) and (d)

As the MTR railway network operates as an open system, passengers can interchange to different railway lines after entering the network. Therefore the MTRCL does not have ridership information for each individual railway line or actual number of passengers making interchanges between railway lines. Since passengers pass through entry and exit gates when they enter and exit the network, the number of passengers entering and exiting each individual railway line is recorded.

When formulating train frequencies and service levels of railway lines, the MTRCL considers a number of factors including train loading in the busiest section and during the busiest period, and situation of passengers waiting at platforms through site observations, in addition to the number of passengers entering the railway lines.

During the early stage of operations of the West Rail Line in 2003, trains ran at a frequency of 3.5 minutes during peak periods, with a carrying capacity of 39 900 per hour in one direction. Following the opening of the Kowloon Southern Link in 2009, which extended the West Rail Line from Nam Cheong Station to Hung Hom Station, train frequency has been enhanced to three minutes, raising the carrying capacity to 46 900 per hour in one direction in order to meet the anticipated passenger growth.

Currently, the period between 8 am and 9 am on a weekday is the busiest on the West Rail Line with the busiest section being the one from Kam Sheung Road Station to Tsuen Wan West Station. The

average number of passengers carried in this section is 27 400 per hour⁽¹⁾, and the average train loading is 58%. As such, the current train service and its level are sufficient to cater for the passenger demand. According to the site observations at platforms conducted by the MTRCL from time to time, most passengers can board the first arriving train during the period between 8 am and 9 am at stations between Tuen Mun Station and Kam Sheung Road Station.

With regard to the service during the nighttime, taking the period between 8 pm and 10 pm as an example, the average carrying capacity for the busiest section from Tsuen Wan West Station to Kam Sheung Road Station is 21 100 per hour in one direction. The average number of passengers carried in this section is 8 300 per hour, and the average train loading is about 40%. The current service is sufficient to meet the need of passengers.

The MTRCL will continue to closely monitor the patronage of the West Rail Line and make service adjustments if necessary to meet the overall passenger demand.

- (c) The MTRCL has been conducting visual inspections and hammer tapping tests regularly to monitor the building structures of the West Rail Line (including the viaduct piers) and the condition of the cracks. During the annual inspection of the structures of the viaducts of the West Rail Line in March 2010, 16 were found to have minor surface cracks that would require repair. The concerned repair works commenced in August 2010 and are expected to be completed in 2011.

The MTRCL understands the public concern of the matter and has already engaged an independent consultancy firm to conduct a detailed structural assessment of the condition of the cracks. The assessment has been completed and the findings indicate that the viaduct piers are structurally safe on the whole. The Buildings

(1) Number of passengers entering stations in the Northwest New Territories (that is, stations between Tuen Mun Station and Kam Sheung Road Station), excluding those who exit at stations within the area.

Department agrees with the aforementioned findings and is now following up with the independent consultancy firm on some technical details.

As to whether the number of cars of a train on the West Rail Line will be increased, according to the MTRCL, considerations are made based on passenger demand and it is not related to the aforementioned issue of cracks.

Protection of Students Against Sexual Harassment by Their Teachers

9. **MR LAU WONG-FAT** (in Chinese): *President, given that from time to time in recent years, there were cases of primary and secondary school teachers sexually assaulting their students, will the Government inform this Council:*

- (a) *whether the Education Bureau has provided primary and secondary schools with guidelines on preventing cases of teachers sexually assaulting students; if so, of the contents of the guidelines; if not, the reasons for that;*
- (b) *whether the Education Bureau has studied why from time to time in recent years, there were cases of teachers sexually assaulting their students; and*
- (c) *whether the authorities will consider adopting new measures to enhance the protection of students against the threat of being sexually assaulted by their teachers?*

SECRETARY FOR EDUCATION (in Chinese): President, all along, the Government has been very concerned about sexual offence cases in which children are the victims, and the police are also committed to combating these crimes. In this regard, the Education Bureau has been working closely with schools to monitor the registration and appointment of teachers respectively to create a safe learning environment for students so as to safeguard their well-being. Furthermore, guidelines are issued to schools and curricula updated on a need basis to enhance the knowledge of students and teachers in this area.

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

- (a) To prevent students from being sexually assaulted, the Education Bureau has issued guidelines to schools requiring them to enhance students' knowledge and skills of self-protection through activities such as life skills training courses and sex education. Currently, sex education, including topics on sexual assault, sexual harassment and sexual violence, is covered in different Key Learning Areas and subjects of the primary and secondary curricula (for example, General Studies for Primary Schools, Science and Integrated Humanities for secondary schools, Moral and Civic Education for primary and secondary schools, and so on). Through teaching activities, students learn how to protect their bodies, say no when they feel offended and seek help when they run into trouble.

In addition, the Education Bureau has also issued circulars to schools on handling child abuse, requesting them to pay attention to students' well-being and safety, and providing guidelines on the procedures for handling child sexual abuse cases involving their staff. In brief, whenever a case arises, the school should consult, as soon as possible, the Family and Child Protective Services Unit of the Social Welfare Department or the responsible police unit, and make reference to the assessment of the caseworker concerned (for example, School Social Worker/Student Guidance Officer/Student Guidance Teacher/Student Guidance Personnel) in providing appropriate support for the student concerned and taking follow-up actions. Schools should also strengthen the skills of their staff in identifying and handling student sexual abuse cases, with a view to referring the cases to appropriate professionals for counselling services as early as possible.

- (b) All along, the Education Bureau has been closely following up cases involving offences and acts of misconduct committed by teachers (including sexual offences). If a teacher is convicted of a criminal offence, the Education Bureau will ask for all relevant documents (including court judgments and records) to gain a full understanding of the case, and consider the teacher's registration status in the light of the nature and gravity of the offence. However, we do not have

information in hand to systematically analyse whether the reasons for a teacher committing a sexual offence are different in nature from those of a sex offender in other trade.

- (c) The Education Bureau attaches great importance to the professional conduct of teachers and handles teacher registration in a prudent manner. We will refuse to register an applicant as a teacher or cancel the teacher registration if he/she has committed a serious offence or acts of misconduct (for example, committing a sexual offence in which a child or his/her student is the victim). To safeguard the well-being of students and to address the concerns of the community and the education sector, the Education Bureau has stepped up its efforts in vetting and monitoring the registration status of teachers to ensure that a teacher who has committed serious professional misconduct is not allowed to teach in schools.

While the Education Bureau handles teacher registration prudently, schools should also strictly monitor the appointment of teachers. Although the appointment of teachers is a matter of school-based management, all along the Education Bureau has issued guidelines to schools, advising them to avoid appointing improper persons as teachers as they may jeopardize students' safety. To further safeguard the well-being of students, the Education Bureau announced in May 2010 a package of enhanced measures on appointment matters, specifying that schools should strengthen their vetting procedures in handling appointment matters and suggesting that schools should require applicants to declare their conviction records and provide relevant details. In addition, schools should require teachers to report any criminal proceedings instituted against them, and should themselves report serious cases to the Education Bureau.

Moreover, the Education Bureau will work closely with the relevant department on the implementation of the scheme for sexual conviction record check recommended by the Law Reform Commission. The scheme would enable employers (including schools), when engaging persons to undertake child-related work and work relating to mentally incapacitated persons (MIPs), to check the

conviction records for sexual offences of applicants subject to the voluntary participation and consent of the applicants, so as to reduce the risk of sexual assault to children and MIPs.

Hong Kong Jockey Club Institute of Chinese Medicine

10. **DR RAYMOND HO** (in Chinese): *President, the SAR Government set up the Hong Kong Jockey Club Institute of Chinese Medicine (HKJCICM) in 2001 as a subsidiary of the Hong Kong Applied Science and Technology Research Institute Company Limited. The purpose is to promote, co-ordinate and strengthen scientific research in Chinese Medicines (CM) in Hong Kong and facilitate the commercialization of research results in CM, with a view to enhancing the competitiveness of the Chinese medicine industry in the market. The HKJCICM obtained a donation of \$500 million from the Hong Kong Jockey Club Charities Trust for funding its research projects and activities. The Government conducted a comprehensive review of the HKJCICM in 2010. In this connection, will the Government inform this Council:*

- (a) *whether the HKJCICM has received other donations or funding support apart from the aforesaid donation of \$500 million; and*
- (b) *of the number of research projects funded by HKJCICM since its inception and the total amount of funding involved; whether such number and amount have met the expected level; if not, of the relevant details and the reasons for their falling short of the expected level?*

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

- (a) The HKJCICM is a limited company of the Applied Science and Technology Research Institute (ASTRI) and the Hong Kong Jockey Club Charities Limited (HKJCCL). Its research and development (R&D) project cost is funded by the \$500 million donation from the Hong Kong Jockey Club Charities Trust while its recurrent expenditure is funded by the ASTRI. The recurrent expenditure of

the HKJCICM in the last three financial years was about \$8 million a year. In the 2011-2012 financial year, the ASTRI has reserved \$10 million for the recurrent budget of the HKJCICM.

- (b) Since its inception in May 2001, the HKJCICM has supported 18 R&D projects with a total funding of about \$108 million. These projects involved the development of new Chinese medicinal drugs, setting up of a CM laboratory, research on and provision of quality control analytical methodologies and CM chemical markers, publication of the Encyclopedia on Contemporary Medicinal Plants, and so on. As the HKJCICM has only utilized about one fifth of the HKJCCL's pledged \$500 million funding support, the result is not satisfactory. Meanwhile, there have been considerable new developments and changes in the CM sector in the past decade (including the establishment of the Hong Kong Council for Testing and Certification in 2009 with CM designated as one of its four selected trades, the research capabilities and infrastructures of local universities in CM area having been enhanced after years of development, the Hong Kong Science and Technology Parks Corporation actively developing a biotechnology (including CM and western pharmaceuticals) cluster in recent years, and so on). As such, Government considered that a comprehensive review of the strategy of promoting CM was appropriate and suggested the Board of the HKJCICM to engage consultants to conduct this. The scope of the review included the current situation and needs of the CM sector, the most effective way to integrate the efforts of Government, industry, academic and research sectors to cope with future development needs, and the role and cost-effectiveness of the HKJCICM after a decade of operation.

The review report pointed out that while the HKJCICM had made some contribution in the past 10 years, its overall cost-effectiveness was not satisfactory. Apart from having only utilized about one fifth of the HKJCCL's pledged funding, the recurrent expenditure of the HKJCICM (including staff salaries, office expenditure, publicity and promotion expenses, and so on) was on the high side. The report also explored the reasons for the less promising results. These included changes of the HKJCICM's strategic direction over

the years, though supported by justifications at the time, were not conducive to sustainability and long-term development. In addition, its small establishment (with only some 20 employees) had not been able to create a critical mass. Besides, some stakeholders had been discouraged from submitting R&D proposals to the HKJCICM because of different views over some funding conditions imposed by the HKJCICM, for example, the authorship arrangement of funded organizations' publications arising from supported projects. Since mid-2010, a number of incidents have also revealed internal problems of the HKJCICM, for example, about half of the Institute's staff departed between June and December 2010. These have inevitably further affected the operation of the Institute.

After gauging the views of various stakeholders, the Innovation and Technology Commission supports the recommendations of the report, that is, setting up of a new committee under Government to co-ordinate promotion of CM development in Hong Kong and to disband the HKJCICM. Nevertheless, the ultimate arrangements will be subject to the decision of the Boards of the HKJCICM's two shareholders — HKJCCL and ASTRI.

Enforcement Actions Against Street Hawking Activities

11. **MR WONG YUK-MAN** (in Chinese): *President, according to government information, the Food and Environmental Hygiene Department (FEHD) mounted 123 877 raids against hawkers in 2010, that is, a daily average of about 340 operations. In recent years, conflicts between hawkers and Hawker Control Teams (HCTs) have time and again been reported in the newspapers, and an enforcement action in Tai Hang on the 10th of April this year became the headlines of several newspapers. In this connection, will the Government inform this Council:*

- (a) *of the number of prosecutions instituted in 2010 by the staff of the FEHD against hawkers' unlicensed or illegal hawking; and the number of retired elderly people among those people who were prosecuted;*

- (b) *among the 1 561 joint departmental operations against illegal hawking in 2010, of the number of cases involving "assault on police officers" and "assault on public officers";*
- (c) *of the number of hawkers who were repeatedly prosecuted by staff of the FEHD in 2010; and whether there is any practice against hawkers which is similar to putting them "on a watch list";*
- (d) *of the number of goods and paraphernalia seized by HCTs in the past three years; whether the authorities have considered returning such goods and paraphernalia; if they have not, of the reasons for that;*
- (e) *of the justifications for the staff of the FEHD to conduct sentinel surveillance beside hawkers and retailers; and*
- (f) *given that a man promoting telecommunication services sought my assistance a month or so ago claiming that he had repeatedly received penalty tickets from the FEHD within a few days, and he suspected that the staff of the FEHD had started to step up law enforcement in February and March this year to clear from the streets those people who promoted telecommunication services and distributed handbills, whether the authorities had issued any instruction on stepping up enforcement to the law enforcement staff between January and March this year?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the duties of HCTs of the FEHD mainly cover three areas, including taking action against illegal hawking, shop-front extension and illegal promotional activities for products and services. The Government's policy on hawker control is to regulate the hawking activities of licensed hawkers and take enforcement action against illegal hawking. As regards illegal hawking, the FEHD's enforcement policy makes certain allowance for hawkers. If the hawking activity does not involve the selling of prohibited or restricted food or cooked food and is not conducted in major thoroughfares or areas of high pedestrian flow, HCT officers will give warning first before taking enforcement action and prosecution action will be taken only if the verbal warning is not heeded. Furthermore, if elderly or

disabled hawkers are involved, HCT officers will exercise their powers in a reasonable manner in light of the actual circumstances. However, under the overarching objective of ensuring food safety and safeguarding public health, HCTs will still take immediate enforcement action against unlicensed hawkers selling prohibited/restricted food or cooked food. It is necessary for hawker control measures to achieve a proper balance between protection of public health and flexibility in enforcement action.

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

- (a) The FEHD often receives complaints from District Councils and the public regarding illegal hawking, shop-front extension as well as obstruction of passageways caused by promotional activities. A total of 29 811 convicted cases of these illegal activities were initiated by the FEHD in 2010. The FEHD does not have breakdowns of the offenders.
- (b) Among the 1 561 HCT joint departmental operations carried out in 2010, there were two cases involving assault on public officers and none involving assault on police officers.
- (c) Hawker control operations aim to protect public health, ensure food safety and environmental hygiene, and maintain unobstructed access to busy places and main thoroughfares. Depending on the actual situation, FEHD staff will take enforcement actions against illegal hawking in accordance with the relevant policies. Whether the offender has been prosecuted before is not a factor for consideration. Nor does the FEHD have any so-called watch list of hawkers. Statistics shows that in 2010, 5 132 persons were prosecuted twice or more for repeatedly hawking without a licence or committing other hawker related offences.
- (d) When arresting unlicensed hawkers, HCTs seize the hawker equipment and commodities concerned in accordance with the powers vested in them under section 86 of the Public Health and Municipal Services Ordinance. It is also provided in the Ordinance that the Court shall order the forfeiture of the equipment or commodities concerned upon the hawkers' conviction of unlicensed

hawking. In the three years from 2008 to 2010, there were a total of 17 919 cases of seizure of goods and paraphernalia upon conviction of unlicensed hawking. The FEHD does not keep statistics on the number of goods and paraphernalia seized.

- (e) HCT members are deployed to carry out static patrols at blackspots of unlicensed hawking or locations where obstruction caused by shop-front extension is found, with a view to achieving a deterrent effect.
- (f) Regarding the use of easy-mount frames for on-street product and service promotional activities, with the consent of the District Councils concerned, the FEHD has instituted prosecutions against offenders in the relevant districts since October 2008, and seized the promotional materials and easy-mount frames as exhibits. After conducting a review on the enforcement practice, and to further control the abovementioned irregularities, starting from March this year, FEHD law enforcement officers have begun to issue fixed penalty notices to offenders. Before changing the enforcement practice, the FEHD carried out a two-week promotion and education campaign, giving advice and warning to the people concerned, including issuing warning letters to those commercial organizations using easy-mount frames and similar devices for displaying commercial promotional materials and conducting promotional activities in the street.

Compassionate Rehousing Offered to Divorcees

12. **MR LEUNG YIU-CHUNG** (in Chinese): *President, will the Government inform this Council of:*

- (a) *the number of people who had sought assistance from the Social Welfare Department (SWD) in the past five years (from 2006-2007 to 2010-2011) because of problems relating to their divorces; and*
- (b) *among the people seeking assistance in part (a), the respective numbers of those who had been recommended by the authorities to the Housing Department (HD) for "Compassionate Rehousing" (CR)*

and those who had been successfully rehoused, as well as the respective reasons for offering and not offering rehousing to them?

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

- (a) The figures on new/reactivated cases with separation/divorce problem handled by the Integrated Family Service Centres operated by the SWD/non-governmental organizations for assistance are set out below:

<i>Year</i>	2006-2007	2007-2008	2008-2009	2009-2010	2010 (April to September)
Number of new/reactivated cases	1 992	1 685	1 695	1 742	797

- (b) Divorce cases requiring assistance usually involve problems of different nature such as emotional distress, childcare, financial hardship, and accommodation problem, and so on. For individuals or families on divorce proceedings with genuine and pressing housing needs, such as those facing undue hardship in continuing to stay in the same unit with the party with whom a divorce is being contemplated but are unable to secure an alternative abode by themselves, social workers will consider recommending eligible applicants (that is, people who have filed *bona fide* petitions for divorce to the Court but the divorce proceedings are not yet finalized) for CR to the HD for consideration of allocating public rental housing units (PRHs) in the form of Conditional Tenancy (CT) under the CR Scheme.

The number of cases involving divorce and recommended to the HD for applications of CT in the past five years is as follows:

<i>Year</i>	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Number of Cases	511	416	491	464	477

Of the above recommended cases for CT by the SWD in the past five years, 92% were allocated PRHs. The remaining 8% were not allocated PRHs owing to such reasons as withdrawal of applications by the applicants, and loss of trace of applicants, and so on.

Measures to Monitor Online Group Purchases

13. **MR WONG KWOK-HING** (in Chinese): *President, it has been reported that "online group purchases" have become popular in Hong Kong in recent years and many members of the public hope to buy products or services at favourable prices through this means. Nevertheless, from time to time there are members of the public who find that the products or services do not match the specifications or descriptions only after they had made the payments for the purchases, thus resulting in many disputes. As group purchase websites and related sales activities are currently not under statutory control, members of the public have nowhere to turn to for assistance when they need to make complaints. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints about "online group purchases" received or dealt with by the Consumer Council and relevant law enforcement departments in each of the past five years; the reasons for and the amount of money involved in such complaints, and whether prosecution had been instituted in respect of those cases and the persons involved convicted;*
- (b) *given that "online group purchases" continue to thrive, whether there are legislation and measures in place to regulate and monitor these activities; if there are, according to the assessment of the authorities, of the effectiveness of such work last year; if there is not, whether the authorities will consider enacting new legislation or extending the coverage of the existing Trade Descriptions Ordinance (Cap. 362), and following the practices of overseas countries and establishing an online certification system, in order to regulate group purchase websites and related sales activities; and*
- (c) *whether the authorities have any plan, measure or guideline to educate members of the public that when making "online group*

purchases", they must choose those websites with good reputation and backing, find out how sellers made transactions in the past and read the transaction terms carefully, so as to safeguard their own interests; if they have, of the details; if not, the reasons for that?

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

- (a) In the past five years, the Customs and Excise Department has not received any complaints about "online group purchases". The police does not keep separate statistics on complaints about such purchases.

Before 2009, the Consumer Council has not received any complaints about online group purchases. Details of the complaints about such purchases that the Consumer Council has received since 2009 are set out in the following table:

	<i>Number of complaints</i>	<i>Amount of money involved</i>	<i>Reasons for complaints</i>
The first quarter of 2011	11	\$10,998	Failure to obtain/use services or goods after payment (7 cases); disputes over quality of services or goods (4 cases)
2010	2	\$2,800	Dispute over price of services (1 case); inability to secure appointment of services after payment (1 case)
2009	1	\$80	Failure to obtain goods after payment

- (b) The current Trade Descriptions Ordinance (Cap. 362) prohibits any person from applying false trade descriptions to goods in the course of trade. The Ordinance applies equally to trade conducted online

and offline. The Customs and Excise Department is responsible for enforcing the Ordinance. The Department is committed to combating illegal business conduct. It will continue to deploy staff to conduct checks on the Internet to meet actual needs.

To tackle unfair trade practices more effectively, the Bureau consulted the public on a package of legislative proposals last year. In January this year, the Bureau published a report on the outcome of the consultation. We intend to broaden the scope of the Ordinance from goods to services as well. Moreover, not only will the Ordinance prohibit false trade descriptions but it will also prohibit other types of common unfair trade practices, such as the practice of accepting payment without the intention or ability to supply goods or services contracted for. We believe that the implementation of these proposals will help tackle unfair trade practices that may be found in online group purchases.

- (c) We have been in partnership with the Consumer Council in conducting publicity and public education activities to raise consumer awareness. In the light of the increasing popularity of online group purchases, the Consumer Council published in this year's April issue of its *CHOICE* magazine a feature article on online group purchases, introducing the operation of such purchases, possible transactional risks and points to bear in mind (for example, the need to understand the rights and obligations of these group purchases portals, the history of transactions conducted through such portals and the terms of transactions). We will continue to work with the Consumer Council to further consumer education.

Fare Concessions Offered by MTR for Cross-boundary Students

14. **MR CHAN HAK-KAN** (in Chinese): *President, some students who cross the boundary from the Mainland to attend schools in Hong Kong relayed to me earlier that the fare they have to pay with their Octopus cards to take the MTR Lok Ma Chau Spur Line to attend schools in the North District of Hong Kong is higher than the adult fare; they pointed out that the half-fare concession offered to students by the MTR Corporation Limited (MTRCL) is not applicable to*

journeys via the cross-boundary spur lines, and they are unable to enjoy the \$3 fare discount offered via the MTR Fare Saver machine installed at the Shenzhen Metro Fu Tian Kou'an Station as such discount is applicable to adult Octopus card holders only. In this connection, will the Government inform this Council whether it knows:

- (a) why the existing half-fare concession offered by the MTRCL to students is not applicable to journeys via the cross-boundary spur lines;*
- (b) the average number of students in each of the past three years who had to take the MTR cross-boundary spur lines from the Mainland to attend schools in Hong Kong; whether it will request the MTRCL to review the existing arrangement of not offering fare concession to such students and make improvement shortly; if it will, of the details; if not, the reasons for that; and*
- (c) why the fare discount offered via the MTR Fare Saver machine at the Shenzhen Metro Fu Tian Kou'an Station is applicable to adult Octopus card holders only; which factors the MTRCL will take into account in setting up various Fare Savers and determining the fare discounts to be offered at present; whether the authorities will request the MTRCL to offer such fare discounts to cross-boundary students, increase the number of stations with Fare Savers and raise the fare discount rates in response to the aggravating inflation; if so, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, for the various parts of the question, our reply is set out below:

- (a) As early as 1981, the pre-merger MTRCL began offering fare concessions of about 50% discount to eligible students studying full-time at a recognized institution in Hong Kong. After the rail merger, the MTRCL extended the student concessionary fares to the pre-merger KCR system on 28 September 2008, so that the scheme applied to the entire MTR network.

The MTRCL's objective in offering student concessionary fares in the whole MTR network in 2008 is to make it more convenient for local students to travel to and from school within Hong Kong, as well as to encourage them to use the MTR to take part in more extra-curricular activities and to become more involved in the community. The concession has not been applicable to cross-boundary train service.

(b) and (c)

Currently the MTR system can only identify a passenger as a student by his/her personalized Octopus cards with student status, but it is not possible to discern whether such trips are made for the purpose of going to school, hence the MTRCL does not have figures for the number of students who use the MTR cross-boundary spur line to travel to Hong Kong for attending school. According to the information provided by the MTRCL, over the past three years, fewer than 100 passengers a day use personalized Octopus cards with student status to travel to Hong Kong via Lok Ma Chau Station between 6 am and 9 am on a weekday (the time when most students go to school).

According to the MTRCL, discounts currently offered at all MTR Fare Savers are applicable to adult journeys only. For the MTRCL, the MTR Fare Saver is a business promotion scheme designed to encourage more people to walk to nearby MTR stations to use the railway.

Generally speaking, the criteria in setting up Fare Savers and setting the level of fare discounts for individual Fare Savers include the distance between the location of the Fare Saver and the nearest MTR station, whether new passengers can be attracted, and whether the MTRCL is already offering intermodal discounts jointly with other connecting public transport for the location concerned. Furthermore, basic facilities should be available at the location where the Fare Saver is to be set up, including sufficient space to accommodate the Fare Saver machine and the availability of electricity supply.

The Fare Saver located at Shenzhen Metro Futian Kou'an Station is the first Fare Saver that the MTRCL has placed outside Hong Kong. The objective of setting up this Fare Saver is to attract more passengers to travel to Hong Kong using the Lok Ma Chau Spur Line. Promotional discounts offered by Fare Savers have all along been applicable only to adult journeys, providing fare discounts to passengers using adult Octopus cards. The MTRCL conducts regular review of Fare Saver promotions.

In general, the Government encourages the MTRCL to provide various promotional schemes to the public as far as possible having regard to its operational situation, the market circumstances and passenger demand.

Management and Maintenance of Slopes

15. **MR CHEUNG HOK-MING** (in Chinese): *President, it has been reported that a landslide occurred earlier at a slope in Ho Man Tin although it did not rain that day, causing people to worry whether with the approach of the rainy season, the slope management and maintenance work carried out by the authorities is able to reduce the risk of landslides. In this connection, will the Government inform this Council:*

- (a) *of the number of existing man-made slopes and natural hillsides in Hong Kong, and whether the authorities have assessed the number of such slopes and hillsides with potential risk; of the plan and the time required for the authorities to deal with such dangerous slopes;*
- (b) *of the number of landslides which occurred on natural hillsides, man-made slopes and retaining walls within the purview of the Government in the past three years, as well as the resultant casualties;*
- (c) *of the number of landslides which occurred on privately-owned natural hillsides and man-made slopes in the past three years, as well as the resultant casualties;*

- (d) *of the number of Dangerous Hillside Orders served last year and, among them, the number of orders which have been fully complied with, the number of persons convicted of non-compliance with such orders and the main reasons for their non-compliance;*
- (e) *whether the authorities have plans to step up the inspection of both government and privately-owned slopes and enhance other relevant measures before the advent of the forthcoming rainy season so as to reduce the chance of landslides;*
- (f) *regarding enhancement of public awareness about the risk of landslides arising from man-made slopes and natural hillsides, of the specific details of the public education activities organized by the authorities at present; and*
- (g) *given that the Landslip Prevention and Mitigation Programme (LPMitP) has been implemented by the authorities since 2010 to dovetail with the Extend Landslip Preventive Measures Programme (LPMP) which was completed at the end of 2010, with an aim to further reduce the risk of landslides, of the improvement made to LPMitP as compared with the previous programme; if no improvement has been made, of the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government has all along been attaching great importance to the work on slope safety and is committed to minimizing the risk of landslides. Apart from systematically implementing LPMitP targeting at slopes in public areas, the Government also requires owners of private slopes to undertake maintenance works. Furthermore, the public is reminded to adopt suitable preventive measures to minimize the risk of landslides before the onset of rainy season every year for protecting the safety of the public. In fact, our achievements in the works on slope safety in Hong Kong over the past three decades have won professional recognition.

My replies to the seven parts of the question are as follows:

- (a) To manage slope safety work, the Geotechnical Engineering Office (GEO) of the Civil Engineering and Development Department has maintained records of man-made slopes in Hong Kong in its Catalogue of Slopes, which presently contains about 60 000 registered slopes. It has also implemented the LPMP for over 30 years to deal with man-made slopes at relatively high risk in the Catalogue in a systematic manner. All in all, we have upgraded about 4 600 government slopes and conducted about 5 200 safety-screening studies on private slopes. The overall landslide risk from slopes has thus been substantially reduced to a reasonably low level that is commensurate with the international best practice in risk management. As about 60% of the area in Hong Kong is natural slope, we have no statistics on the total number of natural slopes. However, we have identified 2 700 or so natural slopes with known hazards.

After the completion of the LPMP in 2010, the remaining landslide risks mainly arise from man-made slopes with potential hazards that affect developed areas and natural slopes with known hazards which are close to existing buildings and important transport corridors. In this connection, the GEO launched the LPMitP in 2010 to dovetail with the LPMP, which was due for completion at the end of the same year.

- (b) and (c)

The following table shows the number of landslip reports concerning registered government or private man-made slopes (including retaining walls) over the past three years:

<i>Year</i>	<i>Number of landslip reports concerning registered government slopes</i>	<i>Number of landslip reports concerning registered private slopes</i>	<i>Total*</i>
2008	369	65	434
2009	51	14	65
2010	104	12	116

Note:

- * Most of the landslides were triggered by heavy rainstorms. In general, the number of occurrence of landslides is closely related to the rainfall distribution and intensity.

We have no statistics on injuries in the aforesaid reported landslide incidents but recorded one landslide incident occurred in 2008 involving private and government land causing two fatalities.

- (d) In last year, we issued 140 numbers of Dangerous Hillside Orders pursuant to the Buildings Ordinance to owners of private slopes. Eighty-seven numbers of dangerous slopes with upgrading works were completed by owners in compliance with the Orders. Twenty-one numbers of Dangerous Hillside Orders are not yet due.

Some common reasons for owners failing to comply with the Order to complete slope upgrading works include:

- (i) the owners are still acting on the Orders (for example, hiring professionals, conducting investigation and submitting upgrading proposals for approval, and so on); and
- (ii) the concerned owners have filed appeal against the Orders.

For the above reasons of not completing the slope upgrading works in accordance with the Dangerous Hillside Order, prosecution has not been instituted last year.

- (e) and (f)

To reduce landslide risk and protect public safety, the GEO always reminds owners' corporations and mutual aid committees of private buildings to complete routine inspections and necessary maintenance works for all their slopes before the onset of a rainy season by way of letters, announcement of public interests on television (TV APIs), radio broadcasts and press briefings on slope safety before the onset of rainy season.

Furthermore, the GEO plans to organize the following publicity and public education activities in 2011-2012 to raise the public awareness of landslide risks arising from man-made and natural slopes:

- (i) production of new TV APIs on slope safety;
 - (ii) tree planting activities (to raise public awareness on landslide hazard mitigation installations for natural slopes and caution them against the dangers of going near these installations during heavy rainstorms);
 - (iii) school seminars;
 - (iv) site visits for secondary school teachers;
 - (v) press briefings; and
 - (vi) roving exhibitions at busy shopping malls.
- (g) The new LPMitP introduces a new system to deal with natural slopes in addition to improving man-made slopes. In accordance with a risk-based priority ranking system, the most deserving man-made slopes and natural slopes with known hazards are selected for follow-up action.

Under the LPMitP, we will conduct upgrading works for 150 government man-made slopes and safety-screening studies for 100 private man-made slopes each year. As regards the natural slopes with known hazards and close to existing buildings and important transport corridors, we will conduct studies and necessary risk mitigation works for initially 30 natural slopes each year. Overall, our target is to keep the landslide risks in Hong Kong to a reasonably low level in the long term.

Services for Undertaking After-death Arrangements for Elderly Singletons

16. **MR LAU KONG-WAH** (in Chinese): *President, it has been reported that there are many elderly singletons in Hong Kong who do not have any relative or friend to take care of their after-death arrangements. Moreover, according to the figures of the Census and Statistics Department, in 2001 the number of persons aged 40 or above who had never married was about 179 000, and in*

2009 the number had increased to about 294 000. Owing to the aggravating problem of ageing population in Hong Kong, coupled with the continuous increase in the number of singletons, the demand for services for undertaking the after-death arrangements (after-death services) for elderly singletons will continue to increase. In this connection, will the Government inform this Council:

- (a) *whether in the past three years the Government has compiled statistics on the monthly average number of elderly singletons in Hong Kong who needed after-death services as they did not have any relative or friend to take care of their after-death arrangements, and whether it has estimated the number of elderly singletons who will need such services in Hong Kong in the next decade; if it has, of the respective figures, and whether there is an upward trend in the demand for such services; if it has not compiled any statistics or made any estimation, whether it will consider following up to find out such service demand;*
- (b) *whether it knows the number of agencies in Hong Kong which are currently providing after-death services for elderly singletons; whether it has assessed if their services are sufficient to meet the demand;*
- (c) *whether the Government will consider allocating resources to provide such services or encouraging more voluntary agencies to provide such services for those elderly singletons in need; and*
- (d) *given that according to the information provided by the Government in its reply to my question on 5 May 2010, the sums of unclaimed estate transferred to the general revenue of the Government amounted to \$7,980,000 in the 2009-2010 financial year, whether the authorities will use such sums to help those elderly singletons in need with their after-death arrangements?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr LAU Kong-wah's question is as follows:

(a) to (c)

Owing to various reasons, some deceased people might not have relatives or friends to take care of their after-death arrangements, thus requiring assistance from other organizations or designated persons. The Government does not keep statistics on the number of elderly singletons among them.

In fact, we encourage elders, whether singletons or not, to plan their after-death arrangements in advance, so that their families, relatives or designated organizations or persons can take care of the arrangements according to their wishes.

At present, there are over 200 government subvented elderly centres in Hong Kong. They organize talks and seminars, covering topics such as will-making, estate administration, funeral arrangements, and so on. These centres also pay special attention to elders' demand for hospice service and offer them advice. Elders in need will be referred to relevant organizations for further assistance.

Some non-governmental organizations (NGOs), such as the St. James Settlement, the Tung Wah Group of Hospitals, the Society for the Promotion of Hospice Care, and the Caritas Hong Kong — Services for the Elderly, assist elders in the planning of after-death matters. Their services include consultation on funeral arrangements, will-making, photo-taking or preparation of photographs for after-death ceremonies, as well as counselling the bereaved, and so on. For welfare services which benefit the elderly (including hospice service), the Government will provide support as far as possible. Even if the services are self-financing or voluntary in nature, we can still consider co-ordinating district efforts to promote them, or recommending the NGOs for grants under various funds.

Besides, there are currently seven licensed funeral parlours which are also holding Undertakers of Burials Licences, and another 94 licensed undertakers in the territory. All of them may provide one-stop after-death services, including making funeral and burial

arrangements, and submitting applications for burial or cremation. Lists of these service providers have been uploaded onto the website of the Food and Environmental Hygiene Department.

- (d) According to the Probate and Administration Ordinance, unclaimed balance of the deceased's estate will be transferred to the General Revenue. We will make use of the General Revenue having regard to policy and service needs in various areas.

Upward Surge of Management Fees of Private Properties

17. **MR JAMES TO** (in Chinese): *President, it has been reported that, in response to the Minimum Wage Ordinance (Cap. 608) (MWO) which came into force on 1 May this year, quite a number of private buildings will increase management fees and some will even have the fees increased significantly by 40% to 50%, in order to increase the wages of some security guards and cleansing workers of the buildings to meet the statutory minimum wage (SMW) level and cope with other increases in expenditure due to inflation. In this connection, will the Government inform this Council:*

- (a) *given that the existing Building Management Ordinance (Cap. 344) (BMO) provides that, when the management committee (MC) of a private building is making an estimate for an increase in management fees, a general meeting of the owners to pass a resolution on such increase is required only if the amount of the management fees charged after the increase exceeds 150% of the preceding amount charged, of the reasons for formulating this stipulation; whether the authorities will consider conducting any review in this regard;*
- (b) *given that it has been reported that some private buildings need to increase their management fees in response to the implementation of the MWO, whether the authorities will, while assisting owners' corporations (OCs) and owners in understanding their responsibility as employers under the MWO, also consider helping them to know how to avoid increasing management fees indiscriminately; if they will, of the kind of assistance to be offered;*

- (c) *whether the authorities have sought information from OCs about any increase in management fees since July last year and the rates of such increases; if they have, in respect of the cases that the authorities know, of the number of private buildings concerned, broken down by the increase (that is, less than 15%, 15% to 24%, 25% to 34%, 35% to 49%, and 50% or above) in management fees; whether they know the number of OCs involved, and among them, the percentage of those which had convened general meetings of owners to pass resolutions on such increases, as well as the highest and lowest rates of such increases; if they do not know, whether they will consider collecting such information;*
- (d) *whether the authorities have advised and assisted OCs which had proposed to increase management fees in convening general meetings of owners as far as possible, to discuss the issue and pass resolutions thereon; if they have, of the number of OCs to which the authorities have given such advice since July last year, and among these OCs, the respective numbers of those which have accepted and rejected such advice; in case where the OC rejects such advice, whether the authorities will offer assistance to the owners in convening a general meeting on the increase of management fees to make the OC follow the resolution passed at the general meeting; if they will, of the assistance given; and*
- (e) *whether the authorities have, since July last year, attended any meeting convened by MCs of OCs to discuss matters concerning the adjustments of management fees; if they have, of the total number of the meetings attended and among them, the number of meetings at which more than half of the members were present and resolutions on increasing management fees were passed by a majority of the members present?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, regarding the five parts of the question, the reply is as follows:

- (a) According to section 20 of the BMO, an OC shall establish and maintain a general fund to defray the cost of the exercise of its

powers and the performance of its duties under the deed of mutual covenant and the BMO (such as for employing security guards and paying cleansing fee) and other outgoings (including any outgoings in relation to any maintenance or repair work). According to section 21(1) of the BMO, a MC elected by an OC shall determine the amount to be contributed by the owners to the general fund. It is provided in the first paragraph of Schedule 5 of the BMO that the amount to be determined by the MC shall be based upon the annual budget of an OC. In addition, section 21(1A) also provides that if the amount subsequently determined by the MC increases by over 50% of the preceding amount, the subsequent amount should be approved by the OC by a resolution passed at a general meeting.

The relevant provisions serve to ensure that there are clear legal provisions and guidelines for a MC to follow in preparing its budget and making an increase in management fee. They strike a balance between effective operation of a MC and protection of owners' rights. Appropriate flexibility is allowed for a MC to adjust its management fee, while ensuring that any significant increase in management fee shall be subject to the resolution of all owners.

We will gather the views of Members and the public on the above provisions and reflect their views to the Review Committee on the BMO.

- (b) The Labour Department has organized extensive publicity activities to explain the MWO to the public. The activities include broadcasting television and radio announcements of public interest through different media channels; advertising on public transport and in various publications; publishing leaflets and posters for wide distribution and display; inserting promotional message in electricity and water bills; placing newspaper supplements; issuing reference guidelines on SMW; conducting briefings on the MWO; staging roving exhibitions; and providing information at the Labour Department's homepage. Members of the public may enquire about the MWO at the Labour Department's 24-hour hotline 2717 1771 and 10 District Offices of the Labour Relations Division. Information about employers' obligations under the MWO is

available to OCs, Owners' Committees, Mutual Aid Committees and owners of private buildings through these channels.

In addition, the Labour Department has since December 2010 sent three rounds of individual letters to invite more than 10 000 OCs, Owners' Committees and Mutual Aid Committees to attend briefings on the MWO, including seminars specifically targeted for them. Publicity materials have also been mailed to them. Moreover, the Labour Department's "SMW: Reference Guidelines for Employers and Employees" and concise guide to SMW are distributed at the Public Enquiry Service Centres of the District Offices.

Apart from the implementation of SMW, other factors may also lead to the increase in management fees. If owners have any queries or dissatisfaction to the increase level of the management fees, they may reflect to their OCs or management companies. If owners consider necessary, they may also convene a general meeting of the OC in accordance with the BMO to discuss the issue on the increase in management fees.

- (c) In setting the level of management fee, an OC has to follow the provisions and procedures set out in the BMO. As OCs are not required to report to the Government on any increase in management fee, nor does the BMO require that OCs have to submit issues to be resolved in every general meeting of the OCs to the District Offices, we do not have any figures in this respect. The management fee of each building or estate may vary in view of its condition, facilities, services and residents' needs, which may not be directly related to the implementation of SMW. To collect information on the increase level of the management fees of private buildings in the past months may not be of material value to enable better understanding of the problem. Thus, we do not have plans to collect such information.
- (d) An OC is an independent body corporate formed under the BMO. It acts legally on behalf of all owners in managing the common parts of the building, attending to their rights and interests as well as taking up responsibilities. It also adopts all reasonable and

necessary measures to perform duties contained in the deed of mutual covenant in relation to the control and management of the building.

Generally speaking, if owners have any enquiries about the convening and procedures of an OC meeting and matters on procurement and financial management, the District Offices will actively provide assistance, support and advice. Increase in management fee is a management issue of private buildings, which should be settled by the OC and owners of the building. Owners should reflect directly to their MCs or management companies if they have any views on management issues. Under the BMO, a general meeting of the OC can also be convened at the request of not less than 5% of the owners made to the chairman of the MC, so as to find solutions to resolve the problem.

If a MC chairman refuses to convene an extraordinary general meeting of the OC at the request of not less than 5% of the owners, owners may apply to the Lands Tribunal for an order to compel the MC chairman to convene a general meeting of the OC.

- (e) Since July 2010, the District Offices have, by invitation, sent representatives to attend 1 675 MC meetings of the OCs. However, we do not have the statistics on the contents of such meetings.

Allocation of Land for Development of Logistics Industry

18. **MS MIRIAM LAU** (in Chinese): *President, some members of the logistics industry in Hong Kong have reflected that the development of the logistics industry hinges on an ample supply of land for storing and handling goods and providing value-added services; therefore, the industry has all along hoped that the Government can allocate more land for its development. Nevertheless, it has been reported that only two permanent logistics sites had been granted by the Government in the past 10 years by way of tendering and through which the sites were awarded to the highest bidders, which inevitably pushed up the prices of the sites and increased the costs. Besides, as the tenancy terms of sites leased out on a short-term tenancy basis (STT sites) were too short (for example, for three*

years, a quarter or a month), the industry cannot make long-term investments and developments. In this connection, will the Government inform this Council:

- (a) of the details (including the disposal dates, locations, areas, uses, selling prices or rents of the sites as well as the tenancy terms of the STTs and tenancy renewal arrangements) of the permanent logistics sites granted and STT sites leased out by the authorities in the past five years;
- (b) given that the Chief Executive announced in his 2009-2010 Policy Address that the Government had identified a number of permanent sites in the Kwai Tsing area, with a total site area of 29 hectares, for the development of a logistics cluster, and it is learnt that the first of such sites with an area of around 2.4 hectares was just granted at the end of last year, of the details and timetable of releasing the remaining sites;
- (c) given that some members of the industry pointed out the logistics industry entails substantial investment, making it difficult to recover the cost of investment within a short period of time, but the tenancy terms of the STTs of Government logistics sites are too short, thus hindering the long-term development of the industry, of the criteria adopted by the authorities in determining the tenancy terms of such sites; whether the authorities will consider providing logistics sites for small and medium-sized logistics companies, which do not have sufficient capital to bid for permanent logistics sites, to rent such sites on a long-term basis, so as to facilitate the development of small and medium-sized logistics companies; if they will, of the details; if not, the reasons for that; and
- (d) regarding the existing problem of the lack of logistics sites in Hong Kong, apart from the 29 hectares of permanent sites identified for such purpose, of any long-term policy and plans that the authorities have to increase the number of sites suitable for logistics uses (particularly low-cost sites) in order to promote the development of the logistics industry?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, we have consulted the Lands Department (LandsD), the Planning Department and the Rating and Valuation Department (RVD) on the reply below:

- (a) The logistics industry is one of the cornerstones of Hong Kong's economic development and has been providing many jobs in the local manpower market. Since logistics refers to the process of planning, implementing and controlling the movement and storage of goods, services and related information from the point of origin to the point of consumption, the industry actually covers a wide spectrum of services, spanning over the freight transport, freight forwarding and storage sectors.

The SAR Government understands that appropriate land supply is vital to the sustainable development of Hong Kong's logistics industry. According to the statistics of the RVD, private warehouses with a total area of about 3.42 million sq m as at the end of 2010 are available throughout Hong Kong to provide storage facilities for the logistics industry. The information on the sites that can be used for logistics or related uses and were sold or let by public tender by the LandsD in the past five years is set out at Annexes 1 and 2. The sites on short-term tenancies (STTs) as set out in Annex 2 involve one or more logistics-related uses such as open storage of goods; consolidation and handling of container cargoes; logistics and freight forwarding activities; the trade of receipt and dispatch of delivery orders in relation to containers transportation, and so on.

- (b) As indicated in part (a) of the reply, the SAR Government has been providing suitable sites for use by the logistics industry. The development of a logistics cluster in Kwai Tsing as set out in the 2009-2010 Policy Address is a specific measure aimed at facilitating the logistics industry's gradual switch to high-value goods and services through specifying appropriate lease conditions designating the long-term sites concerned to be used for the provision of third party logistics services only. To implement this measure, a long-term site with an area of about 2.4 hectares in Tsing Yi was disposed of through public tender last December for the development

of third party logistics. We plan to release another long-term logistics site with an area of about 2.4 hectares in Tsing Yi in the second half of 2011, provided that there is no substantial change in the market situation and the proposed development will not adversely affect the local traffic conditions.

Separately, the Administration consults the Hong Kong Logistics Development Council (LOGSCOUNCIL) on matters related to logistics sites from time to time. Some representatives of the industry have expressed their concerns that the provision of third party logistics facilities in Kwai Tsing, which is a hub of container terminals, may lead to traffic problems and a greater demand and competition for land in the district. They have thus suggested identifying suitable sites outside Kwai Tsing for the development of third party logistics facilities. In response to the industry's views, we are now updating the traffic impact assessment (TIA) of the proposed logistics sites in Kwai Tsing in the light of the latest information, and are also working with relevant government departments to look into the availability of suitable long-term sites for logistics development in other districts. We will consider the updated TIA as well as factors such as the availability of suitable logistics sites in other districts when working out the arrangements for the release of logistics sites in consultation with the LOGSCOUNCIL.

- (c) The LandsD will determine the tenancy term of each STT site, taking into account factors such as its long-term planning use, the situation of individual site and the requirement of the site for government projects. The tenancy term will be specified in the public tender document to facilitate interested parties to decide on investment of their resources.

While many STT sites are currently let for a fixed term of not more than three years, the Government notes the logistics industry's aspiration for a longer tenancy term. The LandsD has, on a case by case basis, extended the fixed term of suitable STT sites to five years, having regard to the circumstances of individual sites.

- (d) As stated in part (b), we are working with relevant government departments to identify suitable long-term sites outside Kwai Tsing for logistics development. In the process, we will consider factors including the availability of an efficient transport network with easy access to facilities such as the airport, port and land boundary crossings; the presence of any constraints that may limit the site's development, the local traffic conditions; and the geographical location of the site (for instance, a relatively remote site may facilitate a lower-cost development).

In addition, all sites zoned "Industrial", "Open Storage", "Industrial (Group D)" and "Other Specified Uses" annotated "Business" under the current outline zoning plans may also be used for developing logistics centres after obtaining relevant planning approval from the Town Planning Board.

All in all, the SAR Government will continue to maintain close liaison with the industry with a view to making available suitable logistics sites in a timely manner, thereby facilitating the sustainable development of Hong Kong's logistics industry.

Annex 1

Sites Granted through Open Tender for Logistics Use since 2006

<i>Item No.</i>	<i>Tender Award Date</i>	<i>Lot No./Location</i>	<i>Area (sq m)</i>	<i>Lease Term</i>	<i>User</i>	<i>Premium (\$ million)</i>
1	22.4.2008	KCTL 507 — Container Port Road South, Kwai Chung, New Territories	23 315	50 Years	Logistics Development	648.18
2	15.12.2010	TYTL 180 — Tsing Yi Hong Wan Road, Tsing Yi, New Territories	24 000	50 Years	Logistics Development	1,150.00

Annex 2

STT Granted through Public Tender for
Logistics or Related Uses since 2006

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
1	21.03.2011	CX 2095 — Cheung Chau Sai Tai Road, Cheung Chau, New Territories	754	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	28,280 (monthly rent)
2	15.03.2011	3758 Kwai Tsing — Junction of Tsing Yi Hong Wan Road and Tsing Ko Road, Tsing Yi, New Territories	73 300	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	450,000 (monthly rent)
3	03.03.2011	3738 Kwai Tsing — Kwai Tsing Road, Kwai Chung, New Territories	15 300	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	415,000 (monthly rent)
4	13.01.2011	3727 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	11 000	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	318,000 (monthly rent)
5	17.11.2010	KX 2814 — Junction of Kai Cheung Road, Wang Kwong Road and Lam Hing Street, Kowloon Bay, Kowloon	9 560	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	426,000 (monthly rent)
6	21.10.2010	KX 2796 — Wang Kwong Road, Kowloon Bay, Kowloon	4 740	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	210,000 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
7	30.09.2010	3734 Kwai Tsing — Container Port Road, Kwai Chung, New Territories	452	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	45,200 (monthly rent)
8	30.09.2010	3733 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	1 100	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	71,000 (monthly rent)
9	15.09.2010	KX 2802 — Hoi Ting Road, Kowloon	6 400	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	461,100 (monthly rent)
10	01.09.2010	3744 Kwai Tsing — Tat Yeung Road, Kwai Chung, New Territories	12 800	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	258,100 (monthly rent)
11	06.08.2010	3746 Kwai Tsing — At the junction of Container Port Road and Kwai Tai Road, Kwai Chung, New Territories	3 090	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	129,000 (monthly rent)
12	19.07.2010	KX 2797 — Sham Mong Road, Lai Chi Kok, Kowloon	10 100	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	577,000 (monthly rent)
13	15.07.2010	2346 — San Fui Street, Tong Yan San Tsuen, Yuen Long, New Territories	347	Two years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	10,500 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
14	31.05.2010	KX 2786 — Wang Chiu Road, Kowloon Bay, Kowloon	8 230	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	6,360,000 (yearly rent)
15	31.05.2010	KX 2669 — Junction of Po Kong Village Road and Choi Hung Road, Diamond Hill, Kowloon	5 430	A fixed term up to 30 November 2010 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	180,000 (monthly rent)
16	19.05.2010	3674 Kwai Tsing — Junction of Tsing Yi Road and Tsing Yi Hong Wan Road, Area 29B, Tsing Yi, New Territories	25 600	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	606,000 (monthly rent)
17	19.05.2010	3717 Kwai Tsing — Tsing Yi Hong Wan Road, Area 29B, Tsing Yi, New Territories	34 800	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	650,000 (monthly rent)
18	17.05.2010	3713 Kwai Tsing — Ching Cheung Road, Kwai Chung, New Territories	12 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	235,000 (monthly rent)
19	24.03.2010	1636 — Junction of Tai Chung Kiu Road and On Sum Street, Area 11, Shek Mun, Sha Tin, New Territories	7 200	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	321,000 (monthly rent)
20	26.02.2010	KX 2694 — Junction of Kai Cheung Road, Wang Kwong Road and Lam Hing Street, Kowloon Bay, Kowloon	9 560	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	4,944,000 (yearly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
21	24.02.2010	KX 2717 — Junction of Wang Chin Street and Wang Kee Street, Kowloon Bay, Kowloon	6 750	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	3,000,000 (yearly rent)
22	21.01.2010	1428 Tsuen Wan — At the junction of Hoi Shing Road and Hoi Kok Street, Tsuen Wan, New Territories	1 340	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	110,000 (monthly rent)
23	04.01.2010	3680 Kwai Tsing — Tsing Ko Road, Tsing Yi, New Territories	10 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	126,000 (monthly rent)
24	30.12.2009	KX 2718 — Junction of Wang Kwong Road and Kai Wah Street, Kowloon Bay, Kowloon	6 580	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	3,972,000 (yearly rent)
25	15.12.2009	1485 Tai Po — Dai Wah Street, Tai Po, New Territories	11 300	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	2,400,000 (yearly rent)
26	7.12.2009	1497 Tai Po — Dai Wah Street, Tai Po, New Territories	4 720	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	61,000 (monthly rent)
27	26.11.2009	1676 — Sha Tin Tau Road, Sha Tin, New Territories	5 200	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	83,800 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
28	20.11.2009	KX 2720 — Junction of Fat Kwong Street and Chung Hau Street, Kowloon	17 200	Monthly until such time as the tenancy needs to be terminated	290,000 (monthly rent)
29	11.09.2009	KX 2672 — Junction of Kai Cheung Road and Wang Kwong Road, Kowloon Bay, Kowloon	6 580	Monthly until such time as the tenancy needs to be terminated	290,000 (monthly rent)
30	03.09.2009	3719 Kwai Tsing — Tam Kon Shan Road, Tsing Yi, New Territories	681	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	12,487 (monthly rent)
31	25.08.2009	CX 1943 — Yung Shue Wan, Lamma Island, New Territories	360	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	8,600 (monthly rent)
32	21.07.2009	KX 2688 — Concorde Road, Kai Tak, Kowloon	20 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	630,000 (monthly rent)
33	13.07.2009	KX 2680 — Junction of Fat Kwong Street and Chung Hau Street, Kowloon	17 200	Monthly until such time as the tenancy needs to be terminated	320,000 (monthly rent)
34	10.07.2009	KX 2648 — Junction of Sheung Yuet Road, Wang Tai Road and Wang Yuen Street, Kowloon Bay, Kowloon	3 930	Monthly until such time as the tenancy needs to be terminated	2,880,000 (yearly rent)
35	23.06.2009	1451 — Area 38, Tuen Mun, New Territories	24 100	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	254,255 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
36	23.04.2009	CX 1899 — Yung Shue Wan, Lamma Island, New Territories	165	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	700 (monthly rent)
37	20.03.2009	1418 — Ho Fuk Street, Area 40, Tuen Mun, New Territories	3 930	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	54,018 (monthly rent)
38	17.03.2009	KX 2646 — Off Hing Wah Street West, West Kowloon Reclamation, Kowloon	31 200	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	704,995 (monthly rent)
39	10.03.2009	KX 2601 — Junction of Cha Kwo Ling Road and Yau Tong Road, Kowloon	5 290	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	120,000 (monthly rent)
40	09.02.2009	3710 Kwai Tsing — Kwai Fuk Road, Kwai Chung, New Territories	3 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	136,900 (monthly rent)
41	30.01.2009	KX 2629 — Off Dakota Drive, Kai Tak, Kowloon	28 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	736,000 (monthly rent)
42	29.01.2009	KX 2628 — Off Dakota Drive, Kai Tak, Kowloon	19 200	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	490,000 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
43	22.01.2009	3693 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	3 960	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	83,000 (monthly rent)
44	20.01.2009	3684 Kwai Tsing — Tsing Yi Road, Tsing Yi, New Territories	12 500	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	139,300 (monthly rent)
45	19.01.2009	3692 Kwai Tsing — Sai Tso Wan Road, Area 16, Tsing Yi, New Territories	23 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	353,000 (monthly rent)
46	08.01.2009	3702 Kwai Tsing — Junction of Tsing Yi Road and Tsing Hung Road, Tsing Yi, New Territories	23 000	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	252,600 (monthly rent)
47	18.12.2008	3678 Kwai Tsing — Tsing Yi Hong Wan Road, Tsing Yi, New Territories	13 200	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	78,500 (monthly rent)
48	18.12.2008	3705 Kwai Tsing — Kwai Wo Street, Kwai Chung, New Territories	23 750	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	883,000 (monthly rent)
49	01.12.2008	KX 2627 — Junction of Yen Ming Road and Yen Chow Street West, Tai Kok Tsui, Kowloon	8 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	188,000 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
50	01.12.2008	3685 Kwai Tsing — Junction of Container Port Road and Kwai Tai Road, Kwai Chung, New Territories	3 090	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	127,053 (monthly rent)
51	18.11.2008	CX 1919 — Government land at Tsing Chau Wan, Lantau Island, New Territories	1 680	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	93,168 (monthly rent)
52	17.11.2008	3707 Kwai Tsing — Tsing Yi Road, Tsing Yi, New Territories	7 900	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	42,000 (monthly rent)
53	22.10.2008	3699 Kwai Tsing — Tam Kon Shan Road, Tsing Yi, New Territories	1 170	A fixed term up to 29 April 2011 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	10,500 (monthly rent)
54	13.10.2008	SHX 1227 — Shek O Road, Hong Kong	556	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	130,656 (yearly rent)
55	13.10.2008	KX 2608 — Choi Hung Road, Diamond Hill, Kowloon	7 010	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	411,000 (monthly rent)
56	10.10.2008	1604 — Area 56C, Lai Ping Road, Kau To, Sha Tin, New Territories	5 440	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	3,000,000 (yearly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
57	08.10.2008	1445 — Junction of Kui Sik Street and Lok Tung Street, On Lok Tsuen, Fan Ling, New Territories	498	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	16,500 (monthly rent)
58	19.09.2008	1554 — Yuen Shun Circuit, Area 14B, Sha Tin, New Territories	2 260	Two years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	1,740,000 (yearly rent)
59	10.09.2008	1602 — Wong Chuk Yeung Street, Fo Tan, Sha Tin, New Territories	3 220	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	927,360 (yearly rent)
60	04.09.2008	KX 2624 — Concorde Road, Kai Tak, Kowloon	28 200	A fixed term up to 31 March 2009 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	700,800 (monthly rent)
61	04.09.2008	1443, Tai Po — Pak Shek Kok, Tai Po, New Territories	18 930	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	260,000 (monthly rent)
62	12.08.2008	EHX 423 — Sheung On Street, Chai Wan, Hong Kong	5 710	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	220,000 (monthly rent)
63	08.08.2008	KX 2565 — Wang Kwong Road, Kowloon Bay, Kowloon	1 650	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	684,000 (yearly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
64	04.08.2008	KX 2623 — Tat Yeung Road, Lai Chi Kok, Kowloon	7 030	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	171,000 (monthly rent)
65	28.07.2008	3704 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	14 500	Three years	421,000 (monthly rent)
66	18.07.2008	1446 — On Lok Mun Street, On Lok Tsuen, Fan Ling, New Territories	578	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	18,100 (monthly rent)
67	04.07.2008	SX 3619 — Tong Chun Street, Area 66, Tseung Kwan O, Sai Kung, New Territories	9 550	Six months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	192,000 (yearly rent)
68	02.07.2008	KX 2550 — Sham Mong Road, Lai Chi Kok, Kowloon	10 100	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	488,000 (monthly rent)
69	18.06.2008	1342 — Ping Che, in Demarcation District No. 77, New Territories	3 720	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	76,001 (monthly rent)
70	30.05.2008	1438 — Yip Cheong Street, On Lok Tsuen, Fan Ling, New Territories	775	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	43,000 (monthly rent)
71	13.05.2008	KX 2613 — Cha Kwo Ling Road, Kwun Tong, Kowloon	4 860	Monthly until such time as the tenancy needs to be terminated	382,000 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
72	30.04.2008	3676 Kwai Tsing — Nos. 22-26 Wing Kin Road, Kwai Chung, New Territories	3 710	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	208,000 (monthly rent)
73	17.04.2008	KX 2566 — Junction of Wang Chin Street and Lam Hing Street, Kowloon Bay, Kowloon	8 530	A fixed term up to 31 December 2008 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	390,000 (monthly rent)
74	17.04.2008	KX 2567 — Junction of Wang Chin Street and Wang Kee Street, Kowloon Bay, Kowloon	6 750	A fixed term up to 31 December 2008 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	300,000 (monthly rent)
75	05.02.2008	KX 2542 — Hoi Ting Road, Kowloon	5 350	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	231,000 (monthly rent)
76	05.02.2008	KX 2553 — Junction of Hoi Wang Road and Hoi Ting Road, Kowloon	6 490	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	342,000 (monthly rent)
77	30.01.2008	KX 2530 — Junction of Po Kong Village Road and Choi Hung Road, Diamond Hill, Kowloon	5 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	238,900 (monthly rent)
78	25.01.2008	KX 2569 — Off Cheung Yip Street, Kowloon Bay, Kowloon	1 710	A fixed term up to 31 December 2008 and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	8,500 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
79	07.01.2008	3667 Kwai Tsing — Tat Yeung Road, Kwai Chung, New Territories	15 200	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	343,500 (monthly rent)
80	18.12.2007	3666 Kwai Tsing — Container Port Road South, Area 30, Kwai Chung, New Territories	1 790	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	53,480 (monthly rent)
81	18.12.2007	KX 2405 — King Lam Street, Cheung Sha Wan, Kowloon	1 210	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	70,888 (monthly rent)
82	13.12.2007	CX 1841 — Government land opposite to Kam Ping Estate, Peng Chau, New Territories	200	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	12,276 (yearly rent)
83	04.12.2007	3672 Kwai Tsing — Tat Yeung Road, Kwai Chung, New Territories	9 120	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	192,000 (monthly rent)
84	29.11.2007	CX 1838 — Cheung Chau Sai Tai Road, Cheung Chau, New Territories	754	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	110,400 (yearly rent)
85	22.11.2007	KX 2574 — Off Sung Wong Toi Road, Kai Tak, Kowloon	19 000	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	337,000 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
86	22.11.2007	KX 2575 — Off Sung Wong Toi Road, Kai Tak, Kowloon	19 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	348,000 (monthly rent)
87	22.10.2007	3656 Kwai Tsing — Tsing Keung Street, Tsing Yi, New Territories	16 900	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	1,080,000 (yearly rent)
88	12.10.2007	3673 Kwai Tsing — Kwai Hei Street, Kwai Chung, New Territories	10 450	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	340,200 (monthly rent)
89	23.08.2007	3677 Kwai Tsing — Mei Ching Road, Kwai Chung, New Territories	41 300	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	13,070,256 (yearly rent)
90	08.08.2007	SX 3304 — Hong Tsuen Road, Sai Kung Tuk, Sai Kung, New Territories	2 900	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	273,600 (yearly rent)
91	03.05.2007	3669 Kwai Tsing — Tsing Keung Street, Area 17, Tsing Yi, New Territories	30 000	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	487,609 (monthly rent)
92	04.04.2007	NHX 726 — Fung Mat Road, Western Reclamation, Hong Kong	4 792	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	2,292,000 (yearly rent)

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93	22.03.2007	KX 2525 — Wang Chin Street, Kowloon Bay, Kowloon	960	A fixed term up to 31 July 2008 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	18,600 (monthly rent)
94	20.03.2007	KX 2442 — Hing Wah Street West, West Kowloon Reclamation, Kowloon	50 700	A fixed term up to 31 October 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	550,000 (monthly rent)
95	12.03.2007	3648 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	49 810 sq m subject to clause (1)(b) of the tenancy agreement	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	10,512,000 (yearly rent)
96	12.03.2007	KX 2532 — Tung Yuen Street, Yau Tong, Kowloon	2 220	Two years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	150,000 (monthly rent)
97	27.02.2007	KX 2443 — Off Hing Wah Street West, West Kowloon Reclamation, Kowloon	31 200	A fixed term up to 31 October 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	1,188,300 (monthly rent)
98	22.02.2007	KX 2516 — Cargo Circuit, Kowloon	3 130	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	50,000 (monthly rent)
99	08.02.2007	3646 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	57 900	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	13,320,000 (yearly rent)

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100	08.02.2007	3658 Kwai Tsing — Kwai Tsing Road, Kwai Chung, New Territories	15 300	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	3,360,000 (yearly rent)
101	30.01.2007	KX 2382 — Sham Mong Road, West Kowloon Reclamation, Kowloon	16 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	433,000 (monthly rent)
102	30.01.2007	KX 2425 — Junction of Hing Wah Street West and Tung Chau Street, Sham Shui Po, Kowloon	4 350	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	200,000 (monthly rent)
103	23.01.2007	KX 2556 — Wang Chiu Road, Kowloon Bay, Kowloon	8 230	A fixed term up to 31 December 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	528,000 (monthly rent)
104	16.01.2007	3655 Kwai Tsing — Junction of Mei Ching Road and Container Port Road South, Kwai Chung, New Territories	58 300	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	15,840,000 (yearly rent)
105	03.01.2007	3659 Kwai Tsing — Kwai Shing Circuit, Kwai Chung, New Territories	4 600	A fixed term up to 31 December 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	104,000 (monthly rent)
106	01.12.2006	KX 2549 — Junction of Wang Kwong Road and Kai Wah Street, Kowloon Bay, Kowloon	6 580	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	271,000 (monthly rent)

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107	20.11.2006	KX 2531 — Junction of Hoi Wang Road and Yan Cheung Road, West Kowloon Reclamation Area, Kowloon	7 980	Monthly until such time as the tenancy needs to be terminated	302,000 (monthly rent)
108	08.11.2006	1342 — So Kwun Wat Road, Area 56, Tuen Mun, New Territories	11 400	Nine months certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	10,800 (monthly rent)
109	16.10.2006	3652 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	11 000	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	2,409,600 (yearly rent)
110	11.09.2006	3641 Kwai Tsing — Tat Yeung Road, Kwai Chung, New Territories	12 800	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	193,000 (monthly rent)
111	07.09.2006	KX 2435 — Junction of Sheung Yee Road and Kai Fuk Road, Kowloon Bay, Kowloon	6 310	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	193,000 (monthly rent)
112	05.09.2006	KX 2434 — Junction of Wang Chiu Road and Sheung Yee Road, Kowloon Bay, Kowloon	3 660	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	143,000 (monthly rent)
113	23.08.2006	1391 Tai Po — Junction of Dai Fat Street and Dai Wah Street, Area 33, Tai Po, New Territories	4 820	Two years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	28,000 (monthly rent)

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114	23.08.2006	1392 Tai Po — Dai Wah Street, Area 33, Tai Po, New Territories	20 000	Two years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	83,000 (monthly rent)
115	07.08.2006	3629 Kwai Tsing — Ngong Wan Road, Kwai Chung, New Territories	3 760	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	73,000 (monthly rent)
116	02.08.2006	3622 Kwai Tsing — Tsing Yi Road, Area 18, Tsing Yi, New Territories	102 000	Seven years	1,130,000 (monthly rent)
117	28.06.2006	SX 3440 — Hong Tsuen Road, Sai Kung Tuk, Sai Kung, New Territories	809	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	52,560 (yearly rent)
118	27.06.2006	KX 2420 — Junction of Kai Cheung Road and Wang Kwong Road, Kowloon Bay, Kowloon	4 310	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	148,000 (monthly rent)
119	10.06.2006	KX 2436 — Po Lun Street, Lai Chi Kok, Kowloon	5 440	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	218,000 (monthly rent)
120	05.06.2006	KX 2415 — Junction of Ngo Cheung Road and Hau Cheung Street, Kowloon	2 470	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	123,500 (monthly rent)

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121	05.06.2006	KX 2359 — Yau Cheung Road, Kowloon	8 420	A fixed term up to 31 December 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	384,000 (monthly rent)
122	02.06.2006	3628 Kwai Tsing — Tam Kon Shan Road, Tsing Yi, New Territories	688	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	7,071 (monthly rent)
123	26.05.2006	KX 2411 — Hing Wah Street West, West Kowloon Reclamation, Kowloon	7 750	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	116,800 (monthly rent)
124	04.05.2006	KX 2306 — Choi Hung Road, Diamond Hill, Kowloon	3 450	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	202,088 (monthly rent)
125	04.05.2006	3624 Kwai Tsing — Tsing Sheung Road, Area 29, Tsing Yi, New Territories	15 100	Five years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	3,406,656 (yearly rent)
126	03.05.2006	3627 Kwai Tsing — Tam Kon Shan Road, Tsing Yi, New Territories	2 930	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	26,680 (monthly rent)
127	18.04.2006	KX 2408 — Austin Road West, West Kowloon Reclamation Area, Kowloon	7 550	A fixed term up to 28 February 2007 and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	106,666 (monthly rent)

<i>Item No.</i>	<i>Tender Award Date</i>	<i>STT No./Location</i>	<i>Area (sq m)</i>	<i>Tenancy Term</i>	<i>Amount Tendered (\$)</i>
128	10.04.2006	3605 Kwai Tsing — Cheung Fai Road, Area 29, Tsing Yi, New Territories	12 800	Five years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	15,360,000 (yearly rent)
129	23.03.2006	3638 Kwai Tsing — Ching Cheung Road, Kwai Chung, New Territories	12 600	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	1,824,000 (yearly rent)
130	13.03.2006	KX 2418 — Junction of Fat Kwong Street and Chung Hau Street, Kowloon	17 200	A fixed term up to 31 March 2006 and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	960,000 (yearly rent)
131	10.03.2006	KX 2424 — Wang Chiu Road, Kowloon Bay, Kowloon	8 230	A fixed term up to 30 November 2006 and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	666,667 (monthly rent)
132	08.03.2006	KX 2364 — King Lam Street, Cheung Sha Wan, Kowloon	472	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	300,000 (yearly rent)
133	23.02.2006	3626 Kwai Tsing — Container Port Road South, Kwai Chung, New Territories	34 100	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	645,000 (monthly rent)
134	21.02.2006	KX 2502 — Cha Kwo Ling Road, Kwun Tong, Kowloon	4 880	A fixed term up to 30 September 2006 and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	380,000 (monthly rent)

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135	16.02.2006	1392 — Area 4B, Po Wan Road, Sheung Shui, New Territories	865	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	30,800 (monthly rent)
136	14.02.2006	3631 Kwai Tsing — Kwai Fuk Road, Kwai Chung, New Territories	3 500	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	136,900 (monthly rent)
137	01.02.2006	KX 2445 — Cargo Circuit, Kai Tak, Kowloon	2 740	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	52,200 (monthly rent)
138	26.01.2006	3614 Kwai Tsing — Tsing Yi Hong Wan Road, Area 29B, Tsing Yi, New Territories	34 800	Three years certain and thereafter, depending on the circumstance of the case, the tenancy may continue on quarterly basis	5,011,320 (yearly rent)
139	19.01.2006	KX 2433 — Junction of Kai Cheung Road and Wang Kwong Road, Kowloon Bay, Kowloon	6 570	One year certain and thereafter, depending on the circumstance of the case, the tenancy may continue on monthly basis	220,038 (monthly rent)

Taxation Problems Faced by Enterprises Engaged in Processing Trade in the Course of Upgrading and Restructuring

19. **DR LAM TAI-FAI** (in Chinese): *President, regarding the taxation problems faced by Hong Kong enterprises engaged in processing trade operations in the course of upgrading and restructuring, will the Government inform this Council:*

- (a) *given that in reply to my question on 4 November 2009, the Secretary for Financial Services and the Treasury indicated that the practical difficulties in relaxing section 39E of the Inland Revenue Ordinance (Cap. 112) (section 39E) were that as the relevant machinery or plants were used by another enterprise outside Hong Kong, it would be difficult for the Inland Revenue Department (IRD) to check the actual usage of the relevant machinery or plants, whether the authorities will, in order to resolve such difficulties, consider commissioning or establishing an organization or office on the Mainland which is dedicated to checking the actual usage of those machinery or plants that are used on the Mainland, and is authorized to issue certificates to the IRD after verifying that the relevant enterprises have not engaged in any tax avoidance or other illegal activities, so that the IRD may accordingly grant approval for the relevant Hong Kong enterprises to claim depreciation allowances in Hong Kong; if they will not, of the reasons for that;*
- (b) *given that Guangdong Province has always been a congregating place for Hong Kong-invested processing trade enterprises, and the Outline of the Plan for the Reform and Development of the Pearl River Delta (2008-2020) has also stipulated that Guangdong Province can fully exert a pioneering role of special economic zones in reforming and opening up the region by supporting the establishment of a national demonstration zone for the transformation and upgrade of processing trade enterprises, whether the authorities will suggest to the Guangdong provincial authorities that concerted efforts be made to implement the proposal in part (a) on a trial basis, and that a co-operation platform and a communication and liaison mechanism be established on taxation matters for the purpose of deepening the co-operation between the taxation authorities of the two sides, enhancing information exchange and proactively supporting the development of commerce and trade in Guangdong and Hong Kong; if they will, of the details; if not, the reasons for that;*
- (c) *given that the Commerce and Economic Development Bureau confirmed on 12 April this year that the views raised by the sector on the issue of depreciation allowances under section 39E had been*

reflected to the Financial Services and the Treasury Bureau, whether the authorities can make public the contents of the views as reflected by the Commerce and Economic Development Bureau and the details of the response given by the Financial Services and the Treasury Bureau, so that the sector can ascertain that their aspirations have been accurately reflected; if they cannot, of the reasons for that;

- (d) *given that in reply to my question on 6 April this year, the Government indicated that for those taxpayers who eventually withdrew the relevant objections or appeals, or the objections or appeals were determined against the taxpayers, the taxpayers concerned would be required to pay interest on the tax being held over in accordance with the "judgment debt rate" and that the aim was to protect tax revenue by preventing taxpayers from abusing the objection mechanism for the purpose of deferring tax payment, whether the authorities have taken into account the principle of fairness in formulating this mechanism to guard against abuse; if they have, whether the taxpayers whose objections or appeals have been determined in their favour can, as in the case of the Government, be compensated with interest calculated at "judgment debt rate";*
- (e) *given that in reply to my question on 13 April this year, the Secretary for Financial Services and the Treasury indicated that the IRD would adhere to the "territorial source" principle in assessing the chargeable profits of the Hong Kong enterprises according to their actual processing trade operations on the Mainland rather than the nomenclature of such processing trade, whether the authorities had, in the past decade, permitted Hong Kong companies which were nominally "import processing" enterprises but were actually engaged in "contract processing" mode of operation to be subjected to taxation arrangements that are identical to those applicable to "contract processing" enterprises; if they had, of the annual figures; if they had not, the reasons for that;*
- (f) *given that the Secretary for Financial Services and the Treasury had not provided a direct response to my question on 13 April this year*

about whether an "import processing" enterprise which gives up its efforts of upgrading and restructuring and engages in "contract processing" will again be eligible for the depreciation allowances for machinery and plants and whether the 50:50 basis of tax apportionment will again be applicable to it, whether the authorities can give a clear explanation regarding the aforesaid scenario; if not, of the reasons for that;

- (g) *whether the IRD representatives had informed the Board of Review (the Board) of the followings during the Board's hearing on the case numbered D61/08: the purposive approach recognized by the Courts, the requirement of establishing the legislative intent in interpreting law under section 19 of the Interpretation and General Clauses Ordinance (Cap. 1), the Court of Final Appeal's comments on interpreting law made in its judgment on the case of Medical Council of Hong Kong v Chow Siu Shek David (2000), and the views on interpreting law held by the authorities in the case of CIR v Sawhney (HCIA1/2006); if the Board had not been informed of the above, of the reasons for that; if it had been so informed, whether the Board had considered the above;*
- (h) *given that the Secretary for Financial Services and the Treasury only repeatedly stated that he had already taken into consideration the views of the industrial and commercial sector, the accounting sector and tax experts on the issue of section 39E, why the Secretary for Financial Services and the Treasury has not considered the independent legal advice offered by the legal sector or the Department of Justice (DoJ);*
- (i) *given that both Article 64 of the Basic Law and chapter two of the Code for Principal Officials under the Accountability System stipulate that it is incumbent upon officials to answer questions raised by Members of the Legislative Council, and I asked the Secretary for Financial Services and the Treasury, at least on six occasions, whether he had sought advice from the DoJ or other legal advisors on the issue of section 39E, as well as requested the Government to make public the views of the industrial and commercial sector, the accounting sector, the tax experts, the DoJ*

and other government departments and to explain why their views are not adequately justified and are against the principles of "territorial source" and "tax symmetry", but the Secretary for Financial Services and the Treasury still has not provided a direct response, whether the authorities can give a concrete reply to the above questions now;

- (j) given that in the past two years, in stating the reasons for not amending section 39E, the Government had initially given the reasons that it was not necessary to take into consideration the legislative intent in interpreting law and that there were administrative difficulties, and so on, yet subsequently it stated the reasons of adhering to the principles of "territorial source" and "tax symmetry" as well as transfer pricing, why the authorities have given inconsistent responses; given that according to the principles of "territorial source" and "tax symmetry", taxpayers can claim deductions for operational expenses incurred in or outside Hong Kong for production of chargeable profits in Hong Kong, why the machinery or plants used outside Hong Kong must be used by the taxpayers themselves in order to comply with the principles of "territorial source" and "tax symmetry"; regarding the moulds and machines provided by traders for processors, although the moulds and machines are used by the processors, the traders still need to pay for the depreciation costs, why the provision of depreciation allowances for the relevant moulds and machines is against the principle of "tax symmetry";*
- (k) given that the Government has pointed out that relaxing section 39E will give rise to the issue of transfer pricing, whether the Government has made any assessment; if it has, whether evidence can be provided to substantiate that the transactions between Hong Kong enterprises and associated enterprises on the Mainland for the provision of machines and plants have given rise to the issue of transfer pricing; if no evidence can be provided, why such a conclusion has been arrived at; and*
- (l) given that the Financial Secretary was willing to make amendments to his Budget in the light of the public's aspirations after his announcement of this year's Budget, whether the Secretary for*

Financial Services and the Treasury will follow suit and amend the taxation arrangements involving section 39E, and so on, in response to the sector's aspirations and in tandem with the initiatives of the Mainland Government in encouraging Hong Kong-invested enterprises to upgrade and transform; if the Secretary for Financial Services and the Treasury will not do so, of the reasons for that?

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

(a), (h) to (j) and (l)

In our reply to the oral question raised by Dr LAM Tai-fai on 24 November 2010, we have explained in detail the outcome of our review on whether the restriction in section 39E of the Inland Revenue Ordinance (IRO) should be relaxed and the relevant justifications. In short, given the established fundamental principles such as "territorial source principle" and "tax symmetry" of Hong Kong's tax system, as well as the transfer pricing issue, we consider that there are no justifiable grounds to relax the existing restriction in section 39E. Subsequently, we have reiterated the above stance in our replies to a number of written questions raised by Dr LAM Tai-fai.

(b) and (k)

On the issue of transfer pricing, the State Administration of Taxation (SAT) has confirmed that if a Hong Kong enterprise provides some machinery and plant (including moulds) to its associated enterprise in the Mainland rent-free for production of finished products which would be sold to the Hong Kong enterprise at a price below normal price, such arrangement may constitute an "offsetting transaction" under the "Implementation Measures of Special Tax Adjustments (Provisional)" (Guoshuifa (2009) No. 2) of the Mainland. In the course of conducting transfer pricing investigations, the Mainland tax authorities will make transfer pricing adjustments to restore the offsetting transactions.

Given the above, if we were to accede to the request of some enterprises to relax the current restriction in section 39E such that depreciation allowance would be provided in Hong Kong for such machinery and plant, we would be perceived as encouraging transfer pricing, thus affecting the taxing rights of Hong Kong and the Mainland. Hong Kong may be regarded as a harmful tax competitor. As such, we would not explore with the Guangdong provincial authorities the pilot scheme as proposed in the question.

In fact, for cross-border transactions, there is an increasing international trend for associated enterprises to enter into "advance pricing arrangements" (APAs) with the relevant tax authorities with a view to drawing up criteria for determination of transfer pricing. APAs will help taxpayers ascertain in advance their tax burden and reduce disputes with the tax authorities. The IRD will embark on work in this regard under the framework of the comprehensive double taxation agreements. As far as the Mainland is concerned, since the SAT is the Mainland competent authorities under the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income", it would be necessary to approach the SAT rather than the local tax authorities for discussions for entering into APAs.

- (c) In our reply to the written question raised by Dr LAM Tai-fai on 13 April 2011, we have already indicated that the Commerce and Economic Development Bureau has reflected to us the industry's views on section 39E of the IRO. The Commerce and Economic Development Bureau has also conveyed to us the views expressed by Members of the Legislative Council on the subject matter at the Panel on Commerce and Industry. In fact, through repeated questions in relation to the relaxation of section 39E, Dr LAM Tai-fai has already reflected the views of the industry clearly.
- (d) In our replies to Dr LAM Tai-fai's written questions on 9 March and 6 April 2011, we have already explained in detail the legal basis and relevant criteria for the Commissioner of Inland Revenue (the Commissioner) to issue, in relation to objections to tax assessments

or appeal cases, "unconditional stand-over orders" or "conditional stand-over orders". In relation to objections or appeal cases where the taxpayers have been granted with "unconditional stand-over orders" issued by the Commissioner or have furnished banker's undertakings according to the Commissioner's "conditional stand-over orders", our abovementioned replies have also set out the relevant legal basis for requiring the taxpayers to pay interest based on the judgment debt rate on so much of the tax which is found payable upon the withdrawal of the objections or appeals by the taxpayers or the determination of the objections or appeals against the taxpayers. As explained in our abovementioned replies, the relevant provisions aim to protect tax revenue by preventing taxpayers from abusing the objection mechanism for the purpose of deferring tax payment.

(e) and (f)

We have reiterated in our reply to the written question raised by Dr LAM Tai-fai on 13 April 2011 that there are fundamental differences between "contract processing" and "import processing" in terms of status of legal person, ratio of domestic and export sales, mode of operation, ownership of goods and production equipment. In assessing the chargeable profits of the relevant Hong Kong enterprises, the IRD would make tax assessments according to the "territorial source principle" and based on the facts of individual cases rather than the nomenclature of the processing trade or the mode of operation as claimed by the Hong Kong enterprises.

The IRD is not aware of any Hong Kong enterprises which are nominally "import processing" enterprises but actually still engage in "contract processing" mode of operation.

(g) The decision of the Board on the case with reference number D61/08, which could be downloaded from the Board's website, has already covered the legal grounds submitted by the two parties to the case for the Board's consideration. We understand that each and every case heard by the Board or the Court has its unique facts which require application of different legal principles. No particular

decision would fit all cases. We respect the taxpayers' rights under the IRO to raise reasonable grounds of appeal against tax assessments to the Board and the Court. We also respect the judgments made by the Board and the Court of all levels. In fact, the decision made by the Board for the case with reference number D61/08 has become final according to the procedures stipulated under the IRO. There is no legal basis to revisit the case.

Opportunities for Further Studies for Students with Visual and Hearing Impairment

20. **MS EMILY LAU** (in Chinese): *President, with regard to further education for students with visual impairment (VI) and hearing impairment (HI), will the executive authorities inform this Council:*

- (a) *in the school year preceding the implementation of the whole school approach to integrated education in 1997, of the respective percentages of students with VI and HI in Hong Kong being admitted to Secondary Six after completing Secondary Five, and those being admitted to programmes funded by the University Grants Committee (UGC) after completing secondary education; in the past three years, with regard to those students with VI and HI who had attended ordinary schools under the integrated education approach, of the respective percentages of them being admitted to Secondary Six and UGC-funded programmes; and how such percentages in 1996 and the past three years compare to the corresponding percentages for all students in Hong Kong in the respective years;*
- (b) *whether they have assessed if, after the implementation of integrated education, the difference in the percentages of further studies for students with VI and HI and other students has been narrowed; and*
- (c) *whether they know, in the United Kingdom, the United States, Canada and Taiwan, how the percentages of students with VI and HI who have progressed to universities compare to the corresponding percentages for all students; whether they have made reference to the resources being injected in these countries and areas to assist*

students with VI and HI in pursuing further studies, as well as the measures in place to effectively enhance the opportunities for further studies for these students; if they have, of the details?

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) The Whole School Approach to Integrated Education Programme (Programme) was launched in the 1997-1998 school year, and a total of 37 secondary schools have participated in the Programme. Since the 2008-2009 school year, the Education Bureau has been providing a Learning Support Grant for all public sector secondary schools in Hong Kong to help them implement the Whole School Approach to integrated education. At the same time, a database was set up to collect relevant data in a systematic manner.

Prior to the launch of the Programme, we did not have structured procedures to collect data. Hence, there is a lack of a sound basis to compare the percentages of students with VI and HI admitted to Secondary Six after completing Secondary Five and the percentages of such students admitted to programmes funded by the UGC after completing secondary education in 1996 with the corresponding figures of the past three years (2008-2009 school year to 2010-2011 school year).

The relevant data on students with VI and HI and all students studying at Secondary Six level in the past three years are listed in the following table:

<i>Type of Special Educational Needs (SEN)</i>	<i>Number of Secondary Six Students (Number of Secondary Five Students in the Previous School Year) (Percentage)*</i>		
	<i>2008-2009 School Year</i>	<i>2009-2010 School Year</i>	<i>2010-2011 School Year</i>
VI	4 (13) (30.8%) ⁽¹⁾	4 (10) (40.0%)	4 (18) (22.2%)
HI	19 (66) (28.8%)	20 (80) (25.0%)	21 (93) (22.6%)

<i>Type of Special Educational Needs (SEN)</i>	<i>Number of Secondary Six Students (Number of Secondary Five Students in the Previous School Year) (Percentage)*</i>		
	<i>2008-2009 School Year</i>	<i>2009-2010 School Year</i>	<i>2010-2011 School Year</i>
All students	26 091 (70 035) (37.3%)	25 898 (70 473) (36.8%)	26 043 (71 455) (36.5%)

Notes:

* The percentage is calculated by dividing the number of Secondary Six students in public sector schools by the number of Secondary Five students in the previous year.

(1) For example, there were 13 Secondary Five students with VI in the 2007-2008 school year and four were studying at Secondary Six level in the 2008-2009 school year. Therefore, the percentage is 30.8% (four divided by 13 times 100%).

In interpreting the figures in the tables above and below, attention should be drawn to the fact that due to the small number of students concerned, any statistical analysis or trends derived would be very unstable and a small fluctuation of data would result in drastic changes in the percentages. Furthermore, the numbers of students with VI and HI promoted to Secondary Five had increased a lot in these three school years, which cause the Secondary Six promotion rates to decrease slightly. However, the actual numbers of such students promoted to Secondary Six remain stable. Since the implementation of the New Senior Secondary academic structure in the 2009-2010 school year, all students, including those with VI and HI, are entitled to complete Secondary Six education.

The numbers of first year students with disabilities enrolled in UGC-funded programmes in the past three years are as follows:

<i>Type of Disability</i>	<i>Number of Year One Students in UGC-funded Subdegree and Undergraduate Programmes</i>		
	<i>2008-2009 Academic Year</i>	<i>2009-2010 Academic Year</i>	<i>2010-2011 Academic Year</i>
VI	7	12	14
HI	21	16	11

The statistics on UGC-funded programmes were collected on voluntary self-reporting by students without the need of medical certification. As the data collection methods and categorization of students with disabilities adopted by UGC-funded institutions and the Education Bureau differ, their respective data cannot be compared directly or used for calculating the percentages of such students pursuing further studies. In any case, the Education Bureau has all along been implementing measures to raise the articulation opportunities for students with SEN. These measures will briefly be introduced in the reply to part (c) of the question below.

- (b) Since the 1970s, the Government has been supporting ordinary schools to cater for students with SEN, including students with VI and HI. Further to the enactment of the Disability Discrimination Ordinance in 1996, the government policy clearly states that all schools are required to admit students with SEN and provide them with appropriate support. Since then, the policy on integrated education and the supporting measures have been developing and enhanced continuously. In the early stage, the Education Bureau set up special classes in ordinary schools, and provided centre-based support through its Resource Teaching Services Centres. Following the launch of the Programme in the 1997-1998 school year, a new funding mode for primary schools was introduced in the 2003-2004 school year. With effect from the 2008-2009 school year, the Education Bureau has further enhanced the funding arrangement for the Learning Support Grant, and started to provide all public sector secondary schools with the grant. This clearly signifies, policywise, that all ordinary schools are required to implement the Whole School Approach.

Students' academic achievements and progression to further studies depend on a myriad of factors, including personal abilities, the numbers of Secondary Six and post-secondary places, and the types of programmes available, and so on. It is therefore difficult to attribute differences in the percentage of students pursuing further studies between different groups of students to the implementation of the integrated education policy, and evaluate the policy accordingly. Nevertheless, it remains our goal to strive to enhance the capability

of schools to cater for students with SEN so that appropriate support can be provided for such students to develop their potentials. In our reply to part (c) of the question, we will briefly introduce our arrangements to facilitate students with VI and HI in pursuing further studies. We will continue to pay attention to the progression of students with SEN (including students with VI and HI), and provide appropriate support for them.

- (c) In view of the differences in economic development, cultural background, education system, education policy and the definition of students with SEN among different places, we have not collected concrete information on the resources allocated for supporting students with SEN or the percentages of these students admitted to universities in other countries. However, the implementation of integrated education in Hong Kong is in line with the world-wide trend. We have been devoting resources in the forms of additional funding, professional support and training to assist schools in providing support for these students according to their needs. The Education Bureau will also send professionals to other countries and regions on study visits and training.

In Hong Kong, schools and tertiary institutions generally consider applications for admission to Secondary Six classes or other programmes based on the students' academic achievements and their performance in other aspects. To ensure that students with SEN have equal access to education as other students, schools are required to provide assessment accommodations to these students. Special arrangements are also made for them in public examinations. In addition, a subsystem under the Joint University Programmes Admissions System is in place for considering their applications. The subsystem enables these applicants with disabilities to establish at an early date what special assistance and facilities are available to them at the institutions of their choice. It also helps the UGC-funded institutions to provide help and advice to such applicants at an early stage and give appropriate consideration to their applications. Applicants may receive an offer under the subsystem but they are not obliged to accept it immediately. Their applications will continue to be considered in the Main Round exercise to see if an even better offer can be made to them.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bill: First Reading.

LIFTS AND ESCALATORS BILL

CLERK (in Cantonese): Lifts and Escalators Bill.

Bill 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): Bill: Second Reading.

LIFTS AND ESCALATORS BILL

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I move the Second Reading of the Lifts and Escalators Bill (the Bill). The purpose of the Bill is to introduce a series of measures under a monitoring system to strengthen regulatory control over lifts and escalators to ensure public safety.

Hong Kong is one of the most densely-developed cities in the world. To tie in with the development need of the city, many high-rise buildings have been built. Many lifts and escalators have been installed in these buildings with high usage rate. Their safe operation is closely related to the daily living of the people at large. In this connection, the Lifts and Escalators (Safety) Ordinance (LESO) was enacted as early as in 1960. At present, there are more than 57 000 lifts in Hong Kong. From 2006 to 2010, there were 170-odd cases of mechanical malfunctioning related to lifts, causing injury to over 20 people. In view of the recent lift incidents, the Government has stepped up its efforts since 2008 to implement a package of multi-pronged measures under the existing legislative framework to strengthen regulatory control over the safety of lifts and escalators. These measures include the enhancement of Codes of Practice on

Lift Safety, disclosure of the performance of registered lift contractors, stepping up inspections and enhancing publicity.

At the same time, the Administration has conducted a stringent and comprehensive review of the LESO. In April 2009, the Electrical and Mechanical Services Department set up two task forces formed by representatives of the industry (including labour unions, trade organizations, the Vocational Training Council and the Construction Workers Registration Authority), as well as relevant professional engineering institutions to review respectively the registration systems for lift/escalator engineers and workers, as well as other related matters.

Subsequently, public consultation was held between November 2009 and February 2010 on legislative amendments proposed after discussions by the task forces. The relevant amendments were generally supported by the public. On 22 June 2010, we reported the findings of the public consultation to the Legislative Council Panel on Development. The Panel was also briefed about the Administration's way forward on the legislative proposal.

As the LESO was enacted in 1960, various amendments made over the past few decades have made the current structure of the Ordinance very complicated. Also, considering the substantial amendments to the current legislation required under this legislative amendment exercise, the Administration proposes to introduce a new bill and repeal the LESO such that obligations of stakeholders can be set out in more clearly specified provisions under a more systematical framework.

After thorough discussions with trade representatives, we have set out the proposed provisions in the Bill. In short, the Bill will strengthen regulatory control in four major aspects, namely, first, strengthening the regulation of lift/escalator workers, engineers and contractors; second, increasing the penalty levels of offences; third, extending the coverage of the legislation; and fourth, improving the existing regulatory processes to enhance efficiency.

At present, lift/escalator workers can acquire the status of competent workers according to specified provisions of the LESO so that they can carry out lift/escalator works independently. However, under the existing provisions, some experienced workers may lose their qualification of competent workers when they work for different employers or are no longer directly employed by a

registered contractor. To replace this employment-tied arrangement, we propose to introduce a stand-alone registration system whereby qualified lift/escalator workers may apply for registration as registered lift/escalator workers based on their academic attainment, training and experience. Under the new system, experienced workers without the specified academic qualification can also apply for registration if they can pass a trade test and have the required experience. Registered workers must renew their registration every five years. Through the registration system, the Administration can monitor the technical level of workers more effectively, promote continuous self-development, and regulate improper or unsafe work practices.

In order to avoid any undue impact on the livelihood of existing qualified workers, we propose to introduce a transitional arrangement whereby they can continue undertaking lift/escalator works under the new system and they will be given assistance to acquire the necessary qualification for registration.

In respect of strengthening the regulation on lift/escalator engineers, we propose to upgrade the registration threshold of lift/escalator engineers to that of registered professional engineers with at least two years' relevant experience. Registered lift/escalator engineers must also renew their registration every five years. In order to allow the existing practitioners to continue serving the public, we propose that all registered lift/escalator engineers can smoothly migrate to the new system. A grace period will be set so that degree-holders in relevant engineering disciplines with not less than four years' experience can also apply for registration as registered lift/escalator engineers within the grace period.

In terms of strengthening the regulation on contractors, we propose to make clear in the legislation the registration requirements of lift/escalator contractors, such as whether a contractor has employed the necessary professionals and workers, as well as possess the necessary tools and facilities (including technical assistance and support from the manufacturers) to carry out the lift/escalator works. In order to build up a checking mechanism to ensure continual compliance by the contractors, we also propose that the registered lift/escalator contractors must renew their registration once every five years.

In terms of penalty of offences, the maximum fine and imprisonment period for safety related offences stipulated under the current legislation are merely \$10,000 and 12 months respectively. The public share our view that such penalty cannot adequately reflect the seriousness of the offences. Hence,

we propose to increase the penalty levels under the Bill so that they are on par with the penalty levels of other offences of similar nature, such as those under the Builders' Lifts and Tower Working Platforms (Safety) Ordinance and the Factories and Industrial Undertakings Ordinance. Based on this consideration, we propose to increase the maximum fine and imprisonment period of certain offences to \$200,000 and 12 months.

Apart from increasing the penalty levels of offences, we also propose to extend the coverage of the legislation so that lifts/escalators installed in buildings of the Government, the Housing Authority, and so on, not covered by the current legislation will also be regulated. Moreover, in order to strengthen safety control over lifts and escalators, the Bill has extended the responsibility of lift/escalator owners to others who have the right to manage or control the lifts/escalators including the management companies of buildings, and management staff of an organization having the management or control of the lifts/escalators on behalf of the owners.

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

Lastly, we have proposed a series of other measures to enhance operational efficiency and enforcement effectiveness such as improving the existing certificate system and conferring power on the Director of Electrical and Mechanical Services to issue Improvement Orders to require the concerned persons to rectify any non-compliance with statutory requirements within a specified period.

Deputy President, the Administration hopes that through the legislative framework provided by the Bill, the regulatory system can be improved to enhance the safety level of lifts and escalators. This is the common aspiration expressed by Members in the past two years during discussions held at the Legislative Council Panel on Development, questions raised at meetings of the Legislative Council and open discussions held after the lift accidents. I implore Members to support the Bill and hope for the early passage of the Bill after scrutiny by the Council.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Lifts and Escalators Bill be read the Second time.

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

MOTIONS

DEPUTY PRESIDENT (in Cantonese): Motion. Proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance to approve the Mutual Legal Assistance in Criminal Matters (India) Order.

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

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

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

Hong Kong has been actively co-operating with other jurisdictions in combating serious crime, and is committed to concluding bilateral agreements with partners who wish to have closer co-operation with us in mutual legal assistance in criminal matters. These bilateral agreements ensure reciprocal assistance between the contracting parties, and are conducive to enhancing international co-operation in the fight against cross-border crime.

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

Pursuant to the MLA0, the Chief Executive in Council has made the Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with India (the Agreement). By applying the MLA0 to the co-operation between Hong Kong and India, the Order allows Hong Kong to provide and obtain mutual legal assistance in accordance with the procedures set out in the MLA0 and the provisions under the Agreement. As the legislation and the arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is often necessary for the implementing order of a bilateral agreement to modify certain provisions of the MLA0 to a limited extent in order to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the relevant bilateral agreement. The modifications made for the bilateral agreement between Hong Kong and India are specified in Schedule 2 to the Order. They are also summarized in Schedule 3 to the Order. These modifications do not affect the substantial conformity of the Order with the provisions of the MLA0.

The Subcommittee set up by the Legislative Council has completed its scrutiny of the Order. I would like to thank the Subcommittee for giving support to the Administration in the submission of the Order to this Council for approval.

In examining the Order, the Subcommittee noted that Article IV(3) of the Model Agreement, which is related to death penalty, has not been included in the Agreement between Hong Kong and India. We have explained to the Subcommittee that the SAR Government and the Government of the Republic of India have agreed that the Requested Party may refuse providing assistance in death penalty cases on the ground of "essential interest" under Article IV(1)(b) of the Agreement.

The Subcommittee also expressed concern about the possible broad scope of the additional questions put to the witness or person giving evidence by the competent authority of the Requested Party under Article X(4) of the Agreement, which may even be out of the original scope of questions specified in Article X(3). We have explained to the Subcommittee that Article X(4) of the Agreement refers to questions additional to those specified under Article X(3), and it has to be read in the context of Article X(3) so that any additional questions raised under Article X(4) should be within the original scope of questions specified under Article X(3).

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

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

Thank you, Deputy President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (India) Order, made by the Chief Executive in Council on 15 February 2011, be approved."

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

DR MARGARET NG (in Cantonese): Deputy President, in the capacity of the Chairman of the Subcommittee on Mutual Legal Assistance in Criminal Matters (India) Order (the Subcommittee), I speak on the motion moved by the Secretary for Security.

The Mutual Legal Assistance in Criminal Matters (India) Order (the Order) sets out the scope and procedures in relation to the provisions of agreements on mutual legal assistance in criminal matters (MLA) applicable between the Hong Kong Special Administrative Region (SAR) and the Republic of India, and the modifications to the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO).

Members have noted that the Order is the first MLA Order in which the authorities have summarized the modifications to the MLAO in the form of Schedule 3 to the Order. The authorities have explained that a summary was not included in the 26 MLA Orders enacted in the past, but such summary was set out in the explanatory statements annexed to the Legislative Council Briefs on the

MLA Orders. Members have noted that to facilitate Members in reading and the interpretation of the modifications in a MLA Order, the authorities will include relevant summaries in the form of a schedule in future MLA Orders and will consider the need to add summaries to existing MLA Orders as appropriate.

The Subcommittee has noted that Schedule 2 specifies the modifications to sections 5 and 17 of the MLAO. Regarding the modification to section 5(1)(e) of the MLAO, it seeks to reflect the provision in Article IV(1)(f) of the Agreement and extends the Secretary for Justice's power to refuse assistance under certain circumstances. The Subcommittee has also noted that the modification to section 17(3)(b) of the MLAO reflects the provision in Article XVI(6) of the Agreement. The Article provides certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance in a criminal matter, such immunities shall not apply after a certain period.

The Subcommittee has expressed concern that Article IV(3) of the Model Agreement, which is related to death penalty, has not been included in the Order. The authorities have explained that the SAR Government and the Government of the Republic of India have agreed that the Requested Party may refuse providing assistance in death penalty cases on the ground of "essential interests" under Article IV(1)(b) of the Agreement. The Subcommittee has requested the Secretary for Security to highlight this point in his speech when he moves the resolution on the Order, and I note that the Secretary for Security has mentioned this point earlier.

Some members has expressed concern about the possible broad scope of the additional questions put to the witness or person giving evidence by the competent authority of the Requested Party under Article X(4), especially when such additional questions could be out of the original scope of those questions specified in Article X(3). The authorities have expressed that Article X(4) has to be read in the context of Article X(3) of the Agreement so that any additional questions raised under Article X(4) of the Agreement should be within the original scope of questions specified under Article X(3). The Subcommittee has requested the Secretary for Security to highlight this point in his speech when he moves the resolution on the Order, and I note that the Secretary for Security has mentioned this point earlier.

Article XVIII of the Agreement provides that where a request is made for assistance in securing the confiscation of proceeds or instruments of crime, such request shall be executed pursuant to the laws of the Requested Party. Members have enquired whether the meaning of "instruments of crime" referred to in the Article follows the meaning in the laws of the Republic of India or the laws of Hong Kong. The authorities have explained that the definition of "instruments of crime" in Article XVIII(6) of the Agreement is drawn from the definition of "external confiscation order" under the MLAO and is to be interpreted under the laws of Hong Kong when Hong Kong is the Requested Party. At the request of members, the authorities have provided information on relevant precedent court cases of other commonwealth jurisdictions on whether immovable property (such as a boat or a house) was considered by the Court as "instrument of crime" or "location of crime".

Members have expressed concern in view of the Coroner's inquest into the death of eight victims of the Manila incident that no legal framework is provided under existing laws for the provision of legal assistance in respect of death inquest. In response to the request of Members, the authorities have undertaken to consider providing a legal framework to facilitate assistance between Hong Kong and overseas jurisdictions on death inquests, having regard to the impact on other matters, and report the results of its study on the matter to the Panel on Administration of Justice and Legal Services (the Panel).

Deputy President, we hope that the authorities will submit the report to the Panel expeditiously. The Subcommittee supports the Order. Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR SECURITY (in Cantonese): Deputy President, as I mentioned earlier, the Subcommittee set up by the Legislative Council has completed the scrutiny of the Mutual Legal Assistance in Criminal Matters (India) Order, and supported that the Order be submitted to and passed by the Legislative Council.

I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (India) Order, so that the bilateral agreement between Hong Kong and India on mutual legal assistance in criminal matters can be implemented.

Thank you, Deputy President.

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

(Members raised their hands)

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.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Disability Discrimination Ordinance to extend the period for amending the Revised Code of Practice on Employment.

I now call upon Ms Cyd HO to speak and move the motion.

PROPOSED RESOLUTION UNDER THE DISABILITY DISCRIMINATION ORDINANCE

MS CYD HO (in Cantonese): Deputy President, in my capacity as Chairman of the Subcommittee on Revised Code of Practice on Employment under the Disability Discrimination Ordinance (the Subcommittee), I move that the motion standing in my name, as printed on the Agenda, be passed.

At the House Committee meeting on 15 April 2011, Members formed a subcommittee to study the Revised Code of Practice on the Disability Discrimination Ordinance. To give the Subcommittee sufficient time for studying the Revised Code of Practice, Members have agreed that I move a motion to extend the scrutiny period of the Revised Code of Practice to the Legislative Council meeting on 1 June 2011.

Deputy President, here, I wish to supplement and report to Members that the Subcommittee has completed the scrutiny this morning and will report to the House Committee on 20 May. The deadline for submitting amendments will be on 25 May. I urge for Members' support of the motion.

Ms Cyd HO moved the following motion:

"RESOLVED that in relation to the Revised Code of Practice on Employment under the Disability Discrimination Ordinance, published in the Gazette as Government Notice No. 2159 on 8 April 2011 and laid on the table of the Legislative Council on 13 April 2011, the period for amending the Revised Code of Practice referred to in section 65(5) of the Disability Discrimination Ordinance (Cap. 487) be extended under section 65(7) of that Ordinance to the meeting of 1 June 2011."

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

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Cyd HO be passed. 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

DEPUTY PRESIDENT (in Cantonese): Two proposed resolutions under Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

DEPUTY PRESIDENT (in Cantonese): Mr TAM Yiu-chung has given notice to move two motions to amend the Rules of Procedure. The first motion seeks to amend Rule 44 and Rule 45(2) of the Rules of Procedure, and the second motion seeks to amend Rule 45(1) of the Rules of Procedure.

This Council will have a joint debate on the two motions. I will first call upon Mr TAM Yiu-chung to speak on the two motions and move the first motion. After the debate, this Council will put to vote the first motion moved by Mr TAM Yiu-chung. Whether the first motion is passed or not will not affect Mr TAM Yiu-chung's moving of his second motion.

The joint debate will now begin.

PROPOSED RESOLUTION UNDER ARTICLE 75 OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

MR TAM YIU-CHUNG (in Cantonese): Deputy President, in my capacity as Chairman of the Committee on Rules of Procedure (CRoP), I move that the first proposed resolution to amend the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be passed.

Rule 44 specifies that the decision made by the President in Council or the chairman of any standing or select committee on a point of order shall be final. Rule 45 further specifies that the President or the chairman of any standing or select committee may direct a Member who persists in irrelevance or tedious repetition to discontinue his speech and order a Member whose conduct is grossly disorderly to immediate withdraw from the meeting.

The majority of CRoP members considered that, due to increasing frequency of disorderly conduct of Members at committee meetings, the present approach adopted by the chairmen of other committees of the Council (such as panels, bills committees and subcommittees) in handling disorderly conduct of Members, which include persuading the Member not to continue to behave in the manner which is the subject of the controversy and suspending the meeting to let the controversy die down, could no longer ensure the smooth operation of the committee. Most CRoP members considered that, although the chairman concerned might suspend a meeting, such suspension was highly disruptive to the work of the committee. If, upon resumption of the meeting, the Member continued to act in a disorderly manner, the chairman might have no alternative but to suspend the meeting again to let the Member calm down. CRoP agreed that Rules 44 and 45 should be extended to cover other committees of the Council. Dr Margaret NG, Deputy Chairman of CRoP, was however of the view that this approach might lead to more conflict or confrontation, which would not be conducive to the smooth operation of these committees.

CRoP proposed that Rules 44 and 45 should be amended and extended to cover other committees of the Council. When the House Committee discussed the issue at its meeting on 15 April 2011, Members expressed differing views on whether Rule 45(1) and Rule 45(2) should be amended. Rule 45(1) specifies that the President in Council or the chairman of any standing committee or select

committee may order a Member who persists in irrelevance or tedious repetition to discontinue his speech. Rule 45(2) specifies that the President in Council or the chairman of any standing committee or select committee may order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting.

This proposed resolution seeks to amend Rules 44 and 45(2), extending their application to all committees of the Council. The second proposed resolution seeks to amend Rule 45(1), extending its application all committees of the Council.

My views on the proposed resolutions are as follows:

Deputy President, there have been 28 incidents where Members acted in a disorderly manner during this term of the Legislative Council, and their acts included hurling bananas, sweeping things off the table, hurling various objects, upsetting order in this Council, or using offensive or insulting language to attack public officials, and so on. Within the first three months of this year, there were four incidents where objects were being hurled. The public image of this Council has been tarnished by these incidents and the normal business of this Council has also been disrupted. This also affects the relationship between the executive authorities and the legislature. Whenever a Member attempted to assault government officials in this Council, the Chief Secretary for Administration will write to the President of this Council, hoping that he will take action and the President will forward the letter to me. As Chairman of the CRoP, I have been asked to follow up seven to eight such letters.

Facing such changes, the public generally think that the Rules of Procedure (RoP) of this Council should be tightened up. In the past few years, the CRoP had conducted four rounds of discussions and held many meetings to consult Members. Yet, the results were obvious. Though quite a few Members have requested for the tightening up of the RoP, some other Members are impervious. During the adjournment debate of this Council on 2 March on acts of violence against the Chief Executive and public officers, we clearly learnt that some major parties and groupings considered that there were no problems with the RoP and amendments were unnecessary. They also said that the provisions in the RoP were adequate. Some Members considered that acts of violence just caused disruption for a few minutes, so we should just be tolerant for a short while.

Some other Members even said wittingly that these acts might have refreshing effects, and they were no big deal.

The CRoP has studied the practices of many other legislatures to find out the approaches they adopt and how they regulate the repeated and continuous disorderly conduct of their members. According to our observation, the legislatures in Australia, the United Kingdom or our neighbour Taiwan may suspend Members who repeatedly violate the rules. The Australian Parliament may impose a suspension ranging from 24 hours to three meetings or up to seven meetings. As regards the British Parliament, if a member violates the rules for the first and second time, he may be suspended for five meeting days or 20 meeting days, as for subsequent violations, the suspension period is determined by the Parliament, and it may even be for the remainder of the session. In Taiwan, legislators can be suspended from their duties for four to eight meetings or three to six months. In the United Kingdom and Taiwan, suspended members have their pay withheld during the suspension period.

As regards restricting members to carrying dangerous objects or props or signs obstructing other people into the Chamber, the Legislative Yuan in Taiwan expressly prohibits legislators carrying dangerous objects into the Chamber. In the United Kingdom, Australia, New Zealand and Canada, restrictions are imposed according to the practices established by the Speaker's rulings. These legislatures do not allow the use of objects that will create inconvenience to other members or impede the conduct of meetings.

Nevertheless, compared with the relevant provisions of the legislatures of these countries and regions, the Legislative Council in Hong Kong does not have direct restrictions in this connection. Even if Members do not follow the directions of the President and are ordered to leave the Chamber due to their grossly disorderly conduct, they will not be subject to further sanction.

As I have just mentioned, the resolution I moved today will be in two parts because some Members have reservations about extending Rule 45(1) to cover all committees of the Council. In fact, this amendment just empowers the chairmen of other committees of the Council to order a Member who persists in irrelevance or tedious repetition to withdraw immediately from the meeting. Members worried that the chairmen may have excessive power which will affect the freedom of Members to express their views. Yet, I think that they are over

worried. Whether a Member's arguments are irrelevant to the subject under discussion or repetitive is purely an objective judgment, and everyone who has common sense will draw the same conclusion. Hence, there will not be difficulties in enforcement. Furthermore, the rulings made by the President in Council throughout the years have provided ample examples. So long as a Member whose arguments are repetitive or irrelevant returns to the subject under discussion, he can go on speaking. Therefore, as compared with Rule 45(2) that orders a Member to withdraw immediately from meeting, I think that the provision of Rule 45(1) is basically reasonable.

For this reason, if most Members support amending RoP 45(2), I also hope that they would also support amending RoP 45(1).

With these remarks, I hope that Members would support these two resolutions.

Thank you, Deputy President.

Mr TAM Yiu-chung moved the following motion:

"RESOLVED that the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended as set out in the Schedule.

Schedule

Amendments to Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

1. Rule 44 amended (Decision of Chair Final)
Rule 44 —
Repeal
"standing or select".

2. Rule 45 amended (Order in Council and Committee)
Rule 45(2) —
(a) Repeal
"standing or select";

- (b) English text —
Repeal
"clerks of any committees"
Substitute
"clerk of any committee".

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the first motion moved by Mr TAM Yiu-chung be passed.

DR MARGARET NG: Deputy President, the amendments proposed in this Resolution and the next may appear to be small, but are in fact fundamental. They go to the root of the principles which underlie the Rules of Procedure and the way this Council functions.

Let me state from the start that I consider our ability to maintain order and decorum in all our proceedings to be essential to our proper functioning, and to our credibility in the community as the Legislature of the Hong Kong SAR.

Like other Honourable Members and members of the community, I am concerned about the repeated challenges to the rules of orderly conduct. I am even more deeply disturbed by the occasions on which the orders of the President were met with defiance and resistance and had to be effected by unseemly force. It is not that I am worried about setting a bad example for the children. More seriously, it is a matter of logic and obligation. For if the President cannot guarantee safe passage within our own house, how can we reasonably require any official or member of the public to appear before this Council?

Likewise, I am also aware that in the circumstances of repeated breach of conduct with apparent immunity, public pressure has increased for Members to "tighten up" the rules to deter such conduct.

The problem is certainly clear. However, are these amendments of the Rules the right answer? I do not think so. First of all, we should distinguish the rules from their enforcement. The most notorious occasions of disorderly conduct took place within Council sittings. The amendments proposed today do

not concern Council sittings; the President already has the powers under the present Rules. The question is how the Rules may be applied and enforced more effectively and expeditiously. This is being dealt with vigorously in The Legislative Council Commission. The amendments proposed extend the same powers to the chairman of any committee, and it is not clear to me that doing so in any way addresses the concern of the public.

Some members of the public have suggested that new rules should be made to punish a disorderly Member by banning him from the Council for a period of weeks, with salary reduced or withheld. Our research shows that the House of Commons indeed has such powers, but they are not exercised at the order of the Speaker, but upon a motion moved by another member and passed by the House.

The apparently quaint procedure of the House of Commons illustrates a fundamental principle: authority is not used on an equal. Rules to give one member power over another member are justified only on the basis of necessity to facilitate debate. We must ask ourselves, before we cast our vote today, whether this requirement is satisfied by the proposed amendments.

As I have said earlier, the proposed amendments appear to be small: a few words are deleted from Rules 44, 45(1) and 45(2), three words in English and five words in Chinese. But the effect is to remove the difference between the powers of the President in Council, the Chairman in a committee of the whole Council or the chairman of any standing or select committee on one hand, and on the other hand, the powers of the chairman of any other committee such as a panel, a subcommittee and a bills committee. Under existing rules, the power to order a Member whose conduct is disorderly to withdraw immediately is exercised by the former, but not by the latter.

I may add that the three amendments are inter-related. Reading backwards, Rule 45(2) allows the chairman to order a Member whose conduct is grossly disorderly to withdraw; Rule 45(1) makes a Member who persists in irrelevant and tedious repetition and who refuses to stop speaking upon the direction of the chairman guilty of grossly disorderly conduct; and Rule 44 makes the decision of the chairman on whether a Member is in breach of Rule 45(1) or (2) final and unchallengeable. These are draconian powers. It is right and fitting that they should be restricted.

So why are they given to one group of committees and not to another group? I submit that this is not arbitrary but a matter both of principle and good sense.

The Rules of Procedure of the Legislative Council originated from the Standing Orders of the House of Commons, which make a similar distinction between the two groups of committees. Powers under Standing Order No. 42 (which is similar to our Rule 45(1)) and Standing Order No. 43 (which is similar to our Rule 45(2)) are exercised only by the Speaker and the Chairman of a committee of the whole House or a standing committee but by no other chairman. The distinction is stated at the head of Chapter 27 of Erskine May: committees are divided into those which proceed by debate, and those which proceed by taking evidence, deliberation and report. These powers only apply in committees which proceed by debate. Or put it another way, committees which deal with formal questions (motions or bills), debate upon them and then resolve them, by voting if necessary, as opposed to committees which hear proposals, deliberate on them by discussion, and where appropriate report to the House Committee but make no binding decision. The report, if appropriate, can then be debated in a sitting of the Council.

According to the research reported to us, no Parliament in the world empowers a chairman of a deliberative committee with the powers which we are now considering under these proposed amendments.

It is clear to me that the draconian powers under Rules 44 and 45 are exercised by a chairman of a decision-making committee in enforcing the rules of debate and are necessary and appropriate for that purpose. The Speaker or the President, in maintaining order and decorum in a formal sitting of the House, is additionally upholding the dignity of the Court of Parliament. Such considerations do not apply to deliberative committees and subcommittees.

Deputy President, the differentiation is not just in name; nor is it just slavish borrowing from a jurisdiction now foreign. It underlines the two complementary halves of our function and the way we discharge them: we debate in opposition, vote on party lines, but we investigate and deliberate in co-operation and across party lines, accommodating the line of exploration of each other. In making our reports we are conscious of power in unity, and that has been illustrated time and again in such reports as on West Kowloon Cultural Development and most of our select committees of inquiry. While the debates

attract more attention, the real work, in my opinion, is more often achieved in the committee room. By the way, the House of Commons uses "Select Committee" to refer to what we would call a "policy panel", and in the House of Commons, part of the legislative procedure is carried out in standing committees, that is why they follow the process of debate.

In short, we take evidence and deliberate, and then we debate and decide. To disregard the distinction, as these amendments do almost more by thoughtlessness, is to confess our failure to co-operate and to commit this house to total debate. There is already an increasing impatience not to give time to a genuine exchange of views in order to forge maximum consensus, and to go immediately to debate from entrenched positions, and the ultimate vote count. I cannot tell you how remote this is from the true spirit of democracy.

I am reminded of the trial in *Alice in Wonderland*. As soon as the accusation was read out, the King said to the jury, "Consider your verdict." "Not yet, not yet," the Rabbit hastily interrupted. "There is a great deal to come before that!" Deputy President, is there, as far as this Council is concerned?

Let us, for a moment, leave principle and constitutional function and duty aside. Even on considering the practicalities alone these amendments should be opposed. They are neither necessary nor efficacious. Not necessary, because adjourning a committee meeting for a few minutes would be ample to deal with any problem of disorderly conduct. Not efficacious, because I see little likelihood of the order of the chairman for the Member to withdraw being meekly obeyed, and the commotion of getting staff assistance to forcibly evict the Member from a committee room will be more conducive to farce than to dignity.

Indeed, I believe that the threat of such an order from the chair will be most likely to be provocative, and contribute to lasting ill feelings between Members. It is not in such an environment that we can expect to foster the habit and norm of co-operation and consensus.

Since such additional powers are neither efficacious nor necessary, I do not see any justification for their adoption. Rules do not make good conduct. Only respect for the rules and the institution can do so.

Finally, I would like to make this point: our Rules of Procedure will fall apart, not just when a few Members choose persistently to throw things at

officials, but when unbridled contempt is permitted to be expressed by Members towards one another, and when Members are permitted to resort constantly to verbal abuse and personal attack.

I do not see how rational debate can take place in such a linguistic environment. And we do need rational debate if we are to discharge our duty, which includes ensuring the development of principled and reasoned long-term public policies for the good of Hong Kong. As a Member who has long served this Council, I am greatly saddened to see this happening.

Although rationality may not be any longer relevant, let it be recorded that these are the reasons why I oppose the motion. I may add that I do so with full exemption from the Civic Party, because rules of procedure are above politics.

Thank you.

MR ALBERT HO (in Cantonese): Deputy President, as I have just said, in making a decision today, we do not base upon political considerations or the interests of parties and groupings, so I hope Dr Margaret NG would not be mistaken. We also talk about principles

(Mr WONG Yuk-man came to Mr Albert HO and criticized him)

DEPUTY PRESIDENT (in Cantonese): Mr WONG Yuk-man, please sit down.

MR ALBERT HO (in Cantonese): Deputy President

MR WONG YUK-MAN (in Cantonese): What principles are you talking about? What kind of democratic camp do you belong to? You have taken the lead to tighten up the Rules of Procedure, are you not a member of the democratic camp?

DEPUTY PRESIDENT (in Cantonese): Mr WONG, please sit down. It is now time for Mr Albert HO to speak. Mr HO, please continue.

MR ALBERT HO (in Cantonese): Deputy President, at the meetings of the Committee on Rules of Procedure, many members have expressed the views that, apart from extending the powers to the chairman of other committees, the powers of the President in Council should also be expanded; and Mr TAM Yiu-chung has just given the examples of practices in various foreign legislatures. However, we have clearly expressed our views at each meeting that we cannot accept such powers under our political environment and the present political structure. We all know the reasons for that.

If an elected Mr TAM Yiu-chung just said that many legislatures are elected; but I need not say anything more about the structure of this legislature. We believe that not only this Council, the community as well does not feel relieved in giving the President in Council similar powers as those enjoyed by the Speaker of the British or Australian parliament.

Furthermore, concerning the two amendments moved today, as Honourable colleagues have just mentioned, in respect of additional powers, firstly, the amendments are minor in nature and only limited powers are conferred; secondly, the chairmen of other committees will have the same power as that of the chairmen of standing or select committees. Deputy President, we have considered that, even though these powers have been criticized as very limited, they are still essential for meetings to proceed normally.

As Honourable colleagues should have noticed, only the part of Rule 45(2) about grossly disorderly conduct will be amended. We all know that, even when the President in Council exercised this power in the past, he would first persuade and even warn a Member before making a final decision to ask him to withdraw from the meeting.

(THE PRESIDENT resumed the Chair)

I am sorry to see such a situation arises, but I understand that some Members have intentionally expressed themselves in this way. They would rather take the risk or subject to the pressure of being evicted from the meeting. They have their political considerations and they also understand that they have to

be accountable and responsible to the community for their behaviours. The voters will express, through their votes, their evaluation of those actions.

In any case, the exercise of this power is restricted to the case where a Member has grossly disorderly conduct and the President finds it impossible for the meeting to operate normally. Although this power is limited, it is essential to ensure that the meeting can proceed. Since the President in Council, as well as the chairmen of standing and select committees can exercise such limited powers to ensure the smooth progress of meetings, I do not understand why the chairmen of other committee of the Council, including the chairmen of panels, should not have the same powers.

Of course, I understand that different committees have different powers; for example, panels can only deliberate, they do not have decision-making powers. Nevertheless, whether open meetings can be conducted orderly and smoothly, especially those meetings that are directly broadcasted through the mass media, are related to the dignity of the meetings, public expectations and the right to know of the community. Therefore, it is equally important for these meetings to proceed normally, even though decisions with legal effects cannot be made at such meetings. People who attend the meetings should be respected and people's expectations should be considered. Based on the above arguments, I think we should similarly give the chairmen of other committees the powers to ensure that the meetings can proceed normally, and I also consider this proposal acceptable.

Nonetheless, President, the case of Rule 45(1) is different. It requires the President to rule if a Member has persisted in irrelevance or tedious repetition of his own or other Members' arguments in the debate. President, this is a very subjective judgment.

Members have their ways of expression; some of them like to express their viewpoints with reference to philosophy, history or personal feelings. So long as their conduct is not extremely disorderly according to our general understanding, and that they will not impede the progress of the meeting, or that they are not extremely offensive, why can we not give Members maximum freedom to express their views in the ways they have chosen? After all, the speaking time at meetings is often limited to three to five minutes. Even if a Member wants to speak once more, he is subject to restrictions. In that case, why should we completely hand over to the President a difficult task, asking him

to decide whether Members' arguments are tedious? After careful consideration, we think that the amendment to Rule 45(1) is totally unnecessary and unacceptable.

Based on the abovementioned two factors for consideration, the Democratic Party will accept one of the amendments to Rule 45(1) today, so that the chairman of any standing or select committee or other panels can exercise his powers in managing the meetings under limited and specific circumstances, and they can ask Members who have disorderly conduct to leave the meetings as the last resort. We will vote against the remaining amendments.

DR PRISCILLA LEUNG (in Cantonese): President, the Professionals Forum interviewed 606 people from 4 to 6 March this year about whether the Rules of Procedure (RoP) should be tightened up. The results of three questions asked represented our views on the issue.

About 70.8% of the interviewees considered the chaotic situation of this Council as seen from television very offensive. Among the 606 interviewees, 508 (approximately 83.9%) strongly disagreed or disagreed with the behaviours of Members in this Council, including throwing bananas, bottles or joss money.

Regarding whether the Legislative Council has to enhance the RoP to further regulate these radical behaviours when this Council is discussing political issues, 74.7% of respondents agreed or strongly agreed. Why did we conduct this opinion poll? It is because this issue has been discussed for almost two years but we (especially the Professionals Forum) have not expressed our views on whether or not it is necessary to do so. However, many people we represented and many residents we met when we visited the local communities hoped that we could make some efforts in this connection. For this reason, we would like to find out objectively the views of the general public on this issue.

The results of this opinion poll showed that most Hong Kong people disagreed that Members should act violently and harassingly when expressing their views in the Legislative Council. They also do not want to see the frequent adjournment of Council meetings during discussion as they regard that very annoying.

We think the results of this opinion poll have revealed some problems. In my view, while some people might feel annoyed when Members acted radically during the early days of this term; some people might find such acts novel. This is not surprising, but as time passes, people no longer tolerate such behaviours, and novel acts have become annoying. I fully understand that we would like to have freedom of expression in our society. Of course, nobody would object to such mainstream values and everybody would like to enjoy the greatest freedom in expressing their views. As Members, we enjoy certain privileges under the law, and our speeches and actions are not subject to legal sanction. Yet, as Members are public figures, what they say or do in this Council or in front of cameras will actually have an impact on society, in particular, they will have far-reaching impacts on the younger generation.

Concerning the RoP, I think the discussions of the Committee on Rules of Procedure are certainly important, but more important still, the RoP are laid down by Members and no Member can force another Member to act in a certain way. The RoP affects the parliamentary culture of the Legislative Council, which not only have a bearing on how Members discuss political issues, but also on the culture of our society. I personally do not agree that radical behaviours should be rationalized on the grounds that we have different views on the political system and that the current political system is unsatisfactory. I think parliamentary culture and electoral system are not necessarily related.

On this issue, I have expressed my personal views at meetings of the Committee on Rules of Procedure. One of my views is that we can follow the practices of other countries by adopting a mechanism with different levels of sanction, like red cards and yellow cards. In fact, Members will not be deprived of their freedom of speech, they can still express their views but there are different levels of sanctions.

Personally, I prefer the practice in Australia. For Members who violate the rules for the first time, they will be suspended from duty for 24 hours, that is, one day; for the second violation, Members will be suspended from duty for three meetings, which is a very heavy punishment because the most important task of Members is to discuss political issues. For the third violation, Members may be suspended from participation in seven consecutive meetings. Having studied the rules of procedure of various countries and their ways of handling offences, I

think that the mechanism of Australia (that is red and yellow cards) is better than the sanction of salary deduction.

This proposal simply represents our stance in the light of the present parliamentary culture of the Legislative Council, that is, we would like the RoP be amended. Certainly, we hope that the Legislative Council in Hong Kong is a solemn and civilized council that Hong Kong people are proud of, hence I have to reiterate again that I disagree with certain people rationalizing these behaviours on the grounds that their political system cannot be realized. We should definitely not rationalize these behaviours for the sake of attaining an ideal political system.

In the past half year, the public have raised stronger outcry against this situation. If Members listen to public opinion, I believe this is the voices of the general public or the silent majority. I so submit.

MR ALBERT CHAN (in Cantonese): President, we are discussing today about tightening up the Rules of Procedure (RoP) and the passage of the relevant motions. Apart from the day on which the "bogus constitutional reform package" was passed, today can be described as one of the darkest days in this Council after the reunification. The motion today about tightening up the RoP is, following the crossing over to the Chinese Communist Party (CCP) by the Democratic Party, another act to further restrict Members' freedom of expression and actions, as well as a means to restrict or control the resistance.

President, the incidents of hurling bananas and sweeping things off the table happened two years ago and almost a year ago respectively. After these two incidents, the League of Social Democrats (LSD) and the Civic Party initiated the "five-district referendum" campaign. In May last year when I stood for election, I stated from the start that I would engage in resistance inside and outside this Council, and I would continue to adopt the means of resistance as what I did in the past. The commitment and explication were supported by 100 000 electors, which brought me back to this Council. Engaging in resistance inside and outside this Council has gained the recognition and authorization of voters.

Today, in this Chamber, not only Members from functional constituencies overwhelmingly support strengthening restrictions, even the Democratic Party shamelessly renders support. Imposing these restrictions slapped the 100 000 electors who voted for me. These electors voted to authorize me to engage in resistance inside and outside this Council. Therefore, if this Council endorses the amendments, it can be said that the democratic development in Hong Kong will be brought into the dark.

President, as regards hurling bananas, sweeping things off the table or hurling joss money I should have given some joss money to Dr Priscilla LEUNG as souvenirs; she is probably unhappy because I have not given her any. Concerning resistance inside and outside this Council, many Members have quoted the practices of some overseas countries, including the United Kingdom, the United States, Canada, Australia and New Zealand. However, the legislatures in these countries are democratically elected rather than controlled by some "lackeys" appointed by the Central Authorities and Members returned by small-circle elections. As we all know, on many occasions in the past, before voting took place in this Council, especially at some important moments, some Members would stay in the Ante-Chamber and keep calling the Liaison Office of the Central People's Government in the SAR to get the instruction. Such cases happened before 1997 and also after 1997. Thus, quite a number of Members in this Council voted not on the basis of people's interests but as instructed by their masters.

That was why Yuk-man and I repeatedly emphasized, through elections, that we ought to engage in resistance inside and outside this Council. The objective is to fight against injustice in this Council. This Council lacks public empowerment and representativeness, many policies have thus been distorted. In adopting resistance as a means, we want to highlight the injustice in this Council and voice out our anger on behalf of the public.

President, I hope Members would explain clearly why there is presently no channel for the general public and ordinary people to express their anger. When facing the Government and some political parties, in particular those parties which reneged on their promises made during the election and acted against the party platform, people have no channels to express their anger.

Yesterday, I conducted a questionnaire survey on railway development at Belvedere Garden in Tsuen Wan. A middle-aged man came to me and said,

"Big Guy, previously I detested your acts of hurling bananas and sweeping things off the table. Many of my friends are middle-class professionals and they oppose and dislike such acts. However, seeing how the Government performs recently, we think your acts are justifiable". People have noticed the incompetent and shameless performance of the Government, as well as the looks of many shameless politicians. Member of the public have become increasingly furious. In hurling bananas and sweeping things off the table, we want to reflect people's anger through actions. Certain social effects would be attained.

Many people criticize us, saying that we take such actions to gain exposure and votes. Nevertheless, if we can gain votes through such actions, why do major political parties not follow suit? Evidently, they think that these actions will be spurned by voters, so they are unwilling to follow suit lest they should lose their votes. For this reason, they just let us do the abominable things. In order to expose the injustice in this Council, we have taken some actions which are disdained by Members who claim themselves to be "gentlemen" and "ladies". Through these actions, we have exposed certain political phenomena, beliefs and improper government measures. These actions help to vent people's grievances and reduce the confrontational pressures. Any acts of resistance expressing dissatisfaction with the Government can, if accepted by the public, help to vent their anger to a certain extent.

If you want to plug these channels for venting anger, I have to warn you, you will create more opportunities for intensifying people's anger and grievances, because people have no channel or opportunity to vent their anger and grievances. When the pressure keeps increasing, the political and social resistance will intensify. For instance, in the 1960s, Martin Luther KING staged a peaceful protest movement in the United States, but the movement was met with the violence of the Black Panthers who assassinated federal police detectives, set fire to warehouses and blew up offices. If Honourable colleagues suppress legitimate acts of resistance or acts that you oppose and consider to be a nuisance, the public would have no avenues to vent their anger, and eventually they will resort to more violent acts of resistance.

President, for more than 10 years since the reunification in 1997, the political "golden hoop" has been tightened constantly: the Provisional Legislative Council; the interpretation of the Basic Law by the National People's Congress; the re-introduction of the District Council appointment system; the proposed

enactment of legislation to implement Article 23 of the Basic Law; forcing through the Interception Bill; selective prosecution of the so-called illegal broadcasting; Secretary TSANG Tak-sing's intervention in voluntary agencies, resulting in the dismissal of a social worker; confiscation of the Goddess of Democracy statues by the police; clamping down on the freedom of expression; as well as stricter police control in recent processions. In fact, the "golden hoop" has been tightened constantly in the past 10 years or so.

The Democratic Party passed the "bogus constitutional reform package" after crossing over to the CCP, and shortly after that, it supported the restriction on the scope of resistance in this Council by tightening up the relevant procedures and powers of this Council. This actually impedes the process of resistance inside and outside this Council. At present, the Democratic Party allies with the royalists to further suppress the means and process of resistance, like what it did during the passage of the "bogus constitutional reform package". This is in fact a successful united front tactic since 1997. The Democratic Party has readily become the political henchmen of the CCP, and it has accepted the rules for tightening the control of this Council. This well illustrates that it has crossed over to the CCP and has willingly become a "lackey".

President, I would like to discuss the issue of extending the power to evict Members to panel chairmen. As many Members have said, since the President in Council has such a power, there are no reasons why the chairmen of other panels should not have the same power. Actually, extending the power of political control implies further tightening of the control. By extending the power of the President in Council to order withdrawal of Members to the chairmen of all panels and subcommittees, it conveys an obvious and strong political message, that is, political control will be further tightened.

Of course, the proposal of extending the power of the President in Council to the chairmen of all other committees will certainly be endorsed by most Members of this Council, as in the case of the "bogus constitutional reform package". Even if this is duly authorized by this Council through voting, this is actually a very violent act. Yet, the passage of this motion does not mean that the acts of resistance will not continue to develop and sustain. Honourable colleagues can drive me out today, and they can drive me out once or 10 times, and they can even terminate my status as a Member; but resistance will definitely

continue. It is because this Council is characterized by injustice and the lack of public acceptance. So long as there is injustice in this Council, resistance will definitely continue.

For this reason, I wish to make it clear to Honourable colleagues that they may as well drive me out of this Council but the road to resistance is bound to continue until the time when justice is done and democracy is fulfilled. Jesus cleared the temple years ago because some "lackeys" turned the temple into a market. SUN Yat-sen broke off the arm of an idol because he wanted to lash at the feudal system. We are not afraid of your enhanced manipulation and control, and we are not afraid of the increasing powers of the chairmen of committees.

Lastly, President, I would like to make one point. Many Honourable colleagues have said that our assault and hurling of objects in the past have caused nuisance and inconvenience to Members and government officials. I feel deeply offended upon hearing that we have caused inconvenience to government officials. I am not sure how many dirty acts various government departments and head of departments had done in the past and how many mistakes they had made, which have created inconvenience to the public. Members do not criticize such acts, and when we have caused slight inconvenience to government officials, we are being condemned as if we have offended the king. The "lackeys" are most willing to clear the obstacles for their masters.

Have we created inconvenience? Processions and demonstrations frequently created inconvenience, right? Some Members had also lain on the road blocking traffic, and some political parties frequently held processions and demonstrations, which led to the closure of roads. These acts also created inconvenience. If Members' conduct in this Council are regulated today, all activities causing inconvenience to the public can similarly be prohibited in the future. Let us prohibit them all! This will happen one day because the work of the CCP on maintaining stability will become more and more extensive. AI Weiwei has not been released so far, right? The treatment received by AI Weiwei indicated how Hong Kong people would be treated sooner or later. This kind of control on speech and political acts will continue to tighten. Therefore, I call upon Hong Kong people to wake up and stay awake. If they are not awake and allow these "lackeys" to continue to strengthen the suppression of political

behaviours in this Council, their rights to free political expression and their acts will ultimately be affected. The causal relationship is clear enough.

Hence, we will reiterate that the means of resistance — no matter what motion is passed today — will certainly continue.

MR WONG YUK-MAN (in Cantonese): President, first of all, I would like to thank Dr Margaret NG for her elaboration on the spirit of this Council just now. I do not know how many legislators in this Council have really listened to her words.

Dr Margaret NG definitely dislikes the behaviours of WONG Yuk-man, right? I believe that Dr Margaret NG will certainly disapprove of the row we made or the so-called body movements in this Council. Despite the disapproval, she still considered that the amendments proposed today were inappropriate. I do not want to repeat the reasons she has just given. However, the problem is, those Members of this Council who claim that they belong to the democratic camp, which include Mr Albert HO and Ms Emily LAU, the Chairman and Vice-chairperson of the Democratic Party; Mr Ronny TONG from the Civic Party, and Mr LEE Cheuk-yan, Chairman of the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China, supported the tightening up of the Rules of Procedure (RoP) at meetings of the Committee on Rules of Procedure, and extending the power to evict Members with disorderly conduct to the chairmen of various panels. President, you are the only one who should have such power. You are elected by all Members while the chairmen of various panels are just the products of political negotiation.

On that day, when I learnt that the Committee on Rules of Procedure passed the said amendment, I approached Mr LEE Cheuk-yan, and how did the Chairman of the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China answer me, he said, "Yuk-man, since you are also the Chairman of a panel, you can also drive members out."

President, these are our great Members from the democratic camp. What way of thinking is this? I will definitely not drive members out, alright? If some members have disorderly conduct when I chair a meeting of the Panel on Information Technology and Broadcasting, and they even abuse me using foul

language, I may not necessarily have to drive them out. All I have to do is to adjourn the meeting and resume it 10 minutes later. For sure, I will definitely not drive members out. Nevertheless, I can assure Honourable colleagues that, after this amendment has been passed, I will certainly attend meetings of all panels, it does not matter if I am a member of that panel, and I will defy the law to test if the chairman will drive me out. I will continue to do so until I have been driven out.

What kind of Council is this? What is the spirit of this Council? Why is there the Legislative Council (Powers and Privileges) Ordinance? Why do Members have the privilege to be exempted from responsibilities in expressing their views? Why does a Member want to have the freedom of speech so that he can speak his mind freely? What are the reasons? All legislatures in the world make the best efforts to facilitate the President in chairing the meetings in accordance with the rules of procedure, and will certainly not restrict the freedom of speech of Members. Moreover, those are elected legislatures while this Council has only 50% of Members returned by universal and equitable one-person, one-vote election.

Many a times, the majority in this Council turns out to be the minority. Under the system of voting by division, the majority becomes the minority, which is a perverse and ridiculous situation; yet, it happens in this Council day after day. After WONG Yuk-man has joined this Council, there have really been some changes in this Council. WONG Yuk-man does not have any extraordinary abilities, he is just the child in the fairy tale "The Emperor's New Clothes". The struggle that WONG Yuk-man engaged in within this Council only revealed that those politicians who have led the democratic movements in Hong Kong for 20 years are unworthy; they were fuming with rage. The dignified Chairman of the Democratic Party was fuming with rage when I condemned him to his face. Mr CHEUNG Man-kwong soon came forward as if he wanted to push me away, and he said, "He is the Chairman of our party, why do you condemn him?" He was fuming with rage — I just said a few words and he was fuming with rage. After they rendered support for the constitutional reform package, they did not say a word when the two Bills were read for the Second and Third time. Eight Legislative Council Members from the democratic camp did not say anything during the debate on these important Bills.

Honestly speaking, President, even you detest such deeds, and hope to hear some interesting debates, right? Unexpectedly, the remarks they made were

exactly the same as those made by your esteemed party, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), that is, Hong Kong people were striving for one person, two votes, there was small progress in democratic movement and we were moving forward. They did not say so in 2005. Late Mr SZETO said that staying put was the same as not going backwards. Now, we are not going backwards and not compromising. Back then, LAU Chin-shek was really wise in saying that we ought to work on a grand conciliation. He had foresight but you people said that he was Judas, and almost drove him out of the political arena. Ah Shek is now the only one who looks dejected.

President, when WONG Yuk-man engaged in resistance after he has become a Member of this Council, many people certainly feel unhappy. It is because the myth of this Council has been broken and its painted skin has been torn off, right? All other Members have lost face, right?

In view of the development of the incident so far, we have already been psychologically prepared. We joined this Council in 2008; I hurled bananas in October; the pro-establishment camp jointly condemned us afterwards, right? In 2009 when John TSANG announced the Budget, I stepped forward and tore up the Budget to his face. The Democratic Party and the Civic Party later convened a joint press conference and condemned us. The pro-establishment camp vigorously initiated a signature drive, all Members — except you, as you are the President — had signed. Honestly speaking, if the pro-establishment camp and the democratic camp joined hands to condemn us at that time, the three of us should have left this Council according to the Basic Law. However, I would like to tell Chairman TAM Yiu-chung, I would definitely be elected again. So, I now challenge you, Mr Albert HO, Ms Emily LAU, Mr Ronny TONG and Mr LEE Cheuk-yan, I will certainly continue to behave disorderly, and I hope they will join hands with the pro-establishment camp to dismiss us. If they dare not do so, they are cowards.

Today, the Member who proposed an amendment to the RoP stated that he was directing against the people but not the facts, that he would pin us down by all means, even at the expense of causing overall harm. What kind of democratic camp is this, buddy? Will they feel ashamed to come forward? Will Albert HO feel ashamed? How is he qualified to call himself a member of the democratic camp? How are they qualified to express support for LIU Xiaobo and AI Weiwei; that is a mere pretence. Ms Cyd HO and Ms Emily

LAU like to give the example of "boiling a frog in lukewarm water", are they doing that right now?

They have opened a gap, which has no great impacts on me, "Big Guy" and even "Long Hair". To be honest, we will still stick to our way. However, there are impacts on other people as the scope of freedom of speech of other Members will be contracted.

After taking this step, they will certainly take the second step. Mr Ronny TONG has comforted me, saying that this would be the ultimate step and we would not be dismissed. At present, eight Members from the Democratic Party regarded me as an enemy, as if I had killed their father. Now that there is a gap, will they not take this chance to catch us off guard? It would be odd if they do not do so.

Nonetheless, President, I am not afraid and I will absolutely stand for election again. When they have driven me out, do you think I will not stand for election again? Why can't I stand for election again after they have driven me out? I should be able to do so. If I resign and join the by-election, you propose amending the legislation. Yet, should the legislation be amended if I stand for election again after I have been driven out? Is there really such a thing in the world? After attempts have been made to drive us out, Dr Priscilla LEUNG may as well propose an amendment to the legislation, specifying that Members who have been driven out cannot stand for election again. Can this be done?

It will certainly be very interesting if such actions are taken. I can tell you people, I will be delighted to play the game with you. This is my character and I can call upon people to support me, hence I will definitely play the game with you. In fact, I made a comment on 25 June last year, saying that the Democratic Party no longer belonged to the democratic camp. Yet, they still brazenly claimed that they belonged to the democratic camp and they wanted to lead the democratic movements in Hong Kong, in terms of quantitative and qualitative. They had also written a 10 000-word article, published in *Ming Pao* for three days. Only *Ming Pao*, the Democratic Party newspaper, would allow them to do so; *the Apple Daily* might not be willing to do so, it would rather reserve the limited space for advertisement. Do they think that they can win with the support of the mainstream media? What have they won? They will win nothing even if we have been driven out. How can they be accountable to the

younger generation? Years ago, they led us to fight for dual universal suffrage through processions and demonstrations. As it turned out, dual universal suffrage in 2007, 2008 or 2012 were all lies. Today, they propose an amendment to the RoP to tighten up our freedom of speech, are they heartless?

It is a well accepted fact that the pro-establishment camp will act like that, how can they allow the rise of the opposition camp? The democratic camp stated openly that the conducts were detrimental; yet covertly, it claimed that we had crossed over to the Chinese Communist Party (CCP). They claimed that the CCP was most happy when we launched the "five-district referendum". Some also said that my son was arrested, and I was coerced into submission, hence I have crossed over to the CCP. These are the remarks made by those damned thieves.

President, when human nature has deteriorated to such a point, we will not feel sorry to sell family properties to relieve the distress of people. But, as they are so mean and detestable, how dare they say that they will fight for democracy in Hong Kong? Obviously, they are directing against people but not facts in opening such a gap. Similarly, late Mr SZETO gave me a kick in the kidney in his deathbed when he said, "This person is not reliable, thus I do not support "five-district referendum". He did not support "five-district referendum" because of me. That was really strange as he had been engaged in democratic movement for decades.

We certainly oppose this amendment but our efforts will be futile. For this reason, I have especially stressed at the outset that I am thankful to Dr Margaret NG. She did not deal with the issue from our point of view; but from the perspective of upholding the spirit of the Council and based on her professional understanding of parliamentary politics. Yet, they will not understand that. Some people, including other Members of her party, intentionally do not want to understand that.

Mr Ronny TONG asked me why I did so. Well, explain to me why the power to evict Members should be extended to the chairmen of panels. I would like to know the reasons. He may say that it is because WONG Yuk-man's appearance is not appealing. If so, I will stay in the Council for a year or so, and I will not stand for election in the next term. I hope that Mr Ronny TONG can tell me the actual reasons. Once the resolution is passed, the rule will last forever and all Members, including Mr Paul TSE, will be subject to the same

criteria of conduct. We do not know when Paul will go mad. He may go mad one day and he may find that it is inappropriate for him to act that way. So, he may as well throw things like what we have been doing. President, every Member has a chance to do so. I think 15 minutes' speaking time is not enough. I can say a lot about the parliamentary history, political development and history of resistance in various countries, but I do not want to do so.

Since I want a historical record, I have to speak today and I have to specifically point out: Mr Albert HO, Chairman of the Democratic Party; Ms Emily LAU, the Vice-chairperson; Mr LEE Cheuk-yan, Chairman of Hong Kong Alliance in Support of the Patriotic Democratic Movement in China; and Mr Ronny TONG from the Civic Party, these four Members from the democratic camp supported tightening up the RoP at meetings of the Committee on Rules of Procedure, to deal with Members like us who engage in resistance in this Council and struggle for justice. History will remember that. Children in the public gallery, please listen carefully, you have to bear in mind that these people are cheaters. What democrats are they?

After they supported the passage of the constitutional reform package, I have expected that this would happen one day. It does not matter after all. As MAO Zedong said, "If heaven wishes it to rain or your mother to remarry, there is no way to stop either of them (*in Putonghua*)". Yet, I must say that, I can speak on this motion for 15 minutes and I must condemn the so-called members of the democratic camp. I must tear off their printed skin so that they will not step forward in the future and loudly express support for AI Weiwei and LIU Xiaobo or propose a motion on the June 4 Incident.

Mr LEE Cheuk-yan submitted a written statement of repentance on the Mainland years ago and I still have a bone to pick with him; however, he can still be the Chairman of the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China. I am most disappointed with him. Let me tell you people, I have anticipated what Mr Albert HO and Ms Emily LAU would do; we have personal grudges. As for Mr TAM Yiu-chung, I have also anticipated his act as he is Chairman of the Committee on Rules of Procedure, a member of the DAB and the pro-establishment camp. I have anticipated what all of them would do. Nonetheless, I really failed to anticipate that he would pick on me and in turn pick on everyone. He has made the worst demonstration for democratic politics in Hong Kong.

I can assure Honourable colleagues that, in the remaining days of my life or in future elections, I will definitely expose the real face of these damned thieves from the so-called democratic camp in the elections. I will do so through my writings, appeal to people who support me, and on my online platform. I will not give up declaring the idea of resistance in this Council, and I will personally call for participation by more young people. In future, whenever there are activities participated by these buddies from the democratic camp, we would voice out our different views.

President, I will not say that today is really a very dark day, and I will just say that Members who support this amendment in this Chamber today will eventually be punished by history.

MR FREDERICK FUNG (in Cantonese): President, as an elected Member, to express my views in this Council is not only a freedom, but also a right. The very reason people elect us is to speak in this Council. While we are vested with no decision-making powers constitutionally, our right of expression must not be deprived of.

President, I am going to cite two examples; and if I am wrong, please correct me. Under the present system, we have immunity, that is, we shall assume no responsibility for statements made in this Council even if people outside this Council are affected or rebuked by any content of such statements so long as we consider them to be correct or true. Under the second scenario, as I understand, if a Member is on his way to a meeting of the Legislative Council and is stopped by the police because of any offences such as jumping the red light or speeding, the police must let the Member go to the meeting first and deal with the offence later, as long as the Member indicates that he is on his way to an official meeting of the Council. The ultimate objective is to safeguard the Member's right to return to the Chamber and express his views. By these two examples, we can see that Members' right of expression in the Council must never be deprived of.

The second point I would like to make is that the Council is a political platform for Members. Of course, we are not that naive or impractical as to think that this is a placid and peaceful platform for us to say whatever we want. Nonetheless, before we can gain access to this Council, to this political platform,

we must first "fight a dying battle" outside (that is, in the geographical constituencies and functional constituencies) and win in the election. In other words, before gaining the right to speak in this political platform, we must compete or struggle in politics, or worse still, use trickery to access the political platform of the Legislative Council. Nonetheless, as Members' right to speak is safeguarded under the law, I think we should be as open and tolerable as possible.

Obviously, the political spectrum of the Legislative Council has changed after the election in 2008. While a number of Members such as Yuk-man have surely given a new meaning to the "radical" end of the spectrum, Members who are gentle have remained more or less unchanged. Given the spectrum has already been widened, do we allow or disallow it to widen further? Can we tolerate and accept the spectrum during the widening process? This is a question we need to discuss further. However, in the process of political development, I think the spectrum must surely become wider, not narrower. As the political spectrum becomes wider and wider, is it appropriate for us, Members of the current term of the Legislative Council, to impose restrictions, obstacles or thresholds to halt the process? Or should we allow the spectrum to widen as long as the situation remains under control under the current system or the Rules of Procedure (RoP)? Regarding the widening of the spectrum, in areas concerning the contents of discussions at the Council, the political actions taken, as well as the methods or means to fight for political or livelihood issues, should we be more tolerant with the widening of the spectrum? Of course, in saying such words, I think this is the right approach to take. We should allow the spectrum to widen unless we think the situation is getting out of hand. Next, I am going to talk about whether the situation is getting out of hand.

Is the current system incapable of handling certain parliamentary behaviour of Members after the spectrum and the scope of expression have become widened? I broadly group them under two categories. The first category is illegal acts. Of course, I mean *bona fide* illegal acts. If an illegal act is committed, the situation will be dealt with under the law. Even though no arrest shall be made during a meeting, the Member concerned can be arrested after the meeting. Hence, I do not see any cases of illegal acts being left unhandled, such as when a Member throws an object and hits somebody (which is obviously a criminal offence). I think if such a case arises, it will be dealt with immediately after the meeting. Even though the police cannot arrest a Member during a meeting — as in the example I just quoted, the police cannot arrest a Member

who is on his way to a meeting; and it follows that the police also cannot arrest a Member during a meeting — they can make an arrest right after the meeting.

The second category involves acts which do not constitute a breach of the laws of Hong Kong. The question thus remains as to whether such acts are permissible under the RoP. Basically, if the laws of Hong Kong have not been violated, the matter should then be dealt with under the RoP. Let us look at Rules 45 of the RoP. The power to evict Members is only conferred to the chairmen of several committees, that is, the President in Council, the Chairman of a committee of the whole Council, and the chairmen of standing and select committees. The chairmen of these committees or the President are all conferred with certain statutory, legal or decision-making powers. As for other committees, the meetings are held purely for the sake of discussion or deliberation. Even if a motion is passed at a meeting, it is absolutely not binding or imposing on the Government. But does it mean that if problems arise at these committees, they cannot be handled? As a matter of fact, there were such cases that we had handled previously.

Regarding Rules 45 that I just mentioned, we can deal with the situation where the name of the Member concerned has been mentioned. Regarding the situation where the name of the Member concerned has not been mentioned, there was one such incident during a meeting of the Panel on Manpower. "Long hair" Mr LEUNG threw plastic bottles at the Secretary. Of course, all of throws were missed. If the Secretary was actually hit, the case might be handled differently. However, his throws were all missed. Given that the throws had missed President, for example, I am very angry now and I throw this book; but what if I am throwing a plastic bottle Of course, it can make a difference, say how far I throw this book or at what direction I am throwing it. If I throw this book forward, say one foot, three feet or 10 feet, how can one say that it is alright if I throw the book forward for one inch or one foot, but not two feet or 10 feet? This is very difficult to quantify. Hence, I think it is very difficult to handle the situation.

In fact, the Panel chairman already has the right to adjourn or suspend the meeting, say for five or 10 minutes. Past experiences showed that when the meeting resumed, Members whose behaviour were more radical would either not return to the meeting or behave themselves if they did return. I think the situation can be handled in such a way. So far, things have not reached a stage

where it is getting out of control. Of course, if we allow such behaviour, are we actually giving other people a platform to "show" their radical acts? For myself, I do not agree with such political behaviour. That is why throughout the years, nobody has ever seen me throwing things or using foul language when handling the work of the Council. If Yuk-man can still recall, after he threw bananas for the first time, I said to him outside the Chamber, "Yuk-man, the matter is not so serious that you have to throw bananas. You have crossed the line." As I recall, he said in reply then, "It is none of your business. I am responsible for what I have done. If I have done something wrong, my voters will tell me." I think he has a point. His voters have elected him to the Legislative Council. If the voters do not agree with his actions, naturally they will not vote for him again. As a Member elected from the same geographical constituency as Yuk-man, how can I say for certain whether he should be re-elected or not? He must and will bear political responsibility for his political behaviour. I think he will bear the consequences of his actions in future. Although I do not agree with Yuk-man's actions, and I have already told him specifically, I accept his reply. As you all know, Yuk-man has changed his stance and he will not send his members to attack me. Although we have different political stands and views, I still think we must uphold the attitude and stance I just mentioned so as to allow Members to express themselves in their own ways. However, we must keep the situation under control.

Members should not think that I oppose these amendments because I am afraid of Yuk-man's intention to attack me. It is not the case. If Members go through my previous speeches and votes, they will see that I have been very consistent. During the previous two or three occasions when amendments were proposed to the RoP to tighten the requirements on Members' behaviour, I have all voted in opposition. If Members still recall, I said that the Council was a venue for political struggles, especially when the spectrum was getting wider and wider, with the most radical at one end and the most gentle at the other, fighting against each other. These struggles about different political stands and values can be handled through rules and regulations. However, these rules and regulations can easily become a tool used by one side to oppress the other party. I think every effort must be made to avoid turning these rules and regulations into a tool.

If Members still recall, back then when the incident involving KAM Nai-wai created an uproar in the community, some people had suggested that Mr

KAM should be "condemned". I opposed to the suggestion because it was a moral issue rather than a matter about political deliberation in the Council. Why should the Council get involved in determining the morality of a person? Many people also have moral problems which others may or may not know. However, even if the problem is made known, do we have to discuss it as an issue? Smoking has now become an issue not only about morality but legality. This is an issue difficult to make any judgment.

Second, regarding disorderly conduct, it is yet another very general concept. What actually constitutes disorderly conduct? For example, Rule 45(2) specifies the actions required to be taken against disorderly conduct, but what constitutes disorderly conduct? Our moral values may be very different. Amongst Members of the Legislative Council, Ms Emily LAU is the staunchest critic against the use of foul language in public speeches, and I can count as the second one. I have said openly that I do not allow people using foul language, not even for messages on Facebook. If someone leaves a message containing any foul language on my Facebook, I will delete it immediately. This is my house rule.

Nonetheless, the current situation is not getting out of hand. We can still rely on the provisions in the RoP to handle such behaviour. However, I want to tell Members, I think we should avoid at all cost the use of rules and regulations to restrict Members' behaviour in Council, so long as these behaviour can still be regulated and are permissible within the bounds of the existing rules and regulations. I think the scope should remain as wide as possible, rather than getting tighter and tighter. This echoes the first point I made that the right of Members to speak in the Council is not just a freedom, but a right. Hence, I do not agree to the two amendments presently proposed. Thank you, President.

MS CYD HO (in Cantonese): President, I speak to oppose the proposed amendments to the Rules of Procedure (RoP), and my reasons are as follows.

The Council today is very different from that of the colonial era, and it is not the first time amendments were made to the RoP. Subsequent to the end of the Legislative and Executive Councils in 1992 or 1993, major amendments were made to the RoP. As an increasing number of Members from the grassroots have been elected after 1997, the dress code of Members has been relaxed time

and again in varying degrees. However, amendments made to these internal organizational rules must be premised on an important condition, that is, Members should be allowed the widest scope of political deliberation. In this connection, the examples just quoted by Mr Frederick FUNG are correct. As several standing committees must work according to the Legislative Council (Powers and Privileges) Ordinance, the chairmen of these committees have the freedom to evict Members from the Chamber. There is a very clear distinction here. However, when amendments were proposed to the RoP on several occasions, nothing had been mentioned about conferring the power to evict Members from the Chamber to the chairmen of all panels. This is a proposal we have never discussed before.

From the speech just made by Mr TAM Yiu-chung, I note that he has put forth two major reasons. First, the overall image of the Legislative Council has been damaged. But in fact, the overall image of the Legislative Council was damaged for a number of reasons. One of the reasons may be the challenges made by individual Members or political parties or groupings against the RoP. This will of course create bad feelings among some members of the public. However, the overall image of the Legislative Council may also be damaged due to the lack of power on our part to monitor the executive authorities, the many restrictions imposed on our powers, and the wavering stands of Members belonging to certain political parties and groupings who initially condemned the Government but later voted in its support. What then can we do to deal with these problems?

The other reason given is that challenges made by some Members against the RoP have prevented the smooth conduct of meetings. However, I do not consider that meetings will be conducted more smoothly under the amended RoP. If Members choose to challenge the established rules and regulations intentionally, they will continue to do so regardless of whether restrictions have been imposed. As just mentioned by some Members who have challenged these rules and regulations, their objective is to strip the Council off its "painted skin"; they will challenge the RoP regardless of whether restrictions have been imposed. If restrictions are imposed, they are more prone to do so because another "skin" is added to the existing rules and regulations.

President, I think the power conferred to the chairmen of panels to suspend the meeting is already sufficient for the purpose. Regarding the proposal to

amend Rule 45(1) of the RoP, there are some views that I must get off my chest. I have great reservation about the rule of order which empowers the chairman to sanction or deal with a Member who persists in repetitive arguments or tedious remarks. Theoretically, Members should have completed a careful and detailed deliberation of a bill at the relevant bills committee. Hence, when the bill is presented to the Council for discussion, the speaker, that is, the President, your goodself, should of course have the power to restrict such actions. That is something we must accept as the lesser of two evils. However, it will be highly undesirable if such power is extended to the deliberation of panels or bills committees.

Regarding tedious remarks, why do Members persistently ask the same question? That is because government officials have refused to give us an answer. I still recall that during the scrutiny of the proposal on Article 23 legislation, a lot of questions were asked by Members. Mrs Regina IP, the then Secretary for Security, had evaded all these questions. With no better recourse, Members could only repeat our questions again and again tediously. We also felt extremely tedious ourselves because no matter what questions we asked, no answers were provided. Hence, if such power also applies to other panels, Members' work in political deliberation will be hampered. The situation is highly unsatisfactory.

Separately, I left the Council between 2004 and 2008. When I returned in 2008, I noticed a new unwritten rule which was also very damaging. According to the relevant rule, the speaking time of Members at panel meetings was limited to five minutes or seven minutes at most. Sometimes, each Member could only speak for three minutes. As it took quite some time for Members to give background information and explain their rationale, not much time was left for government officials to respond. With the application of this time limit, the officials also knew how to play the game with us. They knew that they could avoid giving answers so long as Members were led round in circles on the relevant subjects for a full five minutes. This also led to another vicious cycle because Members might prefer to lash out on the officials in those five minutes, rather than being led round in circles by the officials. By doing so, they could vent their anger for themselves and on behalf of the people. Therefore, this practice of imposing a time limit on political deliberation cannot help facilitate rational discussion by Members.

In the past, the same situation had also been observed in panel meetings. As officials knew that the meeting time of each meeting was limited to two hours at most, they could get away as long as they played their tricks for a full two hours. Therefore, they tried to get by through talking nonsense. As the work of select committee only involves a single subject, Members can concentrate on how to follow up on the matter and hence, the executive authorities are forced to face and resolve the problems. If the deliberation at panel meetings does not follow this principle and Members are restricted to speak for only five minutes, it will be detrimental rather than beneficial to the quality of deliberation. Hence, I must bring up this particular point on this occasion. Although this is an unwritten rule, I hope the chairmen of panels can apply the same taking into account the relevant circumstances so that while ensuring equal opportunities of Members in speaking, adequate time is also allowed for Members to discuss their views, especially the more fundamental and critical views.

President, regarding the provision on disorderly conduct under Rule 45(2) of the RoP, some Members have already quoted a number of examples from overseas countries as illustration. Let us put aside for the time being the fact that overseas legislatures are elected by "one-person-one-vote" elections. Even if we merely consider the facts, we can see that in overseas legislatures, actions to evict or sanction any member must be taken by the Speaker and not the panels. Overseas legislatures may even refer these matters to a special committee. For example, the Committee on Standards and Privileges in the United Kingdom will appoint an independent commissioner to investigate into the matter and prepare a report. The report will then be submitted to the Committee and then the Parliament for a decision by vote. Stringent requirements have been laid down and the power will not be vested with the panels so easily.

In fact, the power to suspend the meeting is more than enough. It is unfortunate that we have to deal with this matter here today. While it is important to ensure adequate scope of political deliberation, I hope Members who challenge the RoP can do so in a measured manner so that they will not step out of bounds. As mentioned by some Honourable colleagues just now, in addition to the RoP, there are also the laws of Hong Kong. Every Member is equal before the law. If cases involving bodily attacks happen, the Member concerned must be sanctioned, even though they may get a temporary respite while the meeting is in progress.

I wish Members can be free from the restrictions imposed by rules and regulations on the one hand, and exercise more self-restraint on the other. Thank you, President.

MR RONNY TONG (in Cantonese): President, my assistants and friends said to me yesterday, "Ronny, you had better not speak on this subject tomorrow so as to avoid getting into a dispute you will regret later on." Just now, Mr WONG Yuk-man asked me if I felt shameful. The crux is I indeed know what shame is. It is exactly because I know what shame is that I think today may be a day when "my enemies gladden and my relatives sadden". If I have different views, I should stay not in silence but make them clear in public.

President, more importantly, I absolutely believe or I am convinced that the pro-democracy camp is embraced by the people of Hong Kong because of the universal core values we uphold. The essence of democracy lies with acceptance. The pro-democracy camp should "call a spade a spade" both inside and outside of this Chamber. The pro-democracy camp should neither stay silent nor refuse to speak out simply because of some embarrassing remarks or accusations made by certain relatively radical fellow members.

President, today I am in an extremely unfortunate position because my views differ from those held by Dr Margaret NG and Mr WONG Yuk-man. Hence, I am obliged to explain myself clearly. It does not matter how others perceive me or what views they hold about me, I am obliged to explain myself clearly.

President, I differ from Dr Margaret NG and Mr WONG Yuk-man on three points. Our first difference is that I do not accept that the Legislative Council is perceived as the most supreme and sacred place. On the contrary, I think the Legislative Council belongs not to Members of the Legislative Council, but the people of Hong Kong. The Legislative Council is the highest institution representing public opinion; it is not an institution representing personal views.

President, more importantly, the Legislative Council is not made up solely by Members from the pro-democracy camp. There are also Members belonging to other factions and groupings. My stand will remain the same until the day I truly witness a Legislative Council formed by universal suffrage elections. It is

exactly because the Legislative Council does not belong to Members that we must maintain its dignity and ensure its smooth operation. In turn, the dignity and smooth operation of the Legislative Council lay the foundation of credibility in the minds of the people. Hence, if there are people who think that what they say is absolutely correct If there are people who hold firmly the belief that the Rules of Procedure (RoP) of this Council and its operational procedures are sacred, this is something which I cannot accept.

President, our second difference — this point is perhaps the most important one — is that I personally do not consider that there are things which are absolutely correct, or conversely, absolutely incorrect in this world. President, although I am not a believer of the golden mean, I think every belief and ideal must be subject to an appropriate level of restriction and adjustment. For that reason, I do not accept that religious beliefs shall cause brutal killings, social unrest or turmoil. I cannot accept anything like that.

In that case, can I accept violent revolutions initiated by the people against political suppression? President, I still find this idea difficult to accept right up to this very moment. Of course, if the situation in China or Hong Kong shall become unacceptable, I might change my view. However, luckily, we have yet to hold any discussion in this respect in this Council.

President, Mr WONG Yuk-man just said that if the pro-democracy camp supported the relevant amendments, the freedom of expression would be suppressed. President, this is exactly the crux of the problem. No human right or core value is absolute in this world. Although I am a defender of free speech, I think this freedom should also be subject to control. Otherwise, the offence of libel will not be enacted in different countries of the world. Every freedom shall be subject to appropriate control and the question lies with how to draw the line. I can accept the control imposed by this line today. What I cannot accept is the claim that free speeches will be wiped out by the extension of this line.

President, the third point I must raise relates to the statement just made by Mr WONG Yuk-man. He criticized that Members of the pro-democracy camp were using the amendments to the RoP to suppress the freedom of speech and expression so that all Members are barred from enjoying such rights permanently.

President, I do not agree with his statement because we can always amend the RoP. That is exactly what we are doing today: To amend those provisions which we previously considered appropriate and adequate. Amendments can also be made by Members of the next term of Legislative Council. For the 60 Members of the next term — sorry, not 60 — for the 70 Members of the next term of the Legislative Council, including Mr WONG Yuk-man and Dr Margaret NG if they get re-elected, they can of course introduce amendments to revert all the amendments passed today. There is absolutely no problem with that. However, the supreme power of the Council At this moment, we have the responsibility of facing the people of Hong Kong and exercising self-restraint. Therefore, I do not consider today's amendments will result in the permanent suppression against free speech.

President, another more crucial point is perhaps about what are these controls actually? Would these controls, as depicted by certain Members such as Ms Cyd HO and Mr WONG Yuk-man, or even Mr Frederick FUNG, result in utmost restrictions on the freedom of expression? President, I do not think so. Why do I say so? Today's amendments are merely intended to bring the power of the chairmen of other committees on a par with that of the President of the Legislative Council. If some Members say that these amendments will suppress the freedom of speech and expression, it is tantamount to saying that they no longer have the freedom of speech and expression at meetings of the Legislative Council because this power is already vested with the President of the Legislative Council.

What is the difference now? The only difference is that colleagues from both the last term and previous terms of Legislative Council seemingly consider that work of the Council can be undertaken by committees of different levels. As the powers of the President of the Legislative Council and chairmen of standing committees are different from those of chairmen of other committees, chairmen of other committees need not be vested with those powers.

President, this is the core question we need to discuss. Is this view correct or not? If Dr Margaret NG, Mr WONG Yuk-man, Mr Frederick FUNG and Ms Cyd HO are correct, what we should really do is to amend the powers of the President of the Legislative Council by deleting Rules 44 and 45. This may be the logical stance to take.

However, President, I do not accept the notion of hierarchies in respect of the work of the Legislative Council. As I have made clear just now, the most important idea is that the Legislative Council does not belong to Members. We are just representatives, and the Legislative Council belongs to the people of Hong Kong. That is my fundamental belief. From the point of view of the people of Hong Kong, there is no difference between various meetings of the Legislative Council. With advanced technologies and massive information exchanges, members of the public can listen to or watch the proceedings of all meetings of the Council on radio or television. They can even come to observe the meetings personally in the Legislative Council Building and gain first-hand experience of our work, just like the students sitting in the public gallery now. At present, our Panel meetings are often attended by individual members of the public and deputations.

In that case, the hierarchies should never exist. President, given that there is no hierarchy in respect of the work of the Council, and if we accept from the point of view of maintaining the smooth conduct of the Legislative Council that the President of the Legislative Council can to a certain extent restrict the actions and speeches of Members in order to uphold the dignity of the Council, I think this power should most certainly be extended to the chairmen of other committees.

It is exactly for this reason that I have indicated acceptance for the relevant amendments at the meeting of the Committee on Rules of Procedure. I have never thought that by accepting the relevant amendments, I will attract vicious condemnation or attack by Members such as Mr WONG Yuk-man, Mr Albert CHAN, "Long hair" and others. I have never thought about this. Of course, the fact that I have never thought about this does not mean the issue is non-existent. Likewise, the fact that the issue exists does not mean I should avoid it.

President, before our discussion today, some colleagues from the pro-democracy camp, particularly those belonging to the Democratic Party, told me that they could not accept any extension of the existing level of restriction as imposed under Rule 45(1) (that is, the rule about "a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate").

President, I think if we examine this question from a macro point of view As I have just said, this power is already vested with the President of the Legislative Council. During my brief — yet seemingly quite protracted — political career, it seems that this power has never been exercised by the President at meetings of the Legislative Council. Many a times, I considered that Members were making some repetitive, tedious or irrelevant remarks. But even though this situation has happened time and again by my reckoning, I do not recall the President ever exercising this power. Of course, if Dr Margaret NG considers that the President has indeed exercised the relevant power, she can correct me later on when she speaks. I will gladly oblige.

However, the crux of the problem is not the frequency of such occurrences. Parliamentary culture is the culmination of constitutional rules and practices. It is only under extreme circumstances that the President of the Legislative Council will exercise this power with his wisdom. Of course, whether the President of the Legislative Council will come under criticisms when exercising such power Both the President and the Legislative Council are subject to monitoring and criticism by the public. As I see it, this is an integral part of the checks and balances mechanism.

Given that Rule 45(1) has been around for a long time, and its operation has never attracted criticisms about democracy or parliamentary spirit being hampered during previous implementation, I think it is appropriate to extend this power to the chairmen of other committees so as to eliminate the notion of hierarchy. Moreover, I do not think such a change will result in any unacceptable political consequences.

Of course, what I said just now may well become my "famous last words" if something did happen tomorrow. Then, I may have to eat my humble pie right away. However, we must make a decision at this point of time. Should this amendment be endorsed by a majority of Members? I have absolute confidence that this amendment will be supported by a majority of Honourable colleagues.

President, I honestly do not know whether the Civic Party will vote in the same line as the Democratic Party to oppose the amendment to Rule 45(1). Nonetheless, I will vote in support of the amendment.

MR LEUNG KWOK-HUNG (in Cantonese): President, having heard Mr TONG's speech, I feel puzzled as to why he did not understand that when the power was extended downwards, and if

PRESIDENT (in Cantonese): Mr LEUNG, please put on your microphone first.

MR LEUNG KWOK-HUNG (in Cantonese): I think he has made a fundamental error about absolute power, such as that vested to you President..... You do enjoy absolute power and I must leave the Chamber if you say so; I have to repeat myself if you ask me to do so; I must have made the wrong analogy if you say so; I must have digressed from the topic if you say so. Mrs FAN used to treat me like that, and you are somewhat better than her. In the past, I might have just spoken a couple of sentences and Mrs FAN would say, "Sorry, please leave the Chamber." Back then, Dr Margaret NG had, out of righteousness, written a letter to Mrs FAN, saying that her practice had serious implication because if the President invariably ordered a Member not to come back for the meeting whenever she considered the Member's speech unacceptable, the Member concerned would not be able to vote, right? Thereafter, Mrs FAN had slightly changed her ways.

In fact, how come the President can now exercise absolute power? One can say it is a "necessary evil", or a rule which facilitates the smooth conduct of meetings. However, if the said power is devolved, such that the chairmen of other subcommittees and committees of the Legislative Council may also be like the President, who can decide on everything, and even matters relating to free speech, In fact, when it comes to whether a Member is speaking in an extended — or "冗長"¹ as the Chief Executive would say — or repetitive manner, honestly, is the President necessarily wise enough to make a judgment? President, even you may not have such wisdom, what qualifications do you have to judge me then?

Once I was putting up a self-defense in court and WOO Kwok-hing said to me, "Mr LEUNG, I understand what you said. Say no more, please. You are

¹ At a previous Council meeting, the Chief Executive said "冗長" when he meant to say "冗長" (meaning in an extended manner).

wasting the time of the Court which is very precious." I then told him, "Please get a piece of paper and write down the next sentence I am going to say. If you guess correctly, I will say nothing more." Finally, Mr Justice WOO Kwok-hing could do nothing but let me continue. However, I cannot do the same thing here. I only retorted with one sentence, and the President already told me to leave and asked me to behave properly. It seems that Mr TONG still does not get it. Is this fairness? This is even more unfair; this is "equitable unfairness". Of course, different standards of fair treatment would apply for different matters. This is the latest concept in terms of human rights.

Let us go back to the incident of throwing objects. That relates to me specifically, right? It is about that incident where I threw four bottles at Matthew CHEUNG, right? I threw four kettles four bottles, not four kettles — things have yet to develop to such a stage. I threw four bottles at him, what harm had been inflicted? Of course, his pride was hurt and so was our image because such a scene should not have happened in the Legislative Council. That is it. In fact, Mr LEE Cheuk-yan also asked me on that day whether I could promise not to throw any objects again, but I said I would not make such a promise. Finally, he decided to adjourn the meeting and I did not return to the meeting afterwards.

Of course, you may say another Member can follow suit when the committee meeting resumes. But the same thing can also happen at a Council meeting. If 23 Members throw objects at a Council meeting and each scuffle lasts for 10 minutes, that will take up 230 minutes — that is, if Members from the pan-democratic camp do something like that. Of course, I do not encourage them to do so. They are unwilling to do so, and we will not force ourselves on others. Actually, this is just a means to highlight the existence of injustice in this Council through struggles in the parliament. I can tell you all that I have no regrets until I die. Is this legislature worthy of any respect? What kind of legislature do we have? It is formed by small circle elections. How can I give it any respect? President, it does not help even if you have my respect because I do not respect the system. That is why I have created trouble in the public gallery in the past and in this Chamber now. I will never stop. This is the first point.

Second, I must uphold all my rights to struggle in the parliament. But I have already said that I would not hit him. Under the circumstances, our

kind-hearted Members notice that the problem is spreading and they try to come up with suggestions to resolve the problem. Why not follow the feat depicted in the *Journey to the West*, just blow towards a handful of hairs and there come 19 or 39 Mr Jasper TSANGs? In other words, President, you are made to become an evil spirit attached to other people, "I am Jasper TSANG. I now exercise this power on behalf of other people." This is of course totally wrong because you are, after all, a Member returned from direct election. I had once asked you if you were a member of the Communist Party, but you gave no reply. Notwithstanding, people still vote for you and I admire you for that. Now, you are vested with an autocratic power, an absolute power. Will it corrupt absolutely? I am not sure.

In fact, this power only serves to facilitate the smooth conduct of meetings. President, you also make mistakes sometimes. If you say that the meeting is adjourned, I will leave this Chamber. Why is it necessary to evict me, right? However, this is not what you said. Buddy, how much time of the people of Hong Kong I have taken up for throwing things? Please be more practical. However, our legislature is formed under a system of small circle elections. How much damage has it done? People study because they want to be more sensible, right? As the saying goes, "Penny wise, pound foolish". If you want to uphold the dignity of the Legislative Council, why do you not demand for universal suffrage? You should do so if you wish for respect.

We will have the greatest respect if the Legislative Council is allowed to exercise its legislative functions freely without the restriction imposed by Article 74 of the Basic Law — or is it Article 79? I cannot recall correctly, it should be Article 74 — and when making laws, the Government should not say, "Students, please go and consult the President whether public expenditure or government policies is involved". This has in effect taken away our functions; we can only sit here like idiots and play with the Government. Sometimes when an amendment is proposed by Dr Margaret NG, I want to tell her to forget it because it will be in vain. Our proposal is useless because the Government already has secured enough votes. The situation is like eating leftovers. Everything has been prepared and you must eat it even if it stinks. After eating and shitting, some people would say they were in fact being forced to do so. The vivid examples that we can still recall include the railway merger legislation, The Link, the West Kowloon development and the so-called constitutional reform package last year. The situation is the same every time.

The Council has no dignity because the system is rotten. I do these things and I change my ways after I became a Member because I must fight for justice on behalf of the people of Hong Kong. I have to remind them constantly. You may say I need not throw four plastic bottles, but I know the reasons for my action. That is my way of expression. It is alright as long as no violence is involved.

Today, do you people want to act like the Monkey King by plucking one hair out and change it to one dozen persons, right? Do they have any basis for such power? Can a *coup d'etat* be allowed? Is it alright to set a bad example for the children due to some misguided pre-conceptions? If you are so worried about setting a bad example for the children, then stop airing the footages about the Libyan civil war because people were killed in the civil war. You should not show the pictures of Osama bin LADEN either. Who are you? Do you think you can block some people off just because you think their actions have a bad influence on others? AI Weiwei is such a person. He is an independent character, right?

My rationale is simple. My point is that I do not mind if someone is doing a bad thing out of good intention. But I have already cautioned you that this is something you cannot do. At present, criminal laws are available to sanction us. If we throw things or if we act disorderly, the matter can be settled by adjourning the meeting. Why is it necessary to propose an irrevocable power such that Members are evicted and denied the right to vote? Why is it necessary to expand this power? This is unexplainable. If you really want to punish us, deduct our salary by all means. The *Wen Wei Po* said we were greedy for money, and we should be afraid if our salary is deducted. Why is this course of action not taken? Our most important right is to take part in political deliberation and voting in the Legislative Council. It is impossible to deprive us of our rights.

In fact, half of the Members in this Chamber are not returned by "one-person-one-vote" election, but they also have the right to participate in decision making in this Council. This is indeed the greatest insult. If it is not violence, what is it? What else can I do if not throwing bottles? Thirty Members are not returned by "one-person-one-vote" election, yet they enjoy the same right as we do. Isn't that the worst kind of inequality? I throw bottles because I have to oppose to such inequality. I do not throw bottles at Members; I just threw them at officials. What is wrong about this? I want to tell students

that it is a sin if you remain silent in face of injustice because other people are made to suffer together.

When Socrates was arrested, he was alleged to have corrupted the young people of Athens for disbelieving in God. He said, "The hour of departure has arrived, and we go our ways — I to die and you to live. Which is the better, only God knows." These are words eloquently spoken, yet the preceding words are even more interesting: "Still I have a favour to ask of them. When my sons are grown up, I would ask you, O my friends, to punish them; and I would have you trouble them, as I have troubled you, if they seem to care about riches, or anything, more than about virtue; or if they pretend to be something when they are really nothing, then reprove them, as I have reprovéd you, for not caring about that for which they ought to care, and thinking that they are something when they are really nothing. And if you do this, I and my sons will have received justice at your hands." Those were the words spoken by Socrates to the people who sentenced him to death. He told them to do good deeds, rather than things even they themselves did not understand; he told them to be practical. If the intention is to do good deeds for this Council, they should join the "five-district referendum" campaign. The Democratic Party should be reprovéd. They have been told to do good deeds so that this Council can actually perform its functions of political deliberation and monitoring the Government. Yet they do not listen, and only engage in some senseless things.

President, you have been a Member for quite some time. Starting from 1977 when I opposed to the repealing of laws by TUNG Chee-hwa at the public gallery, how much time have I taken up? Please do some calculation. Does it add up to 30 minutes? It may add up to less than 30 minutes even under your chairmanship. As Mr Ronny TONG said, meetings of the Council were broadcasted live. Hence, I use this platform to reveal the extreme injustice of this Council. Why do you feel that the dignity of the Council has been undermined?

Men of totally different principles can never act together. But the problem lies with the utterly wrong interpretation you have about powers, the vesting of powers, as well as the use of powers to suppress freedom. Our powers are vested by whom? They are vested by the electors. President, you have the authority. Let me read you another quotation, "Authority that exists not for freedom is no authority, but brutality." That is talking about you. This is neither a place with justice nor freedom. Those words come not from me, but

from Lord ACTON who had been frequently quoted. Those words sum up what happens here today. The amendments have nothing to do about freedom, but authority — the authority to stifle free speech. Thank you, President.

MR ALAN LEONG (in Cantonese): President, there are five Members belonging to the Civic Party in this Council, and four of us will respectively vote for and against the two resolutions proposed by Mr TAM Yiu-chung. Four of us will vote against the resolution in relation to Rule 45(1) of the Rules of Procedure, and Mr TONG will vote for it. Separately, four of us will vote for the resolution in relation to Rule 45(2) and Dr Margaret NG will vote against it.

President, it is an objective fact that individual members hold different stance from the Party's. You may well understand how hard and agonizing the Civic Party has struggled mentally when it comes to the subject under discussion today.

Honestly, the Civic Party is disheartened by the need to discuss this subject today. President, why are we disheartened? We must really ask ourselves why some Members consider it necessary to resort to drastic actions in order to uphold their rights to free speech. More importantly, many Members who resort to this means of expression have the support of the people; they come from the people. These Members consider that this means of expression and this kind of behaviour are the most effective way to exercise the freedom of expression, and their views indeed have the support of the people. I often say that those who come from the people must ultimately face the people, even although they may not have to do so every day. President, they must face the people at the election held once every four years.

We are disheartened by the emergence of this way of expression in the Council because it means certain members of the public must find it helpful in venting their grievances. Is that not an issue our community must reflect on as a whole? The Civic Party of course considers that we must do so. This also explains why we feel disheartened by the discussion today on this amendment. The people of Hong Kong have always advocated for peaceful and rational debate, they hold that problems can be addressed within the system and truth can be ascertained through debate. However, why do some people no longer consider such a belief worth embracing?

I recall that during my visit to the district, an "uncle" said to me, "Alan, you are way too gentleman. Just like in a game of chess, other people are already moving their kings and queens haphazardly, yet you still play by the rules. You are really stupid. In fact, I do not see what good it will bring." President, of course I went on to explain to him sincerely that it was just a matter of different means of expression. I said that we were used to a rational and peaceful means of debate and called for his understanding. However, President, I cannot say that the view held by this "uncle" is ridiculous and utterly senseless. That is the first reason why we feel disheartened.

President, secondly, the Civic Party feels disheartened that we need to hold this debate today because many issues discussed in this Council have been dragging on for years, say, even eight or 10 years; yet the officials are completely indifferent. Hence, we may be approaching a tipping point as we repeatedly have this sense of being excluded and disrespected. Does our discussion today mean that we are approaching a tipping point? For this, the Civic Party feels disheartened.

President, some Members pointed out that various measures such as salary deduction and suspension of duties have been adopted in overseas legislatures. Just now, Dr Margaret NG of the Civic Party has already made it clear that these powers are not exercised by the Speaker. Such sanctions are only imposed after thorough debate by the legislature upon a motion moved by a member and a vote taken. Basically, we are not discussing these issues today. Dr NG has also pointed out clearly — as I could not have explained it better, I will just reiterate her point — Dr NG has clearly explained that there are two types of committees: those which deliberate on political issues and those which make decisions. For those decision-making committees, as stipulated clearly in Rules 44 and 45 of the Rules of Procedure, the President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee are vested with greater powers to facilitate control of order and voting in meetings. Those powers exist for a reason. Hence, as we discuss the amendments to Rules 44 and 45(1) and (2), we would never say that the issue is insignificant when compared to overseas legislatures and hence can be treated lightly or casually. That is absolutely not the stance taken by the Civic Party. We consider the amendments very important. As these amendments are so important, the Civic Party well understand the profound implications involved. That is why we have

thoroughly discussed and debated the issues involved before coming to our voting decision today.

President, we stand together with the general public in our hope of maintaining order in Council, or at least, of assuring that government officials and members of the public who attend meetings of the Council will not feel intimidated or their personal safety threatened. Hence, for these reasons, we have kept thinking whether the amendments today have struck the right balance.

Of course, there is another consideration which Dr Margaret NG has presented just now in a most definitive and forcefully manner. In order to strike a right balance, the mainstream view of the Civic Party is that in upholding the principle of rational discussion, we also have to take into account the people's sentiments because when members of the public come to attend meetings of the Legislative Council, they would not want to receive any unseemly treatment. Some people may feel indignant about the treatment received by government officials. Hence, on balance, we finally decide on the mainstream view that in relation to the amendment to Rule 45(1) about a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate, the chairmen of panels should not be vested with the same power as the President of the Legislative Council.

However, in respect of grossly disorderly conduct, we consider it appropriate to vest the power to the chairmen of panels for the purpose of handling the situation. All in all, we hope that the need to exercise such power will never arise in future. Even more so, we hope that Rules 44 and 45(1) and (2) can be reverted to their original form in the not too distant future when Members no longer see the need to adopt non-peaceful and non-rational means of debate in order to express their views and give effect to the right of free speech. It is also our earnest hope that we will soon achieve *bona fide* universality and equality in respect of our constitutional development so that all citizens can make their views known to the rulers through rational and peaceful means of expression. We hope that in the decision-making process, Members will be respected so that they no longer hold the view that they will be supported for adopting non-peaceful and non-rational means of debate. We hope that the need for invoking the powers in relation to the amendments will never arise.

Hence, President, on behalf of the Civic Party, I have stated our voting preferences in relation to the two motions and explained our stance. I so submit.

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

MR IP KWOK-HIM (in Cantonese): President, in the past few years, the solemn parliamentary culture in Hong Kong has obviously been changed. In open meetings of the Legislative Council, Finance Committee and the Chief Executive's Question and Answer Sessions, individual Members have hurled bananas, insulted public officers and jostled with security officers, having no regard of the Rules of Order. They openly disrupted the order of meetings, setting a very bad example to the next generation of society. The Legislative Council must face this problem squarely and restore order to this Council.

I believe it is no surprise that Mr WONG Yuk-man, Mr Albert CHAN and Mr LEUNG Kwok-hung will oppose the proposed amendments to Rules 44 and 45 of the Rules of Procedure. It will be surprising if they do not raise any opposition because they are the ones who initiated parliamentary violence. If they glorify their acts of violence in this Council as "fights for democracy", may I ask how is democracy in any way related to the ploys of hurling bottles, slippers and gingko seeds and calling public officers as "dog officials" and "eunuch"? This kind of "violent politics" is in fact an "anti-democratic" hooliganism.

It has been said that the parliamentary culture in Hong Kong is increasingly "Taiwanized". The incident of JU Gan-jeng, a Legislative Yuan member of the Democratic Progressive Party, who jumped onto the President's platform and punched the then Legislative Yuan President LIU Kuo-tsai in 1988 was generally regarded as the budding of the violent culture in Taiwan parliament. Talking about Taiwan politics, I believe Mr WONG Yuk-man is the expert. He definitely knows better than I do. Taiwan in the 1980s was still under the reign of Kuomintang. Minority parties in the Legislative Yuan often had no formal channels to put forth their policies or political propositions and their news were seldom covered by the media. It is thus understandable why they were forced to adopt violent means.

However, Hong Kong is a pluralistic society. Any political aspiration or proposition can find its way to the light. Political parties, be they large or small, and individual Members can have opportunities to appear in the media and Members have many formal channels to express their views to the Government. It is thus unnecessary for individual Members to resort to extreme recalcitrance to express their aspirations in this Council. The only reason for their untiring and intensifying insistence is that they want to use radical acts as a selling point to reciprocate for their voters' support.

Earlier in a House Committee meeting, Mr LEUNG Kwok-hung has already voiced his opposition to the amendments, saying that the President in Council is neutral in meetings but panel chairmen is not, thus claiming that it is groundless to give panel chairmen the power to evict Members from a meeting and that Members should "consider their status in every act". Originally, it is not imperative for panel chairmen to have the power to evict Members. It is precisely because Mr LEUNG Kwok-hung who have disregarded his status and hurled plastic bottles at Secretary Matthew CHEUNG in a meeting of the Panel on Manpower that has prompted a majority of Members at the meeting to think that it is necessary to give panel chairmen this power. Dr Margaret NG just asked why standing committees should be given this power but not other committees. In fact, we agree with Mr Ronny TONG's certain logics. He said that if we think that this is wrong and has deprived Members of the right to speak, then, by this logic, the power given to the President in Council and chairmen of other standing committees should also be annulled. However, the function of panels is to maintain the operation of the Legislative Council. I do not see why chairmen should have different grading, while some chairmen who can exercise this power, other second-grade or lower-grade chairmen cannot. Hence, in this regard, I truly cannot agree with these logics.

The proposed amendments, apart from empowering panel chairmen to evict Members whose conduct is grossly disorderly, also empower panel chairmen to order Members who persist in irrelevance or tedious repetition to stop speaking. Those who oppose the proposed amendments, however, are of the view that Members speaking in panel meetings are subject to a time limit and it is thus unnecessary to give panel chairmen this power. In fact, Members speaking in meetings of standing committees are also subject to a time limit and chairmen of standing committees have long been vested with the power to stop Members who persist in tedious repetition or irrelevance from speaking. Thus, I do not see

why the power to stop Members from speaking, which has been vested to chairmen of standing committees, is not granted to panel chairmen in the amendment to enhance their power to conduct the meeting? Why does this power have to be singled out? Why do we not agree to include this power? I just listened to Mr Albert HO's speech. He thinks that it is unnecessary to give chairmen the power to stop Members from speaking. In fact, it is clearly provided in the Rules of Procedure that only when a Member has persisted in irrelevance or tedious repetition may a chairman direct the Member to discontinue his speech, so as to ensure that the proceeding of the meeting is effective, orderly and under control.

The proposed amendments are the first step to restore Council order. I heard Mr Albert CHAN say that many people in the community are outraged at the amendment to the Rules of Procedure. However, I also wish to tell Mr CHAN that I have heard many members of the public who have expressed extreme dissatisfaction towards the present violent parliamentary culture. I believe this is the most important reason why a majority of Members feel the need to use this opportunity to propose these amendments. Frankly, even if the proposed amendments are passed, it does not necessarily mean that the acts of physical and verbal violence in this Council, which I am very much concerned about, will be rooted out. It is because being "driven out from the meeting" may not be a punishment to individual Members; it may even be a prize because they can "call it a day" and at the same time "steal the limelight". The Democratic Alliance for the Betterment and Progress of Hong Kong is thus of the view that it is necessary to further examine the rules of procedure in parliaments overseas, so as to formulate a set of Rules of Order that are suitable for the continued development of the political system in Hong Kong.

With these remarks, President, I support the motion.

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

MR WONG KWOK-KIN (in Cantonese): President, on behalf of the Hong Kong Federation of Trade Unions (FTU) I speak in support of the two resolutions. Actually, I think it is good to have this discussion today because there is a general dissatisfaction in the community about the Legislative Council.

People are unable to tell what has exactly happened in the Legislative Council and may thus have extended their dissatisfaction at the conduct of certain Members to the entire Legislative Council. I remember that an opinion poll conducted earlier revealed that the popularity of the Legislative Council was even lower than that of certain government departments, the Chief Executive and senior public officers. We are frequently criticized by the newspaper that we are strict on others but lenient on ourselves. I thus hold that this discussion can show the public that we, the Legislative Council, do have the spirit of self-discipline.

In fact, I think it is appropriate to propose the two resolutions which seek to uphold the order of meetings in its normal, smooth and fair manner. It is easy to understand why meetings should be conducted smoothly. By fairness, I mean Members should not act in a disorderly manner to the effect that other Members at the meeting or the proceeding of the meeting is jeopardized. When the proceeding of the meeting is jeopardized, the interests of the public are also jeopardized.

I thus think that it is good to have the problems raised for discussion. Even if the resolutions are not passed in the end, they can show that we are answerable to the public and the public will be able to see which political parties or Members are harbouring these conducts and which Members are shielding these conducts. It is good to have this discussion, such that the problem can be revealed and the public will be able to see that the Legislative Council has started to discuss these problems and that many Members are dissatisfied about such conduct and will "say no" to them.

In fact, when we were at the district or conducting surveys in the community, many residents or members of the public complained to us, upbraiding us for not putting a stop to such conduct. I remember recently when I took the bus, a man, who suddenly and deliberately walked up to me and sat by my side, talked to me about this subject. He asked me why we had done nothing to stop such conduct. I think that even if the discussion today does not come to any conclusion, it can indicate that we are answerable to the public and they will then know that we have done something. We thus support the resolutions.

I heard just now many Members explain that Members are elected by the people and thus they act in such a way to be answerable to their voters. In fact, I have a question. Has a Member been authorized by his voters when he was

elected to act in such a way in the Legislative Council? How many people truly want to elect a Member into the Legislative Council who will act disorderly, for the purpose of impeding the proceeding of meetings? Frankly, democracy and freedom of speech are not the grounds for shielding the inappropriate conducts.

I believe the resolutions have not hindered the freedom of speech of any Member. I mean, there is simply no one who can stop a Member from saying what he wishes to say. The point is, whatever a Member does at a meeting, he should not hinder the proceeding of the meeting, nor should he hinder other Members from discussing a policy or expressing their views. Hence, on this premise, the FTU will support the resolutions. Thank you, President.

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

MR PAUL TSE (in Cantonese): President, first, I wish to specifically point out two distinctions. First, the difference between inside and outside the Council; and second, the difference between words and actions. Precisely because of these two distinctions, later I incline to vote in the same way as certain colleagues; that is, I will vote for the amendment to Rule 45(2) of the Rules of Procedure (RoP) on regulating Members' conduct, but at this stage I will not vote for the amendment to Rule 45(1) of the RoP on regulating tedious speeches.

The Legislative Council, like any other institutions in the establishment, must have rules. The discussion on the amendments to the RoP today is self-evident that we have to lay down rules. I will not repeat but I cannot agree more with the points raised by Mr Ronny TONG just now that the Legislative Council is not as supreme and sacred as it is deemed. However, generally speaking, I cannot say that I am the type of person who always abide by the rule. Mr WONG Yuk-man also questioned me, saying that Mr Paul TSE could behave shockingly once he got mad. Nevertheless, I will choose the occasion or the circumstance to behave in such a way. Although I had said or done something publicly and in front of the media camera which might have been regarded as unorthodox or had been openly criticized by members of my profession, and I had even been severely denounced or punished for that, there is a line I will never cross, that is the important line that draws the distinction between inside and outside the Court. By the same token, if the dignity of the establishment

(including that of the Legislative Council) has to be preserved, the distinction between inside and outside the Council should also be drawn.

I very much agree as well as understand and support that under certain circumstances, you must fight at any cost in order to express your views or take to the streets to vent your dissatisfaction, and you may even resort to take actions which are considered impulsive. Nevertheless, I still maintain that such conduct should not appear within this Chamber; otherwise, we are not qualified to talk about democracy because the Chamber is a place for rational discussion.

I always emphasize that "politics and law come from the same door". Politics and law are the same. Even if people, or Members, have regarded themselves to be unfairly prosecuted, I have never heard of any barristers, lawyers or street fighters who dare to openly challenge the authority of the judge in court, or to hold the Court with contempt

MR LEUNG KWOK-HUNG (in Cantonese): President, I have to point out that I had done so. I had chided MACKINTOSH.

PRESIDENT (in Cantonese): Mr LEUNG, what is your question?

MR LEUNG KWOK-HUNG (in Cantonese): He said that he did not believe someone would dare to do that, but I had chided MACKINTOSH who had passed away.

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

MR LEUNG KWOK-HUNG (in Cantonese): If he does not know, he had better say nothing.

MR PAUL TSE (in Cantonese): President, if my memory does not fail me, no Member has been held contempt of court. Even if there have been occasional use of inappropriate expressions, or as Mr LEUNG Kwok-hung just said, he had a

row with Mr Justice WOO Kwok-hing, the Court is, to a certain extent, usually more tolerant and more sympathetic to people with no legal representation. This, however, does not mean that the conduct in this Chamber, I repeat, it is not about what one says but what one does, can be accepted by any court.

President, everything is actually about a matter of balance. Mr Ronny TONG has just repeatedly used the word "balance". Apart from striking a balance, I think it is also necessary to maintain a stance that is reasonable, proportionate and within the yardstick. All these are common sense. Then, where should we place the point of balance when we discuss this topic? Some colleagues mentioned the dignity and smooth operation of the Council, which I agree and no further elaboration is needed. However, I wish to raise the point of fairness. Fairness is multi-faceted, one of which concerns time allocation. Some colleagues pointed out that the disorderly conduct will not take up too much time. The meeting can be resumed once the Member is asked to leave the Chamber. However, more often than not, at important meetings, such as when the Chief Executive or the Chief Secretary for Administration will attend the meeting to answer questions, which draw the attention of the media and the time schedule is tight, some colleagues will purposely behave disorderly, thinking that their conduct can draw people's attention. However, let us not forget that such meetings have a very tight schedule, every minute spent on the hubbub will deprive other Members of their right and time to speak. The disorderly conduct of some colleagues will deprive other colleagues of a fair allocation of time to speak. This is the first point.

The second point is the disruption caused. This point is also self-explanatory. Whenever the atmosphere of the meeting is affected, it will take some time to go back to normal. The third point is about pressure. Not only fellow colleagues feel the pressure, public officers or members of the public who attend the meetings also feel the same. As a colleague has just mentioned, the pressure can be tangible and intangible. Sometimes, violence is not restricted to hitting others with an object. Any conduct which threatens a person and causes the person to think that he is likely to be subject to physical harm has theoretically constituted a criminal offence, except in borderline cases where the rules are ambiguous and the police will not or do not wish to take liberties with law enforcement. As a matter of fact, strictly speaking, certain conducts of Members in the past might have logically and theoretically constituted a criminal act, even although no one has been hit by the object hurled. Hence, Members

had better not be over assertive about their accurate vision or think that they can be off the hook like the past. The truth is that their conduct has not reached the tipping point. As for the tipping point, while Members' conduct has not reached the point of prosecution, other Members of this Council have been very tolerant to their conduct. From the occurrence of incidents of violence, to written condemnation issued by certain Members, joined by an increasing number of Members, and to this discussion on the amendments to the RoP, it is in fact a process from action to reaction. When one side chooses to act on impulse, the other side will naturally consider whether they should react.

With due respect to the analysis made by Dr Margaret NG just now, I cannot accept two points made therein. First, she used the British Parliament as a comparison, but such incidents have not happened in the British Parliament, at least, not up till now. As we cannot imagine Premier League games to be like those played in certain African countries where players are often dismissed from the field or hit each other. Speaking of the British Parliament, at least I cannot recall any incidents of fighting among the members, there are, instead a lot of verbal sarcasm and verbal attack. However, if Dr Margaret NG thinks that such incidents have also happened in the British Parliament, I hope she can furnish us with her views as I also want to get hold of evidence in this regard.

Besides, I cannot fully agree with Dr Margaret NG's analysis because in her grand speech she has only expressed her concern about the situation, but she has not provided any relief to address the situation, as if she can only put up with it. However, I am afraid that in the context of today's parliamentary culture and public opinion, this situation can no longer be tolerated.

President, some colleagues, particularly those who oppose introducing the amendments, have emphatically pointed out that this Council is not a fair playing ground, thus Members should be allowed to do what they want; or the Members concerned only intend to reflect certain opinions in the community; or this Council as a venue to vent their emotions, and if these Members are deprived of this opportunity to vent their emotions, more violent incidents may happen in society. We can take these views as reference, but I wish to point out that however unfair Members find the election mechanism of the Legislative Council is (to a certain extent I agree with this remark), this is a progressive process which has been duly discussed and considered, and the process is progressively changing. Precisely because the establishment has adopted the system of

proportional representation, it allows Members who claim that they have an electorate base to act wilfully.

In fact, if we assess Members' political views by the level of acceptance in society, I believe that colleagues who have only secured 10% to 15% voters' support will not say so emphatically that they are the ones who have an electorate base. Take the recent radical views or the so-called "locust theory" concerning the new immigrants as an example. Should we allow people to express such radical views, even if they are supported by 15% of the public, should we allow them to raise such irrational, insulting and even racist views? Can anyone who feels discontented do whatever he wishes without restraint, as long as he has the support of 15% of the public? I am afraid this is not accepted by mainstream opinion.

As to the remark regarding the channel for venting discontents, I also have great reservation. In fact, some Members have just cried aloud to call on people to follow their practice. This is no longer a matter of venting ones' discontents, but a matter of calling on or appealing to young people to join their actions. This is incitement, abetment and provocation. I have great reservation about this conduct.

Some colleagues attempted to draw a distinction between the President in Council and other chairmen as the ground for not supporting the amendments. I agree with Mr Ronny TONG in saying that this is more than a matter of grading. Whoever takes up the post of the President in Council is not acting on an individual basis, instead he is acting on behalf of the whole Council and the whole establishment. This post can be taken up at any time by any other Member who has not gone through the election process, and he will exercise the power vested to the post. For example, the Deputy President often has to execute the duties on behalf of the President, but he does not need to go through the process of President election. Certainly, we can introduce specific amendment to lay down an election process in this regard.

Thus, by the same token, theoretically, the Chairman of House Committee or standing committees only temporarily exercise the power of the President in Council on behalf of the whole establishment. In this regard, I do not agree that only the President in Council can exercise the relevant power while other Members, in their capacity as Deputy President, cannot. Members have pointed out that chairmen of other committees are also elected among the members after

negotiation. In fact, the President in Council is often elected through negotiation among major political parties. Can individual Members like us say a word? Hence, I do not think the distinction is a big issue, but rather, let me reiterate that the most important distinction lies in whether it concerns with what one says or what one does.

Some colleagues are worried that this is the first step to restriction and it will be the day of darkness because this practice will jeopardize Members' freedom of speech and narrow down their room of expression. The amendments can also evict Members from the Legislative Council as long as two thirds of the Members of this Council agree to exercise the power vested under Article 79 of the Basic Law. Theoretically, there is indeed such a possibility, but in reality it is not so easy to exercise this power and it has never happened before. Members are under the scrutiny of society. If they abuse their power wilfully, they shall be appropriately sanctioned. Hence, the colleagues who have this idea may have over worried.

All in all, there is an incremental process to every measure and amendment. This time, with much regret, we have to deal with this issue because some practices and incidents happened in this Council are different from the past and Members are left with no choice but to amend the RoP with an incremental process. The present amendments seek to deal with grossly disorderly conduct without prejudice to the overall freedom of speech and vest chairmen of other committees with the relative power that has been conferred to the President in Council or chairmen of standing committees. I think this is acceptable. However, as for the sanctioning power in respect of speaking in meetings, I hold that at the present stage it is unnecessary to resort to this step. Hence, I will vote in accordance with my aforesaid stance. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon Mr TAM Yiu-chung to reply. This debate will come to a close after Mr TAM Yiu-chung has replied.

MR TAM YIU-CHUNG (in Cantonese): President, Mr Paul TSE's speech just now is already a very good concluding speech. He has responded to various points raised by Members during the discussion and I very much agree with his remark. I think Mr Paul TSE has given a proper analysis on the distinction between inside and outside the Council. He is in fact speaking from his experience. Before he joined the Legislative Council, he actually had been quite unruly. I think he is not inferior in any way to "Long Hair". Nevertheless, since he became a Member of this Council, he has acted in accordance with the Rules of Procedure (RoP).

Hence, as far as this issue is concerned, Members have indeed been very tolerant in this Council. Let us not forget that we only have one year or so left before our term ends. As I have said just now, there have been 28 incidents of Members acting in grossly disorderly manner in the current Legislative Council term and four incidents of Members hurling objects in the first three months of the year. Having witnessed these incidents, we hope that the Members concerned might have only done so out of a moment of anger. We hope that they will gradually restrain their conduct and come to comply with the RoP. However, our hope has fallen through time and again. In the end, the whole Legislative Council is subject to a lot of negative public opinion. Hence, to me, the minor amendments to Rule 44 and Rule 45 of the RoP proposed today are only a very small step forward. Rather than feeling happy, my heart aches to find that Members have so strongly criticized each others in their response to the amendments.

Some Members said that today was a day of darkness. I think this is an exaggeration. How can such a minor amendment lead to a day of darkness? What are the areas of darkness? They seem to say that no one will be allowed to speak in future. In fact, this is not the case. Mr Albert CHAN mentioned that a man approached him yesterday at the Belvedere Garden in Tsuen Wan, commending him and showing support to his violent conduct in the Council. It so happened that yesterday, I had also heard the views of three members of the public at different places and at different time from noon to evening.

The first encounter was at noon when I was having lunch. A housewife with her teenage son and daughter were having lunch among with a group of people. Knowing that I am a Member of the Legislative Council — I have not seen her for a few years — she started the conversation, "Why do Members of the

Legislative Council behave like that? You Members do not follow the rules and hurl objects at each other." She further asked, "Is such conduct brought over from Taiwan? This is not good. Members should not act like that." This is her comment. The whole conversation was not brought up by me and I did not say anything further. Housewives like her may not pay attention to every business handled in the Council, but they have also reacted strongly to such conduct. This is the view that I heard at noon when I was having lunch.

In the evening at the wedding banquet of my friend's daughter, I was approached by a man of the financial sector. The man frequently comments on the financial market, stock prices and other related aspects and can be regarded as a famous critic. He initiated a conversation with me about the conduct of Members in the Council. He was resentful about Members hurling objects and behaving violently.

After the wedding banquet, I took a taxi home. The taxi driver recognized that I am TAM Yiu-chung, and started talking to me. He mentioned Mr WONG Yuk-man. He first clarified that he was not a supporter of any political party or grouping and then he said, "However, I think that Legislative Council Members such as Mr WONG Yuk-man who is well educated and civilized, why did he act like that? His conduct is wrong. A meeting is a meeting. He should not act like that." He was cautious of not speaking too much while he was driving and when I reached my destination, which was only a short distance, he said to me, "Can I take up a little more of your time? There is something more I wish say." The taxi driver expressed similar views. Within one day, I do not know why, the people whom I came into contact with had said the same thing. They did not ask me whether we had to vote on the motion to amend the RoP today; they might not even know about this debate. However, people of different background and different walks of life are concerned about this issue.

Mr Albert CHAN would certainly say that many people support his actions. I am not sure about this, but from the people I met and as mentioned by Members who just spoke, the people whom we meet every day considered that Members should not behave like that in this Council. I thus very much hope that fellow Members, fellow colleagues can seriously and thoroughly think about this issue. You claim that your conduct is an act of resistance, but there is a limit to every act of resistance. If you go beyond the limit, things will turn out wrong. Your conduct will not bring better outcome and more commendations, nor will it

be conducive to attaining your goals and aspirations, unless you have a hidden agenda that I do not know.

Some Members who have just spoken are against this minor amendment to the RoP. They claim that half of the Members are returned from functional constituencies (FCs), which is a coterie election, and that these Members are not genuine representatives of the people. When they made such remarks, they should think about one point. If they claim that they are the only representatives of the people because they are directly elected, will their unpopular conduct and opinions ultimately affect other Members also returned by direct elections? People will be more cautious about direct elections, thinking that it is lucky that for the time being only a few Members among the 30 Members act like this. What will happen if more seats of direct elections are added and more Members of similar conduct join this Council in future? Will this be conducive to the image of Members returned by direct elections of geographical constituencies? Will more people prefer to have Members returned from FCs? I think this point merits our consideration.

President, some Members think that we need not amend the RoP as long as we know what to do. However, we have been waiting for this for a long time. Some Members said that amending the RoP does not mean that such incidents will not happen. Dr Margaret NG emphatically asked if the amendment could stop such incidents from happening. According to her logic, many amendments may be uncalled for. We frequently introduce legislative amendments to stop irregularities, but it is unnecessary to do so as irregularities cannot be totally eradicated. For example, the legislative amendment to increase the penalty of littering from \$500 to the present level of \$1,500 will be meaningless because even if the penalty is now increased to \$1,500, people will still litter

MR PAUL TSE (in Cantonese): Drink driving.

MR TAM YIU-CHUNG (in Cantonese): Yes. Mr Paul TSE reminded me that another example is drink driving. I do not have a driving licence. This will not happen on me. I thus have not thought of this example. You can say that we need not increase the penalty because there is no way to stop drink driving.

Related accidents will still happen. You may say that the penalty is harsh for you have only drunk a glass of wine, but there are people who will, intentionally or unintentionally, break the law.

All in all, if a certain regulation or ordinance is flawed, it is logical that we amend or enhance it, or lay down more restrictions on certain scenarios. We only know too well that the amendment cannot totally solve the irregularities. If we can do so, things will be much easier, right? Yet, if we do not even take this step, I think we are falling short of public expectation. We hope that after taking this step, the Members concerned can give a good thought to this issue and see whether they will continue to behave like that. Given the majority views of this Council and the overwhelming opinions in society, should they insist on taking this approach?

Moreover, you can well proceed with your act of resistance, but during a meeting, Members should act in accordance with the RoP. No one will stop you from doing whatever you wish to do outside this Council. Hong Kong is a society under the rule of law. You are allowed to do many things as long as you have not violated the law.

Members suggested that the two amendments should be voted on separately later. Some said that they would support one of them, while others said that they would support both. Everyone can make his own choice. However, I do not think that with the passage of the two proposed amendments, Members would be forbidden to speak under Rule 45(1). I believe all Members are aware that the President in Council and chairmen of panels or committees, once they take their seat, will be fair and impartial in discharging their role. I totally disagree that the President or chairmen will abuse their powers or be dominant once they take up that role. I believe Members will not do so. Members take turns to be chairman and everyone has a chance. Having worked together for years, we have an understanding that we will not deliberately stop others from speaking because of these two amendments, nor will we undermine others' freedom of speech. I believe this will not happen because we are not greenhorns in handling Council businesses.

As to Members' query of whether this will happen in future, I do not think so either. Our meetings are all open. Members can see for themselves that we will not abuse the RoP. On the contrary, when incidents happen, we would

often question whether there is any ambiguity or laxity in the RoP that had made it difficult for the President to make a ruling. It is the RoP that we question.

After I finish my speech we will proceed to vote. I earnestly hope that Members can reconsider and vote in support of both amendments which will be voted on separately. Thank you, President.

MR ALBERT CHAN (in Cantonese): President, may I ask him to clarify a point in his speech just now where he called on Members to act in accordance with the Rules of Procedures (RoP). His speech seemed to be misleading, or he may have made a mistake. Can he clarify whether he now seeks to amend the RoP, rather than asking us to act in accordance with the RoP? His speech seemed to be misleading and distorting the truth.

PRESIDENT (in Cantonese): Mr CHAN, this debate has come to a close after Mr TAM Yiu-chung has replied. I now put the question to you and that is: That the first motion moved by Mr TAM Yiu-chung to amend Rule 45(2) of the Rules of Procedure 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.

(During the ringing of the division bell, Mr Albert HO stood up)

PRESIDENT (in Cantonese): Mr Albert HO, what is your question?

MR ALBERT HO (in Cantonese): Are we now voting on Rule 45(1) or Rule 45(2)?

PRESIDENT (in Cantonese): We are now voting on the first motion, that is, the motion to amend Rule 45(2) of the Rules of Procedure.

(During the ringing of the division bell, Mr WONG Yuk-man stood up and yelled)

MR WONG YUK-MAN (in Cantonese): Suppressing freedom of speech, shameless!

PRESIDENT (in Cantonese): Mr WONG Yuk-man

MR WONG YUK-MAN (in Cantonese): The Democratic Party digging its own grave, shameless!

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please sit down immediately.

MR WONG YUK-MAN (in Cantonese): The bogus democratic camp attacking freedom of speech, shameless!

PRESIDENT (in Cantonese): Mr WONG Yuk-man

MR WONG YUK-MAN (in Cantonese): President, we leave this Chamber in protest.

(Mr Albert CHAN also stood up)

MR ALBERT CHAN (in Cantonese): President, you do not have to drive us out. We will not acknowledge this voting result.

PRESIDENT (in Cantonese): Mr Albert CHAN, please sit down immediately.

MR ALBERT CHAN (in Cantonese): The Democratic Party is kowtowing to the Communist Party. Shameless! The Democratic Party, shameless! Betrayal to their voters, shameless!

PRESIDENT (in Cantonese): Mr Albert CHAN, please leave this Chamber immediately.

(Mr WONG Yuk-man and Mr Albert CHAN left the Chamber)

(The ringing of the division bell ended)

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted for the motion.

Dr Margaret NG voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr Frederick FUNG, Ms Cyd HO and Mr LEUNG Kwok-hung voted against the motion.

Mr Andrew CHENG abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 23 were in favour of the motion and one against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 21 were in favour of the motion, three against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was passed.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung. You may now move the second motion.

MR TAM YIU-CHUNG (in Cantonese): President, I move that the second motion under my name be passed.

Mr TAM Yiu-chung moved the following motion:

"RESOLVED that the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended as set out in the Schedule.

Schedule

Amendment to Rules of Procedure of the Legislative Council
of the Hong Kong Special Administrative Region

1. Rule 45 amended (Order in Council and Committee)
Rule 45(1) —
Repeal
"standing or select".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the second motion moved by Mr TAM Yiu-chung be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted for the motion.

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Dr LEUNG Ka-lau and Mr Paul TSE voted against the motion.

Geographical Constituencies:

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Mr Ronny TONG, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 19 were in favour of the motion and five against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 11 were in favour of the motion and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the 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 the mover of the first motion may 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: Temporarily suspending the implementation of the Minimum Wage Ordinance.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Paul TSE to speak and move the motion.

TEMPORARILY SUSPENDING THE IMPLEMENTATION OF THE MINIMUM WAGE ORDINANCE

MR PAUL TSE (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, minimum wage has already come into force, so what is the point of proposing this motion now? Is it a bit outdated? In fact, we can see that even though the relevant ordinance has been enacted, conflicts, contradictions,

queries and concerns on minimum wage have continuously emerged in the community after its formal implementation. President, I am afraid that the conflicts will reach a climax by the end of this month, that is, after 30 May — when it is time to pay the salary, by then there will be an influx of complaints and conflicts.

President, the purpose of proposing this motion is absolutely not to After the minimum wage legislation came into force, many people who benefit from it feel very grateful as their wages has increased significantly. However, at the same time, there are many unfortunate ones — especially the disadvantaged groups, people with disabilities, young people without any working experience and elderly people who are less competitive — they are facing mounting pressure and worries, fearing that they will be dismissed at any time.

President, does the legislation have more pros or cons? Can it genuinely help our society to move forward? Or, as illustrated by the example quoted by me when the legislation was passed, this piece of legislation probably aims to rob the needy to help the poor. It robs the poorer or more disadvantaged ones to help those who are genuinely in need of help. However, is minimum wage the best solution to these problems?

President, there had been precedents where the Government amended, on its own initiative, a newly enacted law to temporarily suspend its implementation in response to strong public reaction or upon serious consideration. The most obvious example is the amendment of the Copyright Ordinance in 2001 amid strong opposition, in particular from schools and the academic circle. The Copyright Ordinance had caused many inconveniences, and even threats constituting criminal infringements. The authorities thus immediately called a halt, and introduced the Copyright (Suspension of Amendments) Bill 2001 to make appropriate adjustments. Notwithstanding that, the relevant frozen period only lasted for 14 months.

Another more obvious example is the transitional period in 1997. As a series of ordinances had been hastily passed before the transition, this Council opined that it could not immediately or properly implement the relevant ordinances after the transition. As a result, a basket of ordinances had to be frozen or even revoked. Among them is an ordinance which might relate to the

subject under discussion today. Member may still remember very clearly that the legislation was related to labour rights, and in particular, the right of collective bargaining.

Precedents have been set. Yet, what do we want to achieve this time? President, I do not intend to deprive people of their protection or increased salaries. President, the most important objective is to provide a platform for Members to openly discuss the public conflicts, contradictions, concerns and queries after the implementation of the minimum wage legislation. It is also a platform for Secretary Matthew CHEUNG or other government officials to solemnly explain to the public their position and stance on these issues, as well as to clarify ambiguous definitions and computations so as to remove all our fears and doubts.

If, after a process of pause and think, the Secretary considers it necessary to make appropriate amendments, I hope that he will introduce appropriate measures and remedies to decisively tackle the issue by clarifying the ambiguous definitions and computations. This is precisely why I am proposing this motion when the minimum wage legislation has already been enacted.

President, this ordinance can be said to be a critical dividing line in Hong Kong society. We have swung from one side of a pendulum to the other side, meaning that we have moved our way from extreme capitalism to socialism. How far and how fast should we go, and what kind of control or cautious measures should we adopt?

President, as we all know — please let me know if Members can find any examples — according to my understanding, there is no place, country or city in this world that have provisions similar to that of Article 5 of the Basic Law. The provision stipulates that the capitalist system must remain unchanged and socialist system and policies shall not be practiced. Certainly, I can fully understand this situation. That is why I had, during the deliberation process, expressed my absolute sympathy, support and understanding of the disadvantaged groups or wage earners who fail to receive reasonable or dignified pay in view of wealth gap and working poverty. I do understand their conditions.

However, as I have said right at the beginning of my speech, I do not consider that the present minimum wage legislation, especially the proposed

computation method and broad-brush approach, is appropriate and suitable for the existing social situation in Hong Kong.

As noted from many previous precedents, many countries were very pretty cautious in implementing minimum wage, and they would be groping their way across the river cautiously when minimum wage was first implemented. Minimum wage was first implemented on a trial basis in certain industries and at a certain level; and adjustments were made gradually. Contrarily, our implementation of minimum wage this time has not only adopted a broad-brush approach, but also drastically changed the long-standing basis of calculating wage from monthly to hourly overnight, thereby causing numerous troubles and controversies.

Worse still, President, the basis on which we calculate, consider and examine the minimum wage level is rather ambiguous. Some key considerations and factors have not been included, thus resulting in an actual increase of minimum wage from originally \$5,000-odd to presently \$7,000-odd. I am afraid that this would make employers spend beyond budget. Although some employees will benefit, a lot more will be asked to leave their jobs or forced to accept false self-employment or other illegal arrangements, for instance, as a result of the hasty minimum wage legislation and the ambiguous computation of wages.

President, as Members may understand, all major changes in Hong Kong society must be dealt with in a cautious and orderly manner, especially when they involve a change in policy from capitalism to socialism, or a change in the basis of wage calculation from monthly to hourly, just as I have mentioned. How can we hastily endorse it without giving due consideration to the details and possible errors? If the Government had considered thoroughly and this Council had done its job conscientiously, the question of whether meal breaks and rest days should be paid would not have arisen.

Many people, including employees and employers of restaurants, travel agencies, management companies or incorporated owners which members of the public can participate, have to conduct urgent meetings for negotiation, "bargaining" and discussion in view of the changes. Under this circumstance, if we strictly enforce the legal obligations relating to the minimum wage legislation all at once, which include the payment of the required salaries and the keeping of

administrative record, the hasty and ambiguous implementation of minimum wage, coupled with the evasive attitude of the Government, refusing to make any clarifications, have caused much nuisance to the general public, be they employees or employers.

President, there are even some sayings that the Government was actually not unaware of these pitfalls as they have been highlighted by Members. It is only that the Government has decided to adopt an evasive approach because it does not want it to drag on for two or four more years. It has simply side-stepped the problems. I hope that this is just hearsay. Perhaps the Secretary may clarify if the authorities have foreseen or predicted such problems in the course of legislation, but deliberately covered them by misleading this Council and even the community so that the legislation could be expeditiously passed and enjoy administrative convenience.

On the other hand, President, those simple guidelines, including the general guidelines or specific guidelines formulated for the hard-hit industries, were only promulgated until April or even late April, immediately before the legislation came into force, even though the content were not too complicated. As a result, the parties concerned had to conduct further examination, negotiation and discussion. Why would this happen?

Regarding the Mandatory Provident Fund (MPF), some colleagues mentioned that with increased wages, people who are previously not required to make MPF contribution will now have to do so. However, as discussion on the revised threshold of MPF contribution is now underway, it is possible that no more contribution would be required a few months later. This is indeed a serious waste of public money and administrative fees. Have the authorities considered these issues and made overall planning before the implementation of minimum wage?

Another issue concerns with the responsibility of keeping records of hours worked by employees. The authorities had been reluctant to provide exemption in the first place, but under the pressure of this Council, the authorities changed their mind and provided an exemption at the wage level \$11,500. The level has nonetheless changed after the blunders involving the computation of paid meal breaks and rest days, as well as the emergence of more unnecessary administrative fees. Have the authorities taken these into account?

Hong Kong people like to play mahjong and everyone knows clearly before the start of the game the payout of "1 fan"² under the "three-three system", and how the payout of "thirteen orphans" or "full flush"³ will be calculated. This is clear to all and there should not be any bargaining over the payout after someone wins. However, the present minimum wage legislation is precisely a case of payout bargain after someone wins. In that case, how can the Government's governance and initiatives earn our credibility?

President, the urgent task at hand is, apart from making criticisms, to urge the Government to expeditiously, proactively and courageously clarify its stance on paid meal breaks and rest days. Also, it should help the already poverty-stricken disadvantaged group — which has probably grown in size — to tide over this transitional period.

The Government has also been criticized in the handling of the Community Care Fund. It should make use of the Fund or other means to relieve, as far as possible, the current short-term pain. More importantly, it is hoped that the authorities would exercise its discretion to the greatest extent possible at the initial stage to help explain or conciliate any conflicts, rather than arbitrarily taking legal actions. After all, the Government was the one who started all these fuss. The hasty legislative process has made people difficult to adapt.

On the other hand, inflation has been fuelled after a significant rise in the minimum wage level. Many people even consider the increased wage more a loss than a gain. Against this background, I hope that the Government will make use of this opportunity to clearly explain what causes all these problems and what will be done to help people who are seriously disturbed and are living under the shadow of losing their jobs. Thank you, President.

Mr Paul TSE moved the following motion: (Translation)

"That, as both employees and employers in many industries have complained bitterly about the Minimum Wage Ordinance, the general

² "Fan" is a scoring element in mahjong.

³ "Thirteen orphans" or "full flush" are special hands in Chinese mahjong.
<<http://www.dragonkong.com/classic-chinese-mahjong-hands.html>>;
<<http://www.dragonkong.com/hongkong-mahjong.html>>

guidelines promulgated by the Government as well as the specific guidelines formulated for a number of industries which are mostly affected by the Ordinance are not yet able to allay public concern, and Members who supported the passage of the Minimum Wage Bill that day have recently been queried for failing to thoroughly scrutinize the relevant bill and underestimating the negative impact of the legislation, this Council urges the SAR Government to temporarily suspend the implementation of the Ordinance."

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

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

I will call upon Dr Priscilla LEUNG to speak first, to be followed by Mr Vincent FANG; but no amendments are to be moved at this stage.

DR PRISCILLA LEUNG (in Cantonese): President, a 65-year-old elderly woman came to my office in Shek Kip Mei last week. She is a flat owner of a tenement building in Sham Shui Po, and she also lives alone. She said a neighbour recently told her that she would be affected by the implementation of minimum wage, because she was one the employers of the security guards working in her building. The elderly woman was very nervous when she came for help as she has never thought that she was an employer. She was very worried. The neighbour told her that she would be arrested and imprisoned if she breached the minimum wage legislation.

As we all know, many old buildings in Sham Shui Po and To Kwa Wan do not have proper management or owners' corporation. Not only had I comforted her, I had also visited many owners' corporation of old buildings over the past two months, especially those in To Kwa Wan and Sham Shui Po. Most of them are single-block buildings. There are conflicts among members of these owners' corporation, arguing whether they should increase the management fee or change

their permanent staff to part-time employees, given that the property owners are also employers.

The implementation of minimum wage has actually affected many Hong Kong people. It also affects the way how people look at the difficulties arising from the enactment of the relevant law on 1 May.

Today, Mr TSE proposes a motion on "Temporarily suspending the implementation of the Minimum Wage Ordinance (Ordinance)". While this motion is good in the sense that it enables us to look squarely at the concrete problems brought about by the Ordinance, I nonetheless consider it not practicable. Today, I am not going to further discuss whether or not Hong Kong should legislate on minimum wage. Rather, I will focus on how the Ordinance can operate more smoothly after it came into force on 1 May. In the example cited by me just now, for instance, how we can provide assistance to the elderly persons in a systematic way if they are suddenly borne with the responsibility of an employer.

I was a member of the Bills Committee on Minimum Wage Bill (Bills Committee). During the deliberation, other members and I had pointed out many problems, such as whether meal breaks and standby time should be paid for industries like catering, tourism, professional driver and retail. Relevant discussion had been conducted at the Bills Committee meetings. I recalled that when the question of whether meal breaks should be paid was discussed, we agreed that flexibilities should be provided for employers and employees to deal with the matter through employment contracts, such that they have room to implement minimum wage in an orderly manner. I think that neither the trade unions nor Members had intended to put any party in a difficult position. We just want to give them more room.

I had also highlighted a number of issues. For instance, some drivers have to work both morning and night shifts and their waiting time is as long as 10 hours. How can we tackle this situation? The Government has already clarified certain issues. And yet, my deepest impression about the response made by government officials is that ambiguous issues should be left to the ruling of the Court. I was taken aback by this response for I do not agree to leave anything to the Court before ambiguities in the Ordinance are resolved.

We all understand that lawsuit is a torture to employers and employees indeed. As we mentioned the other day, the Government should by all means consider handling all conflicts relating to the terms and conditions of employment contracts entered between employers and employees in a systematic way, instead of asking the parties concerned or the mediation centre to solve the problems. The Government is obliged to help resolve these expected problems in a systematic and well-prepared manner.

Since the enactment of the law, we have been worrying that wages of employees would be deducted as a result, or they would be forced by their employers to engage in false self-employment by using dirty tricks, thus giving rise to a situation that some employees have higher wages while some were dismissed.

In my opinion, the success of the Ordinance mainly depends on the sincerity of the two parties. I hope that employers would not regard the new Ordinance as a monster. In fact, the wages of some workers were too low in the past. Notwithstanding this, employees should not exert too much pressure on their employers. We learnt from employers of small and medium enterprises (SMEs) that there are actually operational difficulties. On 27 April, Mr Danny LAU Tat-pong, Chairman of the Hong Kong Small and Medium Enterprises Association (who has appeared on many public occasions) said that he supported minimum wage and wage adjustment was only worthwhile if it rose from \$4,000 to \$6,000. However, if all rights, including the rights that could be dealt with under the employment contract, have to be provided through legislation, he estimated that more than 10 000 SMEs would be in danger of closing down.

I notice that KWOK Chi-hung, convenor of the Concern Group on the Minimum Wage of the Security Services, also indicated that some companies have to employ more administrative staff after the Ordinance came into force, which has greatly increased their administrative costs. To SMEs employing less than 10 employees, this will definitely prejudice their survival. That is why I always say that the Ordinance is like a double-bladed sword and must be dealt with very carefully.

Prof Harrison HO raised a very good point in yesterday's newspaper, saying that employees and employers should walk in each other's shoes. Employees should take into consideration the affordability of their employers and

the need for employers' investments to secure reasonable returns. The Ordinance would definitely benefit more people if the two parties can work together.

It is our wish to help as many affected people as possible. Therefore, today, the main objective of proposing an amendment is to urge the Government to study the provision of funding to set up a "relief fund for implementing the minimum wage during its transitional period, like that of the financial tsunami in 2008 I suggest that the fund should operate for a period of time, say, two years, to enable the SMEs to tide over the difficulties. Also, the fund can enable Hong Kong to gradually adapt to the Ordinance.

This is just a mild request for the Government to study the provision of funding to set up the fund. Why do I mention the SMEs? We have received many requests for help from the SMEs, which have decided to wind up after computing the additional costs incurred. This is the last thing that we wish to see.

There are some other cases. With increased management fees, singleton elderly flat owners who do not get any support from their children are immediately in a plight. In this connection, will the Government consider introducing additional measures under the social security system to assist their payment of the additional management fees, with a view to enabling them to comply with the statutory requirements, and help those singleton elderly flat owners with financial difficulties relieve their worries? I hope that Members will consider the matter from this perspective.

It goes without saying that the successful implementation of the Ordinance is beneficial to all. We hope that workers can have increased wages and remain employed, and the geese (meaning jobs) would not be killed after the golden eggs were seized. Communication and mutual understanding must be established between employers and employees, and I also agree that it is important for them to walk in each other's shoes. The Ordinance may still have many operational difficulties and the Government should handle them properly. I do not think that the guidelines would give rise to many conflicts and legal actions are needed to solve the problems.

I understand that Members are not permitted to amend the heading of the original motion, but I hope that they will not disregard the amendments because of the words "temporarily suspending" used. Instead of considering from the perspective of a possible increase in the unemployment rate, I hope that Members would consider from the perspective of how the affected people can be assisted and how to benefit more people under the Ordinance. I therefore hope that Members should not merely consider the heading of the original motion, but also the content of my amendment and support it.

I so submit.

MR VINCENT FANG (in Cantonese): President, minimum wage was first officially implemented in Hong Kong on 1 May. The minimum wage level of \$28 per hour was the conclusion reached by employers and employees in the Provisional Minimum Wage Commission after one-and-a-half year's repeated negotiation, examination and consultation. The Liberal Party had reluctantly accepted this conclusion at that time for the purpose of smoothing out social conflicts in the community and paying heed to the aspirations of low-income workers.

Therefore, today, we cannot support Mr Paul TSE's proposal to temporarily suspend the implementation of the entire ordinance. This would seriously disappoint tens of thousands of low-income workers who would have been benefited; they should not be deprived of the right to enjoy the benefits brought about by the minimum wage legislation. And yet, this does not mean that the current implementation of minimum wage is perfect. Today, I propose an amendment on behalf of the Liberal Party to arouse the concern of people from all walks of life and rectify the series of problems that have arisen since the promulgation of the industry-specific guidelines in late March.

As I have pointed out in part (a) of my amendment, employees' minimum wage should be \$28 per hour multiplied by the number of actual working hours. At that time, the prevailing consensus was people work 26 days a month and eight hours a day, where meal breaks and rest days were not included. This was also agreed by representatives of the labour sector. Therefore, we strongly request that the Government should vigorously publicize this point to enable the public to have a clear understanding of the actual details of the Ordinance.

The labour sector, however, has now put forth a completely different request. They want more on top of the minimum wage of \$28 per hour by asking all employers to pay for rest days and meal breaks, thereby significantly raising the minimum wage level. Compared with the original method of computation, this proposal will result in an hourly rate of more than \$36, which is even higher than the hourly rate \$33 as requested by the labour sector at that time. In other words, wage cost will drastically increase by 30% to 40%, thus leaving many employers of small and medium enterprises (SMEs) in a state of dilemma. Some wage earners had openly opposed the proposals put forward by the trade union, fearing that the proposed increase might not only affect employers financially, but also result in job loss if employers close down their businesses. It can therefore be seen that the relationship between employers and employees is so intimate that "teeth are exposed when lips are gone".

Part (b) of my amendment requests the Government to step up promoting that there should be no regression of employees' remunerations when compared with their previous remunerations. We absolutely do not promote any attempt by employers, for whatever reasons, to provide employees with remunerations lower than their previous remunerations under the minimum wage arrangement. This is because we agree that the legislative intent of the Ordinance is to protect low-income employees.

President, the Liberal Party also thinks that the Government is obliged to promote the rule of law, so that the community would not resort to unethical practices, such as making arbitrary moral judgment and arbitrarily labelling employers who cannot afford extra expenses as unscrupulous employers. According to Secretary for Labour and Welfare Matthew CHEUNG, who met with the Liberal Party and a dozen SME representatives a few days before the implementation of minimum wage, minimum wage should be \$28 per hour multiplied by the number of actual working hours. Anything other than that are welfare benefits not mandatorily provided.

As described by CHAN Yue-kwong, a member of the Provisional Minimum Wage Commission, the greatest problem lies in the fact that the Government, playing the role of a "referee", has changed the rules of the game. Initially, it stated that workers of contractors would not be provided with meal break and rest day pay, but subsequently it agreed to provide rest day pay. With the Government taking the lead, trade unions were encouraged to "play foul" by

forcing all employers into granting extra meal break and rest day pay without any negotiation and disregarding the actual affordability of the SMEs. Is there any justice?

Nonetheless, the Liberal Party does support employers who are more financially capable to provide employees with paid rest days and meal breaks, but these payments are absolutely not on a mandatory basis. Many employers reflect to the Liberal Party that they are SMEs with a dozen employees and can barely survive under the existing operating environment. The irrational act of the trade union might mistakenly catch the scrupulous employers in the end.

Some trade union representatives did speak out their hearts in a television seminar and admitted that the trade union's proposal had departed from the previous consensus and aimed to get the best that they could. However, I think that they might do more harm than good as the disadvantaged workers, including the aged, less educated or freshly graduated young people, might lose their jobs as a result. Their mere dignity of feeding themselves would also be lost. This is precisely the last thing which the Liberal Party would wish to see.

Regarding people's misunderstanding about the Minimum Wage Ordinance (Ordinance) after it came into force, I think clarifications should be made by the Government on its own initiative.

President, the Government has originally reserved a six-month preparation period for the implementation of the new ordinance. However, the guidelines which intended to help employers and employees clearly understand the implementation details were only promulgated at the very last minute. So, both employers and employees are at a loss and the half-year preparation period exists only in name.

President, after the "grievance meeting" on minimum wage held in mid-April, the Liberal Party had published a joint statement on newspapers with some 80 organizations entitled the "Joint Statement by Victims of Minimum Wage". Among the three major requests that have been put forward, the most important one is "to enable employers and employees to have sufficient time to adapt to the new legislation; mediation will first be conducted and there will not be immediate prosecution in the event of disputes, and a half-year cushion period should be introduced from 1 May onwards". Our requests are indeed very simple. Given that the guidelines are ambiguous, it is unreasonable to take strict

enforcement actions right at start. Rather, employers and employees should be given sufficient time to adapt to the new arrangements. We agree that the hourly rate of \$28 must be enforced for salary computation, but for other welfare benefits, they should be open to negotiation.

We therefore agree with the Secretary that enforcement actions should be pragmatic. In the event of disputes, mediation should precede that of prosecution. As for Dr Priscilla LEUNG's amendment, the Liberal Party considers it unviable.

All in all, the Liberal Party thinks that as employers and employees are riding on the same boat, they should give play to the spirit of partnership so as to bring forth a soft landing of the minimum wage to enable all employees in Hong Kong to truly benefit.

I so submit.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, first of all, I thank Mr Paul TSE for proposing a motion concerning the Minimum Wage Ordinance (Ordinance), and Dr Priscilla LEUNG and Mr Vincent FANG for proposing amendments.

Statutory minimum wage is the fruit of a series of process from discussion, forging public consensus, enactment of legislation to final implementation, during which employers and employees, the Government and different sectors of the community have worked hand-in-hand and overcome numerous hurdles. The objective is to provide grass-roots workers with the necessary wage protection. During the process, all parties considered it necessary to strike a reasonable balance between wage protection and sustaining Hong Kong's competitiveness and economic growth.

Statutory minimum wage was officially implemented on 1 May, the Labour Day, and it is now the eleventh day. On the whole, the Ordinance has operated smoothly on the first 10 days. Nonetheless, we will not be complacent but will continue to keep a close watch on the relevant development, so as to ensure that the policy will achieve the intended purpose of protecting grass-roots workers and providing targeted assistance to employers and employees.

As minimum wage is something new under a newly established system, there is bound to be a teething period. Both employers and employees will have to adapt to the new method in computing wages, and ambiguities or divergent expectations will probably arise during the process. It is therefore essential for us to resolve the problems with tolerance and mutual understanding. The Government, on the other hand, will spare no effort to proactively co-ordinate different parties. I believe these are only problems emerge during the transitional stage and will not undermine the positive effect of statutory minimum wage on our society.

Implementation of statutory minimum wage does not only increase the salaries of our grass-roots workers, but also represents the concerted effort of the entire community to care for grass-roots workers and enable them to share the economic fruit. If we propose a temporary suspension of the Ordinance after its full implementation, this will not only deprive grass-roots employees of their statutory minimum wage protection, but will also make people cast doubt on the SAR Government's determination to protect grass-root workers, thereby creating more confusion and worries. This is not desirable to either employers, employees or the entire society.

President, I so submit. After listening to Members' views, I will make a more detailed response. Thank you.

MS LI FUNG-YING (in Cantonese): President, today, I am going to speak with the support of 11 Legislative Council Members. We all oppose Mr Paul TSE's motion on "Temporarily suspending the implementation of the Minimum Wage Ordinance (the Ordinance)". We think that the wordings of his motion have smeared the Ordinance and the work done by the Legislative Council in scrutinizing the Minimum Wage Bill (the Bill). The proposed temporary suspension of this important and newly implemented legislation that protects labour rights will only intensify social conflicts. After consideration, Members from the labour sector and those who are concerned about the rights of grass-roots workers considered this motion totally unacceptable. This is because its criticisms of the Ordinance and the work done by the Legislative Council in scrutinizing the Bill is nothing but an attempt to camouflage the fact, and the temporary suspension is a regression in the protection of labour rights. We feel

regretful about this motion. We have decided not to participate in the debate after I have spoken and we will vote against it.

The implementation of the Ordinance is a milestone in the protection of the rights of grass-roots workers in Hong Kong. The birth of minimum wage is actually the fruit of the concerted efforts of the labour sector and people who are concerned about labour rights. The enactment of the minimum wage legislation is the outcome of the joint collaboration of 36 Members (including Mr Paul TSE) after going through 30 meetings of discussions between the relevant bills committee and the Administration, during which views of deputations were received. The law was finally passed in late July last year after a three-day debate in the Legislative Council.

The Ordinance was passed after going through three readings in the Legislative Council, and Mr Paul TSE was the only Member who voted against it. While opposing minimum wage is his personal choice, he should not make use of a motion to criticize, via a third party, Members who support the Bill for not scrutinizing the Bill carefully and underestimating its adverse effects. This has not only insulted the members of the Bills Committee on Minimum Wage Bill, but has also damaged the credibility of the entire Council.

Regarding the question of whether we should legislate on minimum wage, we are not going to repeat our previous discussions. I must nonetheless stress one point that our Composite Consumer Price Index has risen to 4.6% in March this year. It is an objective fact that the implementation of minimum wage has provided immediate protection for over 270 000 low-income employees in Hong Kong, and relieved their pressure in the face of the soaring inflation. We would not say that the implementation of the Ordinance will be plain sailing without any obstacles. Yet, all major legislation for the protection of labour rights is bound to have teething and adaptation problems on the part of employers and employees at the initial stage of implementation, and differences may inevitably arise between them. While employees wish to safeguard their own rights, employers aim to control production costs. They have reached consensus through interaction, the Mandatory Provident Fund Ordinance is an example, and the same rule also implies for the implementation of the Ordinance.

The implementation of the Ordinance has given rise to controversies about whether meal breaks and rest days should be included in computing wages. It is

not that Members had not considered this issue during the deliberation; in fact, in the draft Bill submitted by the Government to this Council, it was provided that employees' meal breaks were not included in computing wages. However, such approach is likely to lead to a misunderstanding that the legislation has mandatorily provided the exclusion of all meal breaks in computing wages, thereby taking away the paid meal breaks from workers who were so entitled under the employment contract following the implementation of the Ordinance. During the deliberation of the Bill, members who are concerned about labour rights suggested that in order to retain certain flexibilities, the Ordinance should not specify the exclusion of meal breaks in computing minimum wage. This would enable employers and employees to decide on the basis of their employment contracts whether meal breaks should be included in computing wages. Providing flexibilities in the Ordinance is a reasonable arrangement and employers' representatives had not raised any opposition during the deliberation of the Bill. However, as the implementation of the Ordinance drew near, the Employers' Federation of Hong Kong (EFHK) posted an advertisement in a newspaper, stressing in a high-profile fashion that rest days and meal breaks should not be included in computing wages. The problem has undoubtedly become polarized by encouraging employers to exploit the paid meal breaks and rest days to which workers are entitled. Polarized sentiments have been added to the flexible approach of negotiation between employers and employees, which benefits neither parties. We feel regretful about what the EFHK has done, and hope that employers and employees would look at the computation of paid meal breaks and rest days in a rational way. Not only to respect the employment contract, but also improve employees' protection.

We have zero tolerance for remarks smearing the entire minimum wage legislation by taking advantage of the paid meal breaks and rest days. The controversies over the Ordinance did not originate from the law itself, but were attributable to the deficient labour legislation in Hong Kong. We had pointed out that when the minimum wage legislation was promoted, the legislation on standard working hours should not be sidestepped. If minimum wage and standard working hours can be implemented in parallel, there would not be controversies over the calculation of meal breaks and rest day.

President, the above speech represents the common stance of 12 Members, namely Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyau from the Hong Kong Federation of Trade Unions; Mr LEE

Cheuk-yan from the Hong Kong Confederation of Trade Unions; Mr CHEUNG Kwok-che from the social welfare sector; Dr LEUNG Ka-lau from the healthcare sector; Mr WONG Yuk-man and Mr Albert CHAN from the People Power; Mr Frederick FUNG from the Association for Democracy and People's Livelihood, Ms Cyd HO from Hong Kong Island and I. We fully support the implementation of the Ordinance and oppose the motion.

MR JEFFREY LAM (in Cantonese): President, the Minimum Wage Ordinance (the Ordinance) has been implemented for more than 10 days, during which problems arising from its implementation have been extensively covered by various media. As both employers and employees have their own difficulties, they are supposed to minimize conflicts with tolerance and understanding, and get themselves familiar with the Ordinance to ensure its smooth implementation. Only by so doing can basic production and living remain unaffected.

However, what we see were endless accusations between trade unions and associations of small and medium enterprises (SMEs). In fact, during the scrutiny period, the Economic Synergy, the Hong Kong General Chamber of Commerce and the Federation of Hong Kong Industries had raised our concerns with concrete justifications about the implications of minimum wage on Hong Kong's economic freedom and inflation. And yet, debates in the community has intensified rather than diminished as the implementation of the Ordinance drew near. This has clearly reflected that the enactment of the Ordinance by the Government was hasty and loose with ambiguous provisions and unclear guidelines. What is more, it has gone back on its words. Coupled with the promotion of the populists, the relationship between employers and employees was further strained. Nonetheless, the Government still adopted a nonchalant attitude and asked the two parties to resolve the problems on their own. It is therefore the inadvertent attitude and forcible legislation of the Government that caused the contradictions between employers and employees and social division.

In fact, economists and the business sector had warned of the implications of minimum wage long ago, saying that if the minimum wage legislation was forced through and the western approach was blindly adopted without having regard to Hong Kong's uniqueness, it was tantamount to running the head against a stone wall. However, I can see that the Secretary's forehead is still very shiny

today, so I guess he probably does not know what is meant by running the head against a stone wall. While the Government needs not raise money to pay for the rest days, SMEs are having head-on competitions to raise money.

The minimum wage legislation uses the hours worked as the unit of computation. Hours mean the hours worked and work is interpreted in terms of hours. The definition is very simple indeed. It means the number of hours worked instead of the number of hours of meal break or rest. When the relevant bill was discussed, the Secretary told us that as long as employers pay the statutory hourly rate in accordance with the law, they would comply with the legal requirements. This is the understanding of members of the trade.

The business sector originally supported the objective of the minimum wage legislation and worked co-operatively because they hoped that the legislation would provide workers with reasonable remuneration, relieve social conflicts and promote harmonious labour relations. However, the issuance of the guidelines on minimum wage has again given rise to conflicts over meal break and rest day pay. While the Ordinance has not specified if meal breaks and rest days should be paid, the Administration nonetheless adopts an equivocal stance on whether or not meal breaks and rest days should be included in calculating minimum wages. Instead of making clarifications, ambiguous remarks have been made. The Ordinance merely requires that employers should calculate minimum wage on the basis of hours worked, whereas the Government kept reiterating the need to act in accordance with the contract. This has further complicated the issue.

President, I have written a number of press articles to request the Secretary to clarify that meal breaks and rest days are not included in computing minimum wage. Last week, I read a newspaper article written by the Convenor of the Executive Council Mr LEUNG Chun-ying. He also stated that "If an employer pays \$28, or he does not pay for meal breaks or rest days as the employment contract has not so specified, just like workers are only entitled to statutory holidays, he is a law-abiding rather than an unscrupulous employer." (End of quote) If even the Convenor of the Executive Council said so, I hope that the Secretary will state clearly in this Council today that the Ordinance only requires employers to compute minimum wage according to the hours worked, and they will not breach the law for not including this and that in computing wages.

President, I understand that in order to deal with the populists, the SAR Government was forced to give ambiguous remarks on the issue of meal break and rest day pay. It has, however, taken the lead to subsidize the payment of rest day pay for workers employed by contractors. As a result, the SAR Government has been commended as a "scrupulous employer" whereas the SMEs in Hong Kong have been given an ill name of being "unscrupulous employers". The operation of the Ordinance and the attitude of the Government have not only imposed heavier burden on SME employers, but has also given them an ill name. Who can the aggrieved Hong Kong employers turn to? Has the Government ever cared about them?

President, it is believed that it still takes almost a month for the implication of minimum wage on Hong Kong to emerge, when the first pay day comes. An economist predicted that there would be a larger impact two years later. Throughout the years from preparation, consultation, deliberation to implementation, the deficiencies of the Ordinance have been highlighted time and again. We are a bit dissatisfied that the Secretary and the officials concerned had not listened to us attentively throughout the entire process. Nor had they incorporated our consensus into the Ordinance. It is not the right time to amend or revoke the Ordinance, and a temporary suspension would not only impose heavier burden on employers, but also disappoint grass-roots workers who originally benefit from the minimum wage legislation. It is believed that the social conflicts and even division caused by this suspension is unbearable to the Government, and this is also the last thing that Hong Kong people would wish to see.

President, I so submit.

MR ANDREW LEUNG (in Cantonese): President, the Minimum Wage Ordinance (the Ordinance) has come into operation on 1 May. While I thank Mr Paul TSE for the opportunity to revisit the subject after the implementation of the Ordinance, it is impractical to either temporarily suspend its implementation or introduce a cushion period for its implementation. Both suggestions cannot help improve the legislation.

In fact, during the scrutiny of the relevant bill, the business and industrial sectors have issued repeated warnings about the likely problems arising from

minimum wage, which include the affordability of small and medium enterprises (SMEs), escalating costs, increasing cases of business closure, rising unemployment, worsening inflation, as well as unemployment of the disadvantaged groups. Now, these problems have surfaced one after another.

The implementation of minimum wage is in fact a simple matter. When determining whether the legal requirement has been fulfilled, one can simply multiply the number of working hours by \$28. Nonetheless, little has been done by the Government in the several months after the enactment of the Ordinance. It has been late in formulating the relevant guidelines. When the guidelines were finally ready, only three or four weeks were left before the implementation of the legislation. In fact, as far as we are concerned, both employers and employees have difficulties in understanding the relevant guidelines. They were still uncertain about the guidelines even after receiving briefings by lawyers invited by the Federation of Hong Kong Industries (FHKI). Hence, the problem lies in insufficient preparation time.

We have already pointed out a long time ago that according to overseas experience, in particular the implementation of minimum wage in the United Kingdom, initially, the level of minimum wage should slowly climb upwards, so as to minimize chaos and confusion. However, after deliberation at the Provisional Minimum Wage Commission and many political struggles, the level of minimum wage was set at the higher end of \$28 per hour. This level of \$28 was barely acceptable to the FHKI because we, after all, supported giving grass-roots workers the protection of a minimum wage. However, we had long pointed out that if an excessive wage level was set, it would cost Hong Kong \$5 billion to \$7 billion. At that time, nobody understood what we meant by \$5 billion to \$7 billion. It is in fact quite simple. Every citizen of Hong Kong will have to pay about \$1,000. But at that time, the public still did not understand. Now, they start to understand that they must pay for the extra meals as well as salary of security officers. As reported in the news this morning, the residents of a housing estate in Tin Shui Wai were asked to vote if they supported the proposal of paid meal time and holidays for security officers such that their monthly salary would go beyond \$10,000. It turned out that the residents voted against the proposal and chose the option with the least cost because it would only incur about 8% increase in management fees. With the provision of paid meal time and holidays, management fees would increase by about 20%. We can see from this incident that there is no such thing as a free lunch, and the

people must foot the bill. As Dr Priscilla LEUNG just said, that was exactly the question raised by the feeble elder who felt extremely worried. In fact, the public has to foot the bill.

I must stress that nothing has been mentioned about pay for rest days and holidays at the Bills Committee. Of course, since the enactment of the Ordinance, demands for paid meal breaks and holidays emerge. We have put the question to the Secretary at the meeting of the Panel on Manpower held on 11 April. In reply, the Secretary pointed out that employers would have complied with the Ordinance as long as the hourly wage of \$28 was paid. Furthermore, issues about whether meal break, holiday pay and other benefits should be provided by the employer were matters to be dealt with under the relevant employment contracts, and not through this legislation or outside pressures. We hope the Secretary will clearly explain this point to the public.

I share Mr Vincent FANG's view that employers should not be encouraged to reduce employees' salaries under this Ordinance. Of course, another important aspect is that we must examine whether support can be provided to SMEs.

Today, I also want to talk about an issue I am greatly concerned about, that is, the problem faced by young people. In fact, in the past couple of weeks, the problem of youth unemployment has been featured in many press reports. Young people who cannot fit into the traditional education system and with low academic qualifications want to receive training — I would like to declare that I am the Chairman of the Vocational Training Council — so that they can acquire suitable vocational skills by starting to work as apprentices. However, with the implementation of minimum wage, many employers have indicated that they can no longer afford the financial burden of providing training opportunities for young people, except those apprentices they employed under statutory apprenticeship schemes who are exempted from the payment of statutory minimum wage. Moreover, statutory apprenticeship schemes were drawn up according to the conditions of Hong Kong some 10-odd years ago. The schemes, which have become out-dated, rigid and strained in resources, have failed to meet the needs of employers nowadays. As a result, young people with low academic qualifications are provided with fewer training opportunities, and the situation has become quite severe.

We propose that the Government should adopt a multi-thronged approach by expediting the review of the Ordinance, enhancing publicity, allocating additional resources to employers and providing training subsidies so that more training opportunities can be provided for young people. Given that the implementation of minimum wage is a foregone conclusion, I hope that with full co-operation among employers, employees and the Government, a competitive environment can be created for the implementation of the Ordinance so that ultimately, Hong Kong as a whole can benefit with reduced unemployment rate and greater protection for the disadvantaged groups. Thank you, President.

DR LAM TAI-FAI (in Cantonese): President, I am all along neutral about the establishment of a minimum wage. I agree that we should safeguard the livelihood of grass-roots workers and make our community more harmonious. Notwithstanding my views that the hourly wage of \$28 finally set by the Government is on the high side and this wage level will undermine the competitiveness of many small and medium enterprises (SMEs) in the long run and cause job loss, I eventually support and accept the computation of the hourly wage of \$28 because I consider that persistent arguments will only lead to greater division and disharmony in the community. I only hope that employers and employees can adopt an understanding and accommodating attitude so that a desirable outcome will be eventually achieved. It is also my hope that when conducting reviews on the wage level in future, the Government will take into account each and every argument so as to come up with a reasonable wage level through a practical and rational approach.

President, it turns out that in the recent disputes, the government officials not only failed to perform a proper mediatory role, but also added fuel to the fire and disregarded the plight of SMEs. As a result of their biased and unconstructive statements, many people have misconceptions about the employers of SMEs being unscrupulous and this has affected labour relations.

When the Ordinance was first implemented, Secretary Matthew CHEUNG had said publicly that as Hong Kong's economy was now booming, the timing was perfect for the implementation of minimum wage because it would only have a slight impact on the unemployment rate. He also said that the issues on hand were only teething problems which would eventually be ironed out and resolved.

However, President, except for real estate and stocks, may I ask what industries are now booming in Hong Kong? SMEs engaging in catering, retail, wholesale and import/export industries are all struggling due to increasing costs such as escalating rental and import prices. Moreover, they are overburdened with the implementation of minimum wage. The Secretary's remarks, if not borne out of ignorance, must be sarcasms intended to play up the good news and play down the bad news. People will then see him as an upright person; they also have the impression that SMEs are having an easy time and employers ill-treat their employees even though they have made huge profits.

The Secretary always stresses that an employer who deliberately commits an offence will be dealt with under the laws. In that case, may I put this question to the Secretary: Who will be spared by the Government if he has committed an offence deliberately? If nobody is spared, why should the Secretary warn employers repeatedly, is this a superfluous act? Does he want to hint that many employers are now flaunting the laws so that people would think badly of employers as being unscrupulous?

Separately, according to the Secretary, paid meal breaks and paid rest days are to be negotiated between employers and employees. But the Secretary also said that if an employer has always provided paid meal breaks and paid rest days to his employees, the employees will have reasonable expectation that these benefits will continue. If the employer cannot afford the additional cost, he should negotiate with his employees. While being contradictory, the Secretary's statements are misleading as employees will have an idea that they can fight for these benefits if they are not already provided with them; and if employer wants to continue without paid meal breaks and paid rest days, he must negotiate with employees and seek their consent.

President, the Government has a hefty fiscal reserve of some \$600 billion such that it can afford to "hand out money" to people, it can of course take the lead to provide paid rest days to outsourced workers. However, how would SMEs have so much reserve? Since the financial tsunami, many businesses have been suffering losses and their budgets are still very tight. How can they afford to be as "generous" as the Government? In fact, by taking such a lead, the Government has put many SMEs under a lot of financial and moral pressures and burden. To apply the mahjong terminology used by Mr Paul TSE just now,

I would say such action has given many SMEs which have been supportive of the Government a feeling that they have been "cheated" by a con man.

Minimum wage has only been implemented for less than two weeks, and Cafe de Coral has already indicated its intention to issue a profit warning. Even big consortia find it hard to absorb the additional cost, let alone SMEs. If SMEs cannot control their costs properly and do not have any reserve, there is no way they can continue operation. The implementation of minimum wage, together with paid rest days and paid meal breaks will definitely over-burden the SMEs as their operating costs will go beyond budget. If they transfer the cost to consumers, the price of their products will go up and they will risk losing out in market competitiveness. If they decide to cut cost by reducing the staff, it will not only create unemployment, but also reduce their own productivity and turnover, or even miss the opportunity of expansion. As I see it, if the situation continues, ultimately all SMEs will close down and the market will be monopolized by big consortia because only they are capable of weathering the storm. Ultimately, the catering and retail industries will be dominated by chain stores while all cleaning and security services will be taken up by subsidiary companies of real estate developers. By that time, we must bear the high rental and pay additional management fees.

President, the minimum wage legislation has been enacted and put into operation. From a practical point of view, it cannot possibly be suspended. However, the Government should clarify immediately to the public, the employers and employees that the legislation has not specified the provision of paid meal breaks and paid rest days by employers to employees. As far as I am concerned, it is most important for government officials to play their role properly. They must treat employers and employees in a fair and just manner. They should never make subjective, judgmental or biased remarks. They should neither resort to exaggeration nor fabrication so as to put pressure on either side and incite even more disputes. We should provide more opportunities and additional space for the natural progression of the legislation.

President, balance is the key to building good labour relations. If one side goes too far or the other side is pushed to its limit, ultimately all SMEs will close down and employees will be laid off. Why do we want to see a lose-lose situation? Members should understand that both sides need some respite before a lasting relationship can be maintained. Hence, I hope the Secretary should

handle the situation more properly and ensure better co-ordination. I am not asking the Secretary to play dumb, but he could have reacted not so quickly or suavely on certain matters. He should make adjustments after listening to different voices. Hence, I hope the Secretary can, apart from listening to the voices of employees and labour unions, be more sympathetic towards the plight of SMEs.

President, I so submit.

MR WONG SING-CHI (in Cantonese): President, regarding the original motion proposed by Mr Paul TSE, the Democratic Party cannot give our support and we will definitely vote in opposition. On 17 July 2010, this Council passed the Third Reading of the Minimum Wage Bill with high votes and almost all of the Members now present in the Chamber voted in support of the legislation. Except for Mr Paul TSE who cast his vote in opposition a number of times, almost all Members voted in support of the legislation. Moreover, subsequently in January and March this year, we have scrutinized various notices concerning the subsidiary legislation on the level of minimum wage and the productivity assessment for persons with disabilities. It has been more than 10 days since the implementation of minimum wage on 1 May; honestly, it is impractical to propose all of a sudden today that the legislation be suspended. Instead, we should hold discussions together to ascertain the impact of minimum wage. If the implementation of minimum wage has indeed created difficulties for certain persons, we should discuss the improvement measures to be taken.

Our most urgent task is to listen to different voices in the community and demand follow-up actions and improvements from government departments. I still recall that during the initial discussion on minimum wage, I had already mentioned that the implementation of minimum wage would definitely create problems. For example, employees who are old, feeble or disabled may be laid off, less competitive workers will be in a disadvantaged position, and enterprises may have to face greater operational difficulties. All these are facts and we have discussed them before. After our discussion, most Members still maintained the view that the wages currently earned by many workers were pathetic and meagre. Hence, by implementing minimum wage, the public at large can regain their dignity in terms of wage. This is a good thing for Hong Kong.

However, the Government has worked in a "defective" manner on many matters. The relevant guidelines were only published at the eleventh hour. Thereafter, the Government has hurriedly amended the terms of outsourced workers in relation to paid meal breaks and paid rest days. Of course, we accept those amendments because they are good ones. However, many enterprises feel that given the Government's lead on this matter, they are forced to follow suit. This sentiment is created because the Government has seemingly failed to properly communicate with various sectors and no proper account has been given. Hence, the whole process is marred with "defects", creating dissatisfaction among the public.

Because of these "defects", Mr Paul TSE is now saying, "In view of the situation, why do we not temporarily suspend the implementation of this policy?" If this is the right attitude, many initiatives undertaken by the Government should also be suspended because the measures in place are "defective" in many aspects and are far from satisfactory. If all initiatives were to be suspended, we will end up going nowhere. Let me cite an example. At present, there are many unauthorized building works in premises in the New Territories, do we also suspend enforcement actions and leave the problem unattended? Do we just let loose all the unauthorized building works from now on? That will cause other problems. The appointment of deputy directors of bureaux and political assistants has caused great controversies. Up to this day, there are still many criticisms about their work, yet the Government still lets them continue working. In that case, why does Mr Paul TSE not propose a motion to suspend the work of deputy directors of bureaux and political assistants? Let us do that and ask him to propose a motion to suspend such work, shall we?

Therefore, as far as we are concerned, the present motion to suspend the implementation of the Minimum Wage Ordinance is highly impractical. If the enforcement of the legislation was to be suspended, it will create an enormous impact on several hundred thousands of workers who have been given a pay rise.

Regarding the amendment of Dr Priscilla LEUNG, I will also vote in opposition. While Dr Priscilla LEUNG has seemingly spoken in a noble manner about her wish to help others, but upon examining the contents of her amendment, we can see that her arguments are incoherent; and if we inspect closer, they are even self-contradictory and plagued with problems. In fact, the

closure of a large number of enterprises has happened in the past few years, for example, many restaurants and eateries would close down after Chinese New Year. Many businesses close down not because of minimum wage, but poor management or other reasons such as structural changes in individual industries or the need for restructuring. Dr Priscilla LEUNG talked about the need to provide support, but what kind of support should be provided? Moreover, if we look at the amendment proposed by Dr LEUNG, she has more or less blamed the minimum wage for current operational difficulties faced by many enterprises. That is in fact a wrong view.

Statistics show that the accumulated inflation rate is 8.75% from December 2007 to March 2011. According to the Composite Consumer Price Index, overall consumer prices rose sharply by 4.6% in March 2011 over the same month a year earlier. In other words, we need to pay more for vegetables and meat. As a matter of fact, raw materials have become very expensive. Enterprises are in fact facing severe operating conditions even without minimum wage. Let us look at these figures. From the period between December 2007 and March 2011, the accumulated rental increase for office space is 13.23%, private retail premises 10.65%, and industrial buildings 9.16%. In that case, why does Dr LEUNG not propose about curbing property hegemony, or conducting a serious study on ways to resolve the current problem of escalating prices? She has proposed none of the above. She just said minimum wage had resulted in the closure of enterprises. She is blaming the policy and implementation of minimum wage for all the operational difficulties faced by employers. That is an extremely incorrect and unfair view. Hence, we hope Dr LEUNG can think the matter seriously before proposing her amendment.

Regarding the views of Mr Vincent FANG, the Democratic Party also considers them to be self-contradictory. On the one hand, Mr FANG said that we should encourage the community to respect the rule of law and refrain from making arbitrary moral judgment, but on the other hand, he said that we should stop enforcing the legislation and introduce a half-year cushion period for its implementation so as to ascertain the situation. That is not going towards the direction set by the legislation. On the one hand, he talks about respect for the rule of law, yet he suddenly proposes to introduce a half-year cushion period. What does he mean anyway?

The Democratic Party considers that with the implementation of minimum wage, many people and enterprises will invariably be impacted. Difficulties or irregularities will emerge under various circumstances. However, this problem cannot be resolved by the temporarily suspension of the legislation; instead, we must resort to mediation or come up with solutions through harmonious joint efforts. Mr Albert HO will speak about those practical measures later on behalf of the Democratic Party.

MR IP KWOK-HIM (in Cantonese): President, since October 2004, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been openly stating the view that the Hong Kong Government should study the trial implementation of minimum wage for some industries because we were already aware of the seriousness of the problem of working poverty in Hong Kong. The Government should take some concrete actions to face up to the problem.

In the past few years, various sectors in the community must admit, though unwillingly, the hard fact that the problems of wealth gap and working poverty have been escalating. They gradually accept that the implementation of minimum wage should present a feasible solution to these problems. With continuous efforts as well as repeated discussions and preparation in the community, including the implementation of the Wage Protection Movement, various sectors in the community such as employers and employees eventually reached the consensus of implementing a system of statutory minimum wage in Hong Kong across-the-board. In retrospect, I think this is indeed a hard-won achievement which should be treasured by the community.

Notwithstanding the many criticisms and disputes in the community about the implementation of the minimum wage system, the DAB does not agree with the moving of a motion hastily to suspend the legislation just 10-odd days after its operation, and to effectively overturn the hard-won consensus of the community. There are opinions in the community that the Government, the political parties and Members have all underestimated the negative impacts arising from the implementation of minimum wage. The DAB does not totally agree with these views. In the past few years, many proposals have been submitted by the DAB time and again to the Government (I believe many Members and political parties have also done the same thing) on how to reduce the impacts arising from the

implementation of minimum wage. In fact, it is only natural to have teething problems. Regarding the request to hastily suspend the implementation of minimum wage during its initial operation due to various concerns in the community, we find it unacceptable.

Although it is difficult to predict how long the teething problems will last, luckily, the overall economy of Hong Kong and the employment situation are still quite agreeable. Hence, the new policy will not create the effect of "adding insult to injury" in the community.

As far as the DAB is concerned, an analysis from actual circumstances and theories clearly indicates that the implementation of minimum wage will invariably impact on Hong Kong's employment situation. Many Members from the business sectors have already mentioned this point just now. Hence, the DAB requests the SAR Government to provide a dedicated unemployment subsidy to unemployed persons affected by the minimum wage on a temporary basis, so as to provide them with assistance, help them tide the difficulty and give them time to adapt to the new environment in the labour market.

Regarding ways to avoid increasing labour disputes, the DAB suggests that the Government should continuously collect and collate the enquiries and questions raised by employers and in the community so that the provision of the legislation can be clarified as soon as possible through codes of practice of the industries, and employers and employees will have a legal basis to negotiate various contractual arrangements in future. That is a very important aspect of work.

On the other hand, with the implementation of minimum wage, we can foresee that the situation about coerced "false self-employment" of employees will further worsen, and the wage of grass-roots employees will be computed on an hourly, instead of a monthly basis. Many employees will become temporary or casual staff. An employer may, under "4-18" continuous contract requirement, reduce the weekly or monthly working hours of employees so as to cut down on the expenses for providing benefits such as rest days, statutory holiday pay, paid annual leave, sick leave, severance payment and long service payment. Hence, the DAB urges the Government to review expeditiously the relevant policies and legislation mentioned above so as to impose a heavier criminal sanction against employers who force their employees to take up "false

self-employment" and strengthen the statutory employment benefits enjoyed by part-time workers.

President, regarding the motion presently proposed by Mr Paul TSE, the DAB considers that in terms of implementation of any legislation, there is no way to guarantee that all problems would be resolved before the legislation comes into force or that it will be implemented under a perfect condition. If the Minimum Wage Ordinance was to be suspended, up to 300 000 grass-roots workers will stop benefiting from the policy of improving the income and livelihood of low-income earners. Hence, the DAB opposes the original motion.

Regarding the amendment proposed by Dr Priscilla LEUNG, while the DAB identifies with its contents, the title of the motion is still "Temporarily suspending the implementation of the Minimum Wage Ordinance". Hence, if the DAB supports this amendment, it can easily lead to public misunderstanding about our stance. Hence, the DAB will abstain from voting.

Another amendment urges the Government to vigorously publicize that under the statutory minimum wage, employees' minimum wage should be \$28 per hour multiplied by the number of actual working hours. This differs from the DAB's established stance of supporting the Government's view that it will depend on the contracts signed between the relevant parties as to whether rest days and meal breaks should be included in the computation of salary. Regarding the proposal to impose a half-year cushion period, the DAB has even greater reservation. Hence, the DAB also does not support these proposals.

President, I so submit.

MR ALBERT HO (in Cantonese): President, our society has generally accepted the fact that the Minimum Wage Ordinance (the Ordinance) would be implemented from 1 May onwards. It is a right move for the Government to implement this important Ordinance, and the reasonable labour rights that the democratic camp and the labour movement sector have strived for so many years have finally been realized.

In spite of the fact that different classes and sectors still have controversial views on the minimum wage rate and details of the Ordinance, generally

speaking, people still look forward to 1 May as a new leaf is turned in respect of labour rights and positive employment relations in Hong Kong. Although employers and employees have not yet adapted to the new Ordinance, we foresee that a lot of improvements can possibly be made, and we have noticed that employers and employees in quite a number of industries have gradually reached a consensus and they have made good preparation for the new arrangement.

A hasty suspension of the implementation of the Ordinance will not only pour cold water on the efforts previously made by the executive authorities and the legislature, as well as various sectors of the community in preparation for the implementation of the Ordinance, but will also deal a heavy blow to the vast numbers of workers who anticipate for an improvement in their standard of living.

Two years ago when the executive authorities introduced the Minimum Wage Bill into the Legislative Council, they failed to introduce legislation to concurrently deal with the problem of standard working hours; as a result, there are serious controversies in the community today over the arrangements for paid meal breaks and rest days. Moreover, the Labour Department has delayed in issuing the final version of the guidelines on minimum wage implementation. When it finally issued the guidelines in late March, it was unwilling to clearly state the solutions to sensitive problems. On the contrary, it left the problems to be solved by employers and employees on their own. I think that the relevant government departments should be blamed.

For some time in the past, the regional offices of the Democratic Party had received enquiries from quite a number of people. Most of their enquiries were about paid meal breaks, rest days and changes in work arrangements when the minimum wage was implemented. Employers and employees are often in a very sensitive state of opposition. Do employers and employees really not have any room for compromise?

As a matter of fact, a desirable working environment requires the understanding between employers and employees; some labour disputes arise due to insufficient communication between both sides. The Democratic Party has recently co-operated with the Hong Kong Mediation Centre (HKMC) in introducing pro-bono mediation services to the general public. The HKMC

currently has more than 600 accredited mediators, and quite a few of them are willing to participate in this programme. Many mediators are willing to provide free services for the first four hours — of course, if the services provided lasts more than four hours, I believe some mediators will continue to complete their services to the best of their abilities. Through providing such services, we would like to help employers and employees in resolving the friction caused by the implementation of the minimum wage. Employees can understand the difficulties of employers while employers can understand some grievances and dissatisfaction of employees so that the two sides can calmly discuss the issue and reach a consensus, thereby achieving a win-win situation.

Mediation services are not common in Hong Kong and the public may not have come across such services. Simply put, accredited mediators act as intermediaries for mediation services, and they assist employers and employees in understanding the position of the other side. The two sides will then find a mutually acceptable solution on a reciprocal basis. Mediators remain absolutely neutral throughout the process and they will not make any decisions for employers and employees. Participation in mediation is voluntary and the process is absolutely confidential. Even if reconciliation is unfortunately not accomplished and employers and employees have to proceed to court proceedings in future, the conversations in the course of mediation or the information provided by both sides shall not be used as evidence in court. Therefore, both employers and employees have certain legal protection.

For instance, under the Employment Ordinance, employers cannot unilaterally change the terms of employment contracts. If the terms of the current employment contracts are not clear in certain areas, or if employers really have to change these terms because of affordability, clarify the unclear areas or update the relevant provisions, the two sides can clarify ambiguities and try their best to understand the difficulties and needs of both sides with the assistance and guidance of the mediator, so as to ensure that the interests of both sides can reasonably comply with the existing legislation and be reasonably protected under the law.

The implementation of the Ordinance in Hong Kong is undeniably the implementation of a major local policy; employers and employees need an adaptation period and the implementation of the Ordinance may cause momentary

pain. Yet, to minimize the difficulties encountered by the general public in adapting to the new Ordinance, to minimize the adjustment in the mode of operation of enterprises pursuant to the implementation of the minimum wage, as well as to minimize the rate of unemployment because of the changes in the mode of operation of enterprises, we believe that the mediation services launched by the Democratic Party can make humble efforts in this connection, thereby practically solving the problem for employers and employees.

I so submit.

MS MIRIAM LAU (in Cantonese): President, this is the 11th day since the implementation of minimum wage, and Secretary CHEUNG has earlier described that the implementation has been smooth, steady and satisfactory on the whole. I hope this is true. However, based on the truthfulness of what government officials have said in the past, I am afraid that Secretary CHEUNG's description of the implementation of minimum wage may cover up errors by excuses and fail to reveal the full picture.

As many other Honourable colleagues have just said, before and after the implementation of minimum wage, they continue to work on this issue despite the many difficulties, hardships, confusions and doubts. In fact, when the authorities initially passed the legislation, the information grasped by Members, the community and enterprises of various sizes in the business sector was that the minimum wage should be calculated by multiplying the actual number of hours worked by \$28. The most common example cited is \$28 times 26 working days times eight hours of work, thus the amount derived is \$5,824. This is how the minimum wage is calculated, and this is generally accepted by everyone.

Moreover, this computation method is well accepted by the community and this Council. Even many members of the Provisional Minimum Wage Commission indicated that, at that time, they did not have any method of computation, they simply multiplied \$28 by 26 and then by 8, and that was the basis for computing the minimum wage. However, after the Government announced the minimum wage guidelines on 28 March, we found that this is not the case. First of all, the method of computation is completely different from what we initially understood because the monthly payment mode is adopted in

Hong Kong. Under the monthly payment mode, the minimum wage should be calculated by deducting rest day pay and meal break pay from the monthly wage, the amount resulted should then be the minimum wage. This would exceed the budget of many employers. Originally, the minimum wage is derived by multiplying \$28 by the actual number of hours worked, the amount can be affordable by employers, and some employers have already paid employees with that amount. After the issuance of the guidelines, employees found, upon re-computation, that the minimum wage to be paid was different from the previous amount. This is one of the complaints.

Another complaint is about the guidelines published by the Government. Actually, the general guidelines were published on 28 March while the industry guidelines — I know that the latest guideline was published just a few days before the implementation of minimum wage. Employers have great fears upon reading the guidelines; they were not afraid before the publication of the guidelines. Now that the minimum wage has been implemented for 11 days, how can we make the industries rest assured and implement the minimum wage steadily and satisfactorily? There are actually many grey areas in the Minimum Wage Ordinance (the Ordinance) that have yet to be clarified.

Furthermore, some industries, especially small industries, have not clearly understood the guidelines, and employers may not know how to calculate the minimum wage. They need more time to master the information. More importantly, the publication of the guidelines has given rise to disputes as whether meal breaks and rest days should be paid. In this connection, the Government is to be blamed because it has not grasped and clarified in the first instance how meal breaks and rest days should be handled under the minimum wage system. Moreover, the Government has taken the lead to declare that it would be a scrupulous employer by giving outsourced workers paid rest days; leading to conflicts between scrupulous and unscrupulous employers. This is not just a conflict between the Government and industry players; the labour sector was overjoyed and immediately attacked employers who failed to offer paid rest days and meal breaks. They even took concrete actions such as sending wreaths to employers. These sensational actions frightened many employers and they had no way to voice their grievances and could only suffer in silence. They dared not stand up and speak for the nail that stuck out got hammered. Thus, they had a very hard time. Consequently, we held a meeting on 17 April for employers to voice out their grievances in respect of the minimum wage, and we subsequently set up a website and a telephone hotline. We received complaints

from many employers and employees concerning the implementation of the minimum wage; they really had loads of grievances. We trust that the Government must bear the blame.

Fortunately, Secretary CHEUNG met with many representatives of small and medium enterprises on 28 April and made a public statement, explaining clearly that the scope of the minimum wage did not include rest day and meal break pay. He also stated that employers who could not provide rest day and meal break pay were not unscrupulous as that has nothing to do with whether the employers were scrupulous or unscrupulous. This is a very important statement for the enterprises because nobody wants to be regarded as an unscrupulous employer and everybody wants to fulfil their legal obligations.

I would like to spend one minute discussing Mr TSE's motion. We did invite Mr TSE to attend the "grievance meeting" on 17 April; he initially promised to attend but was subsequently absent. If he could attend the meeting, he would be able to learn more about the grievances of enterprises after the implementation of the minimum wage. We certainly concur with some of the views they expressed. The Liberal Party has debated about the minimum wage for eight to 10 years and we have conducted a lot of researches. We understand that low-skill and low-education workers will become unemployed after the Ordinance has been implemented; as a result, there will be an increase in inflation and small enterprises will be significantly affected. We know that these things may happen. Yet, we do not know why the Government has swiftly changed to play another trick in the course of implementation, making enterprises encounter so much hardship. In such a confusing situation, I believe that we should not ask for temporarily suspending the implementation; instead, we should ask for specifying a prosecution buffer period. In other words, prosecution should not be conducted at one stroke and strong measures should not be taken as we hope that the disputes could be handled through mediation. Thank you.

MR RONNY TONG (in Cantonese): President, I hope that Mr Paul TSE would excuse me. After the incidents concerning the high speed railway and the constitutional reform package, I am not really sure whether he solemnly raises a motion for debate or he just wants to indirectly lead Members to debate another subject.

President, no matter what, I think this debate today is essential because the passage of the Minimum Wage Ordinance (the Ordinance) has really evoked repercussions in society. Many of the problems are definitely initiated by the Government, and it has a part to play. Some people even said that the troubles of today were resulted because the Government wanted to gain applause on the one hand, yet it hid behind the scene on the other. It failed to stipulate the provisions that should be clearly spelt out, hence employers and employees adhere to their own interpretations and stances, and in safeguarding their own interests, their acts and disputes have run counter to the basic spirit of the Ordinance.

President, I believe the Government is duty-bound to express clearly at the outset the basic principle under this Ordinance. President, I can simply read it out. At the discussion of the Bills Committee on 28 January last year, the Government responded to the issues raised by Members, especially in respect of clause 3(2)(a) of the Minimum Wage Bill (the Bill). The Government clearly expressed at the meeting that the main object of the Bill was not to specify whether paid meal break was an entitlement provided under a contract of employment or to regulate meal break arrangements. As in the past, these employment matters should be determined by mutual agreement between employers and employees. The Government has also stated very clearly in the last paragraph of the same paper that, specifically speaking, in computing the statutory minimum wage, though meal breaks are not included in the hours worked, the average hourly rate derived will not be distorted and it will not damage the rights of employees.

President, what is the problem? Why has the Government failed to express clearly in the first instance this basic principle, in particular, to explicate this principle in the guidelines? I am really perplexed.

President, Honourable colleagues should first understand some points about the background. These are very important indicators. Section 5 of the Employment Ordinance (as I remember) and section 5 of the Minimum Wage Ordinance clearly specify that the contracts of employment in Hong Kong take monthly salary as the assumed basis, unless the parties have other agreements. It is also stated very explicitly that the Minimum Wage Ordinance has no intention of changing the monthly-rate system to the hourly-rate system. This point is very important.

What are the reasons, President? From the perspective of the monthly-rate system, the salary received in a month certainly covers all work completed within the month, which certainly includes meal breaks and rest days, as meal breaks and pay days will not be computed under the monthly-rate system. However, the situation will be different under the hourly-rate system. Actually, it is explicitly stated in the law that the monthly-rate system should not be replaced by the hourly-rate system. The method of computing the hourly rate is used in the Ordinance as an indicator for assessing if the monthly salary in a certain month meets the minimum wage requirement. The method of computing the hourly rate is essential; otherwise, it will be difficult to develop a fair mechanism applicable to all contracts of employment. The Government has the responsibility to explain clearly to us whether the contracts of employment should be changed from the monthly-rate system to the hourly-rate system upon the implementation of the minimum wage. President, as it was not explicitly stated, I believe we cannot blame employers or employees for fighting for their maximum interests.

Wage earners certainly want to have rest day pay and there is no reason why they do not want to get paid, right? Employers will surely say, "Buddy, the wage is computed on an hourly rate. If you want to take meals, I am sorry, you have to mind your own business." I trust that they can adopt such a position. The Government has a slip, that is, it should specify in the Ordinance or at least publicly clarify that employers should not adopt an unfavourable method of computation to reduce employees' monthly salary upon the implementation of the minimum wage. If an employer used to pay an employee \$5,000 a month, he should not pay him \$4,000 after the passage of the legislation on minimum wage. In my opinion, there should be a provision in the Ordinance specifying that, if an employer adopts such a method or even changes the terms of employment contract to reduce an employee's salary, the act is considered to be a violation of the law.

President, this is not what the Government has said, it only asked the two parties to resolve the problem on their own. President, I do not want to praise Mr JAT Sew-tong, but honestly, his remarks are right. How can the two parties resolve the problem on their own, as their interests are different; since wage earners lack bargaining power, they will definitely be exploited by employers, right?

To be honest, when we scrutinized this Bill, we also computed the amount on the basis of eight hours a day and six days of work a week. If the hourly rate is \$28, the amount derived by multiplying \$28 by 48 and then by 4 will be more than \$5,300. The amount of some \$5,300 is close to the median wage and one half of the CSSA payment amount. In fact, this amount is accountable in foreign countries. Taking a four-member household as an example, if a couple has work, their minimum wages will be just above the income level of a four-member CSSA household. This will encourage them to work and they will not be encouraged to apply for CSSA. This is the thinking behind this arrangement. For this reason, when Members scrutinized this Bill, we had never considered the inclusion of paid leave; if so, the monthly salary would increase from \$5,000 to \$7,000.

MR TOMMY CHEUNG (in Cantonese): President, since the Minimum Wage Ordinance (the Ordinance) came into effect, the disputes between employers and employees intensify day by day. Bad news about company layoffs and closures come unceasingly.

A reporter of the LegCo Review of the Radio Television Hong Kong asked me, should trade unions be held accountable for the chaos today? I told him the responsibility of trade unions was not comparable to that of Chief Executive Donald TSANG, the main culprit, and Secretary Matthew CHEUNG who drafts and implements the Ordinance. They should take the greatest share of blame for the chaos and problems resulted from the implementation of the minimum wage.

Truly, hostility towards the business sector has intensified in society under the provocation of trade unions. In the incident in which food establishments have not provided paid meal breaks or paid rest days to employees, and even increased the price of food, trade unions simply attacked the establishments without seeking to understand the rationale behind such acts. This has significantly jeopardized the business environment.

It has been an established political strategy of trade unions to launch groundless attacks to win the immediate applause of the majority of employees. I am not surprised to see that. Nonetheless, the Government, who should be responsible for balancing the demand of various sectors and safeguarding the

overall economic interest of Hong Kong in the long run, has once and again failed to fulfil its duties. I consider this most disappointing.

During the scrutiny of the Ordinance, the authorities had stated clearly that meal breaks and rest breaks, during which employees were not required to be in the place of employment, did not have to be counted as hours worked. Actually, regarding the initial computation method mentioned by trade unions repeatedly, that is, "eight hours of work multiplied by 26 working days and then by the hourly rate", meal breaks and rest days had never been counted. It was not until the hourly rate for minimum wage was pitched at \$28 that trade unions requested employers to include paid meal breaks and paid rest days for employees in addition to the minimum wage.

However, the authorities had not come forward to tell the truth. On the contrary, officials who, being pressurized by trade unions, often say that scrupulous employers would provide such payments. Should employers not provide such payment be regarded as unscrupulous then?

Actually, the authorities provide contractors of government services with additional subsidies and payments for rest days not because it is scrupulous, but because it is bound by the original contract to do so. Thus, on the premise of not altering contracts, the authorities must continue to include paid rest days in the computation.

However, the authorities have not come forward to explain the case clearly. Eventually, it is being mocked by the media as a "half-scrupulous" employer. The authorities should indeed be dubbed the "half-unscrupulous" employer, for it has not provided paid meal breaks. The hypocritical behaviour of the authorities have put small and medium enterprises (SMEs) which cannot afford paid meal breaks or paid rest days in an extremely difficult situation.

In my view, the most important point is to respect the spirit of the contract. If there is no clear provision in the contract, a clear definition should be provided. If it is clearly stated in the contract that such payments will not be provided, the employers do not have to do so. By the same token, if it is stated in the contract that payments should be provided, the employers should do so. However, in the cases where such payments are provided for in the contract but the employer cannot afford, the employer should be allowed to negotiate with employees in

amending the employment contract on the principle that the original salaries of employees will not be reduced.

Yet, up to date, on the issue of minimum wage, trade unions have adopted a bundling approach to request large scale chain enterprises and government contractors to include paid meal breaks and paid rest days in the computation, and the rippling effect on wages so caused is greater than expected. Though SMEs may turn a deaf ear to the outcry of trade unions and decide whether or not to include paid meal breaks or paid rest day in computing minimum wage according to their affordability, it is somehow meaningless, for the overall wage level in the market has already increased swiftly. Even if SMEs offer an hourly wage of \$33, they may not be able to compete with large-scale chain stores or government contractors in recruiting a cleaner. It is expected that in the lack of competitiveness with chain enterprises, SMEs will eventually dwindle and the market in Hong Kong will grow more lopsided.

In fact, when the authorities indicated that 46 000 people would become unemployed with the minimum wage set an hourly rate of \$28, I already felt very disappointed.

When the authorities persuaded me and the Liberal Party to support the minimum wage, it said that it would strike a balance among the three major principles, namely, preventing excessive low wages, minimizing the decrease in the number of low pay posts lost and maintaining the development and competitiveness of the economy of Hong Kong. Why would the authorities think that it is not a problem when over 40 000 people will become unemployed?

Moreover, the authorities have never considered and accepted my proposal to examine and draw reference from the approach adopted in the United Kingdom in offering a discounted minimum wage to young people. The authorities should understand that though young people with low academic qualifications do not need to support their families, they need to be given an opportunity to continue learning while they work. According to the figures of Hong Kong for the first quarter, before the implementation of the minimum wage when the market rate is applied, the unemployment rate for young people between the age of 15 and 19 has reached 18.3%. Recently, a number of enterprises have indicated their incapability to employ apprentices with no experience and low

academic qualifications at an hourly rate of \$28. This has sounded the alarm. The authorities must grasp this critical moment to take precautionary measure.

President, since the Ordinance was passed in July last year, I have been requesting the authorities to issue expeditiously guidelines for the trade. I keep telling Secretary Matthew CHEUNG that I worry the trade does not understand the Ordinance fully. After repeated requests, guidelines for the trade were issued in less than a month before the Ordinance came into effect. The authorities have undertaken to issue guidelines for the catering industry some time ago, for the catering industry is significantly affected, but in the end, the industry was only given a month to prepare for the implementation.

All along, the trade has done its level best to cope with the policies of the Government, but the authorities fail to play its role properly in helping the trade to prepare for the implementation. It cannot shift the blame in this respect. The Liberal Party puts forth the amendment requesting the authorities to give allowance to members of the trade, who are not ready or do not understand the Ordinance, in the event of inadvertent violation, so that conciliation will first be sought before immediate prosecution. This proposal will indeed help the authorities to remedy its mistakes.

I have to warn the authorities about one thing. If the authorities continue to dodge the problem for the sake of keeping out of the disputes, refrain from explaining the legislation clearly and striking a proper balance, and condone trade unions to irrationally overplaying the matter and arbitrarily labelling employers as "unscrupulous", more SMEs and grass-roots workers will suffer and eventually become the victims of minimum wage. By then, society will further lose their trust in the Government.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, I wonder if you have ever heard of a poem from Chairman MAO, "Like a dim dream recalled, I curse the long-fled past — My native soil two and thirty years gone by."⁴ He wrote

⁴ <<http://www.marxists.org/reference/archive/mao/selected-works/poems/poems26.htm>>

this poem when he returned to Shaoshan at that time. In the wink of an eye, 35 years had lapsed. I recall the time was in 1976. President, at that time, you might have made much effort to learn a campaign, namely, the "review of anti-rightist cases". Today, this trend of "rightist-case review" prevails in this Council. During the fight for implementing minimum wage, Members supported with applause, but upon implementation, Members stage opposition and request for temporary suspension of the implementation.

Naturally, it is not wrong to accuse the Government of playing politics or dereliction of duties. However, at issue is whether a minimum wage should be set when a large number of workers are facing the plight of low income? Or at which level should the minimum wage be set? I used to advocate that a minimum wage should not be implemented, and I did point out that the hourly rate of \$28 was undesirable. Yet, my remarks were met with an avalanche of criticisms from various fronts. They queried what I really wanted if I consider the hourly rate of \$28 unacceptable.

Actually, the labour sector is in destitution and deep waters. Under the system of the Labour Advisory Board, the minimum wage can only be implemented with unanimous consent, members on the board were thus under the pressure to accept the proposal. The same situation applied to the Minimum Wage Commission appointed by Chief Secretary Donald TSANG, where the minimum wage would not be implemented without a consensus. The Government has been resorting to such tactics, claiming that the minimum wage would not be implemented if compromise was not made. For this reason, I could only propose setting the minimum wage at the level of \$33 as a prerequisite for implementing the system, and if the level was set at \$28, I considered we would better do without it. In the end, the proposal was negated by this Council. In fact, I have long since adopted the strategy of "leftist-case review", stating the proposal would only acceptable when higher wage rate was provided. But now, the development takes a turn for "rightist-case review". A proposal from a rightist perspective is put forth, suggesting that due to the undesirable situation in implementation, the implementation of the system should be suspended temporarily.

President, many people claim that it is impossible for SMEs to survive because of the excessive high salaries. Is this the reality? According to my simplest common knowledge in political economy, I roughly divide social

economy into several areas, namely, rents, profits, interests and wages. I will first talk about rents. The rapid and excessive surge in rent has rendered it impossible for enterprises to continue with their operation, or they must maintain operation by suppressing wages. This situation is extremely unreasonable. However, a majority of Members in this Council has used their vote to push up the rent significantly at different times. In the case of Donald TSANG, his aim was to get to a higher post. In the case of TUNG Chee-hwa, he aimed at extending his term. In 2002, for the sake of getting elected, he formulated "ten measures to salvage the property market", which was the cause of the skyrocketing rent today. With the lifting of rent control, the cost of living of the working class or small owners has increased, and the operation costs have also increased. Certainly, some people have managed to make the most profit out of the situation, but the continual speculation in properties has pushed up the rent.

As for profit, the high profit margin in Hong Kong is renowned worldwide. The same applies to interest. In respect of structural financial products, customers are requested to deposit money on the products to gain or reap huge amount of interest or profit. Under such circumstances, certain Members of this Council dare to say that the hourly rate of \$33 for minimum wage is too high, which is impracticable, and that it can only be set at \$28.

Now, problems aroused because the Government fails to give a clear definition to the hours worked. I have reminded them about this long ago. But Deputy Commissioner Alan WONG is an idiot. Secretary Matthew CHEUNG is more idiotic, for he only knows to say the phrase "time-honoured and effective". Secretary Matthew CHEUNG, look at me please. Do you use the phrase "time-honoured and effective" frequently? Even when elderly on the waiting list fail to get a residential place, you still claim that the system is time-honoured and effective. Today, can you still say that everything is time-honoured and effective, buddy? Back then, I did tell you and Deputy Commissioner Alan WONG that there would be big trouble if the number of hours worked was not taken into account. I would say that you treated my remark lightly at that time. You probably thought that Long Hair's remark was negligible, for he only had one vote, and you would like to have your own way. Now that you are under flak from all sides, I would say serve you right! Today, even your own men turn against you and blame you, they employ the "rightist-case review" strategy to play on you.

I have told you long ago that no matter the monthly rate or the hourly rate is adopted, it is important that the original target should be adopted as the standard. However, no express provision has been made on this requirement. If the hourly rate is adopted without considering the hours worked, we cannot come up with the assumption of how many days and hours an employee has to work and at how much per hour in order to obtain the target minimum wage. This is the life of workers, for their wages are as low as some \$5,000 only. Tommy CHEUNG said that this was the result of provocation by members of trade unions. I am not a member of trade union. What provocation can we make? Is it possible for us to make provocation in reality? Is low wages the result of provocation? Can we just talk arbitrarily about whether some \$5,000 is sufficient for meeting daily needs?

JAT Sew-tong is a member of the Minimum Wage Commission (MWC). He says that the Government should handle the issue properly. If so, why has he not mentioned this at an earlier time? Why will he accept the employment of the Government to handle its lawsuit? JAT Sew-tong has undertaken many public offices. He is the Chairman of the Independent Police Complaints Council, he is employed to represent the Government in lawsuits, and he participates in the work of the MWC. Again, this is inbreeding, "the retarded sitting together at a table". What is the point of stating that the arrangement is impracticable right now? The Government may as well employ JAT Sew-tong to represent it in these lawsuits, for he is after all its own man.

President, the present situation is really disastrous. Under the trend of "rightist-case review", the competition law will come to the same pass. It will eventually be given up because the requirements stipulated are undesirable. After all, you are the culprit. Hence, Secretary, please look at me (*The buzzer sounded*) You said that it was time-honoured and effective at that time, so serve you right today.

PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up. Does any other Member wish to speak?

DR MARGARET NG (in Cantonese): President, I have spoken at the Second Reading debate of the Minimum Wage Bill (the Bill). As I listened to the debate

at that time, it became clear that the authorities had not faced squarely the contentious issues involved in this controversial policy and failed to make proper policies. The Government has not admitted the responsibility for the policies made. On the contrary, it attempts to promote ambiguity in those contentious issues, so that those issues will be carried forward to the next stage, and disputes about those issues will start all over again.

At that time, I had already warned that the legislation so enacted would be impracticable. Legislation should be a solution to problems. Even though both parties concerned may disagree with certain provisions, they should know extremely clear about their responsibilities, what they have successfully strived for and what they have failed to strive for. It should not be the case where both parties know not what they have successfully strived for despite the passage of the Minimum Wage Ordinance.

President, for this reason, I will refer back to the report of the relevant Bills Committee this time. According to the report, there is no question that the disputes arisen today should be attributed to the cause mentioned by Mr Paul TSE in his original motion, that is, Members "have recently been queried for failing to thoroughly scrutinize the relevant bill". Regarding this issue that he raised, I notice from the report that very detailed scrutiny had been conducted at the time. However, the Government refuses to shoulder the responsibility for the problems arisen.

Take paid meal breaks as an example. A substantial part of the report has been spent on handling the meal break issue. It was pointed out that clause 3(2)(a) of the Bill at the time provided that the hours worked by an employee in a wage period for computing statutory minimum wage must be taken not to include any period allowed by the employer for a meal except to the extent during that period that the employee is doing work in accordance with the contract of employment or with the agreement or at the direction of the employer. In other words, payment for meal breaks or meal breaks are not counted in general, unless the employee is instructed by the employer to work during the period. I think this is definitely an unfavourable condition to workers. But if we have failed to strive for this, we should face it. The Government should not say that no conclusion has been made, or future planning is awaiting or that it depends on the contract concerned. It should not make these vague statements.

Regarding the clause I read out just now, Secretary Matthew CHEUNG had actually proposed an amendment to delete this clause on meal break at that time, which made the existing legislation even more ambiguous. If we look up the record, we will know that the issue is not ambiguous, only that the Government is shirking its responsibility.

It is evident that the Government wants to win applause for Chief Executive Donald TSANG on the one hand with the passage of the legislation on minimum wage, but on the other hand, it attempts to promote ambiguity as far as possible in imperfect areas. In other words, it is trying to please both parties. At that time, it tried to impress employers to think that the legislation was not too bad and hence passed the legislation, and at the same time, it gave employees an impression that they had successfully strived for a minimum wage. The Government cannot act this way. It must state the issue clearly in an honest manner. It must bear the responsibility upon the passage of the legislation. President, given the situation today, I really think that the Government should learn a lesson: It should admit what it has done.

President, I notice that this issue had not been specifically mentioned at the debate back then, for it had been discussed by the Bills Committee repeatedly. So, Members focused on the discussion of the amendments proposed by Mr LEE Cheuk-yan and other Members during the Committee stage, which were about whether journeys to workplaces should be included in computing wages, and so on.

President, I particularly like to raise a problem put forth by the legal sector upon the implementation of the legislation. It is about the interns employed by the legal sector during the summer vocation, where the employment is in connection to their internship. This issue had been discussed at the Bills Committee, but similarly, the Government puts the series of problems Take the issue relating to Juris Doctor (J.D.) students as an example. At present, they are entitled to two types of exemption. First, it is the exemption for student interns, where the internship employment is a compulsory or elective component of the accredited programme. Another type of exemption for student employment is subject to an age limit of below 26 years of age. Since many J.D. students are taking up study for the second time, more often than not, their age will exceed the limit. However, the Government is too worried about possible abuse and fears criticisms that it gives no consideration to this point.

On the other hand, the Hong Kong Bar Association had raised the concern about whether barristers on pupillage should be bound by minimum wage. At that time, according to the authorities, the Bar Association considered that pupillage was not an employment. I absolutely agree with this. However, if this will give rise to legal disputes, should we then resort to legal means for solution? Will the authorities only examine the case when disputes are taken to the Court?

Prof Johannes CHAN has mentioned another scenario that certain people who have completed the study of law may have plans to study the Postgraduate Certificate in Law (PCLL) but have not yet started studying. During the interim period, how should they be treated if they take up internship? All these issues are now pending the discussion of professors, the Law Society of Hong Kong and the Hong Kong Bar Association, these are uncertainties. They will naturally work out a solution, but I consider that the SAR Government should clarify these issues and amend the legislation to make the issues clearer when necessary.

Thank you, President.

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

MR ALAN LEONG (in Cantonese): President, Mr Ronny TONG and Dr Margaret NG do not mind taking the trouble to point out that during the scrutiny of the Minimum Wage Bill, the Bills Committee had highlighted the loads of problems we encountered at present and had had thorough discussion. Hence, I would say that the Government has asked for the troubles it faced today. No one should be blamed. We must have a clear understanding of the background before we debate on the motion today. For this reason, this Council does not have to bear any responsibility regarding the grey areas found in the existing Minimum Wage Ordinance (the Ordinance).

Actually, during the scrutiny of the Bill, the Bills Committee had already foreseen the many problems encountered at present. Members had not only foreseen those problems but had also brought them up and requested the Government to deal with the problems at meetings of the Bills Committee.

However, the Government had chosen to curry favour with both parties instead of handling the problems, simply trying to muddle through the troubles. This is the choice of the Government. But in view of the problems arisen, the Government is obliged to come forward to offer some assistance to employers and employees, so that they would know their position better.

Some Members mentioned earlier that at the initial stage of implementing the Ordinance, the authorities should exercise discretion in law enforcement by resorting more to conciliation instead of initiating immediate prosecution. The Civic Party supports these views. However, we can hardly vote for the motion today. We are after all of the view that Members of this Council have fulfilled their responsibility during the scrutiny of the Minimum Wage Bill and have put forth many issues for discussion, and the onus is on the Government to decide how to deal with those problems. At present, the Government must solve the problems faced by employers and employees. It should work harder on this. After all, a late step is better than none.

President, in the remaining time, I particularly want to talk about the thorough analyses conducted by the Civic Party in the past on the impact of the implementation of the Ordinance on small and medium enterprises (SME). In our view, under the hegemony of estate developers, exorbitant rent has caused much difficulty to the operation of many SMEs. When we look at the operating accounts of SMEs, it is true that rent has accounted for a rather significant part of their expenditures. I had exchanges with a number of SME employers, at least five or six, in the district in person. These employers told me that it was a fair practice to pay minimum wage, they considered employees should be given a fair deal and they definitely did not mind paying a higher salary to this group of workers. Yet, they told me that the surge in rental was really alarming.

President, you may have read from the press in the past one or two days that a family operated Hong Kong-style restaurant was facing a three-fold rent increase, from \$21,000 to \$70,000 a month. In terms of the operating account of the restaurant, the increase imposed by the owner will only force the restaurant to close down. Surely, we earnestly hope that the impact of the implementation of the Ordinance on employers can be reduced. Hence, the Civic Party urges all owners to reduce rent. Even if they do not reduce rent, they may freeze the rent. If owners are willing to make this declaration, I believe it will definitely ease the

worries of SME employers. Members will get the clear picture if they review the operating accounts of SMEs. If owners respond to the urge of the Civic Party to reduce rent or freeze rent, it will definitely alleviate the shock of the implementation of the Ordinance on SME employers. Hence, we make this urge to all owners.

At the same time, we hope that the Secretary will not be complacent because the motion today is negated by this Council. On the contrary, we think that with the debate today, the truth of the matter will be revealed. The public will know clearly that the Government is wholly responsible for all the problems today. I think the Secretary should face the situation squarely, and the Government should do its level best to help employers and employees to address the existing problems properly.

President, I so submit.

MR CHAN KIN-POR (in Cantonese): President, the implementation of minimum wage in Hong Kong is definitely the fruit of the joint efforts of all employees, employers and the Government over the years. This is no easy achievement and the meaning is far-reaching. Several hundred thousands grass-roots workers will benefit from this. In fact, the primary objective of implementing minimum wage is to alleviate working poverty, ensuring fundamental livelihood protection for workers, so that they can live in dignity.

Over 100 countries or regions have set or implemented minimum wage. As a caring society respecting human rights, Hong Kong should be obliged to implement minimum wage, which must be carried out.

According to the information provided by the Government, in a week since the implementation of the legislation, the Labour Department (LD) has inspected over 800 enterprises and identified 10-odd cases where the wage level offered was suspected to be lower than the statutory minimum wage. The main reason for non-compliance is attributed to the misunderstanding of the legislation by employees or employers.

President, today is the eleventh day since the implementation of minimum wage. In fact, for any new legislation, particularly legislation involving

complicated provisions, technical problems or enforcement problems of various extent will arise at the initial stage.

However, we all understand that there is no problem with the minimum wage policy itself. In the face of the spiralling inflation and price hikes in Hong Kong, the life of wage earners is becoming more and more difficult. Regarding the principle of minimum wage in providing basic livelihood protection for grass-roots workers, I think Members will have no objection.

The problems we are now facing mainly involve technical issues and particulars in enforcement. The first one is the payment for meal breaks, and the second one is on rest days. In my view, the bottomline is that any adjustment in minimum wage should not result in condition inferior to those before the implementation of minimum wage. Definitely, I think the situation should not be inferior to that before the legislation was passed. Therefore, if negotiations between employers and employees can go on along this line, seeking to meet with the requirement of the legislation while ensuring it is not inferior to the previous state, I think it is acceptable.

In fact, the issues relating to paid meal breaks and rest days can be solved by negotiations, rational conciliations and discussions. The issues can be settled between both parties by narrowing the difference to reach a consensus. This will not affect the implementation of the legislation.

Recently, I learnt that the labour sector has reached a consensus with business associations on paid meal breaks for security guards, which is a very contentious issue. The arrangement include providing paid meal breaks for security guards working for more than eight hours, no matter the security guard is going out for meal or having the meal at the workplace. This is a case in point manifesting the understanding and accommodating spirit of the labour sector and the business sector in Hong Kong. It is also evident that the business sector is sincere in improving the livelihood of grass-roots workers and undertaking the social responsibility of enterprises.

We should understand that wages for meal breaks and rest days are non-statutory items. In fact, with the implementation of minimum wage, many small and medium enterprises (SMEs) are under further pressure of increasing

operating costs. Many SMEs are reluctant to offer paid meal breaks and paid rest days to their employees simply because they cannot afford the costs incurred even though they are willing to do so. They worry that it will push their operating costs further upward, and eventually they have to wind up.

We should never classify employers by a simplistic standard. Naturally, employers providing the benefits of paid meal breaks and paid rest days should be commended. However, for employers failing to provide such benefits, they should not be labelled as "unscrupulous employers", for they may fail to provide such benefits to employees only for the time being due to operational difficulties. It is unfair to besmirch all employers in this manner. Employees should appreciate the difficulties of employers and tide over the hard times together. The relationship between employers and employees should be built on mutual co-operation.

President, I strongly believe that an overwhelming majority of employers in Hong Kong are law-abiding, and they are sincere in improving the standard of living of employees. If the authorities find any intentional violation, it definitely should enforce the law. However, as I mentioned earlier, during the initial stage of implementation of the legislation, society may not be able to fully understand the legislation. This is absolutely understandable and foreseeable. If the employer makes the mistake out of misinterpretation resulted from insufficient knowledge of the legislation, the Government should handle the case flexibly by arranging conciliation as far as possible. At the same time, the Government should step up its effort to communicate with the public. It should make proactive efforts to promote and advocate the legislation vigorously, so as to let the public know clearly the method for computing minimum wage and prevent employers from violating the legislation inadvertently due to their misunderstanding of the legislation, thereby leading Hong Kong society to achieve success in implementing minimum wage.

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

In Hong Kong, it is not easy to earn a living. Employers are busy finding business opportunities while employees are busy operating the business. It is

not until the legislation is implemented that people may not necessarily have the motive to follow the provisions. Therefore, a temporary suspension of the implementation of the legislation will only reduce the legislation to exist in name only. Additional resources should be deployed to enhance publicity and promotion. This is the proper approach.

After years of hard work of the Government and employers and employees, a consensus is eventually reached on implementing minimum wage. At the initial stage of implementation, we may encounter some difficulties. Things are always difficult at the beginning. It takes time for various sectors to gear in. Nonetheless, it is indisputable that several hundred thousands grass-roots workers will benefit from minimum wage. Hong Kong employers are more than happy to see improvement in the livelihood of workers, and they are willing to comply with the laws to establish a caring and dignified working environment in Hong Kong.

Thank you, Deputy President. I so submit.

MS AUDREY EU (in Cantonese): Deputy President, Mr Ronny TONG, Dr Margaret NG and Mr Alan LEONG of the Civic Party have clearly stated the party stance, so I am not going to repeat that. However, I would like to supplement some figures.

This is the eleventh day of the implementation of the Minimum Wage Ordinance (the Ordinance) since its enactment. As the media has reported, there were both praises and criticisms in the community. Yet, it seems that there were more criticisms than praises. This made some people query if the implementation of minimum wage is bad. Today, I have listened attentively to all Members. I felt very glad because, so far, except for Mr Paul TSE who opposed the implementation of minimum wage — and had voted against the relevant motion on that day — all other Members have spoken in support of the principles of minimum wage. Of course, they considered that there is still plenty of room for improvement on the part of the Government, especially the Secretary, in promoting the relevant policy.

Why do I find it necessary to supplement some figures? This is because some recent reports have made people — I mean people outside this Council —

query if minimum wage is good or not. I think the problem of working poverty in Hong Kong has aggravated, which drove us into implementing the minimum wage. Oxfam Hong Kong (Oxfam) released a latest report on poverty in September last year, which examined the working poverty in Hong Kong over the past five years. As we can see, in the second quarter of 2010, among the employed households, 10% could be categorized as households of working poor. In other words, one out of every 10 employed households in Hong Kong was a household of working poor. Furthermore, the number of households of working poor was 172 600 in 2005, but it has increased by 12% to 192 500 in 2010.

Besides, the number of people living in poor households has also increased. It rose from 595 600 in 2005 to 660 700 in the second quarter of 2010. Accordingly, the poverty rate has also increased from about 10.5% in 2005 to 11.4% in the second quarter of 2010. Nonetheless, it can be seen that Hong Kong's actual GDP was \$1,743,465 (millions of HK Dollar) in 2010, which represented a 21% actual growth in GDP in six years when compared with 2005. As we can see, although the amount of wealth has increased on the whole, the problem of working poverty within the working population has become more serious. This reflects that the bargaining power of our wage earners failed to enable them to share the fruit of Hong Kong's growth in wealth in terms of wages.

For rental, I once visited the Rating and Valuation Department to search for the rental level in Hong Kong over the past years. The rental level of offices and retail trades alone has exceeded that of 1997. Members may aware that the rental in 1997 was pretty high, but the current rental is even higher than that of 1997. Estate agents estimated that the rental of Grade A commercial buildings or offices will further soar by 20% in future. Oxfam conducted a survey on the impact of minimum wage on small and medium enterprise (SMEs) in September 2009. The findings showed that rental and material cost accounted for 50% to 60% of the total expenditure of most SMEs, and the percentage was as high as about 70% for 20% of these SMEs. The catering industry has been hardest hit by the cost of raw material. Some Hong Kong style cafes indicated that the cost of raw materials (such as pork, gas and rice) has significantly increased by nearly 10%. Thus, the effect brought about by the minimum wage is actually not as large as the soaring rental and costs.

Let us turn to the annual report of Café de Coral. According to the 2010 Annual Report, expenditure on employee benefits has increased by about 4%

when compared with 2009, but the rental level for the same period has increased by nearly 7%. The increase in rental was much higher than the increase in salary and benefits. These figures remind us that the implementation of minimum wage is not only the consensus reached by Members in this Council, but also something we have struggled for years. This is a policy formulated on the basis of actual needs, and was not introduced in a rush. As many colleagues have mentioned in their speeches, the policy was implemented on a voluntary basis in the first place. Later, it turned out to be ineffective and the Government decided to introduce legislation. A Bills Committee was formed for the enactment of the relevant law, and Members who had joined the committee had expressed many views, which were contained in the relevant papers and Bills Committee report, for instance, mentioned by both Dr Margaret NG and Mr Ronny TONG earlier.

I recalled that the meal break incident of Café de Coral took place before the implementation of minimum wage, that is, before the enactment of the Ordinance. The problems did not come all of a sudden after the passage of the Ordinance, but were predictable. We had requested the Government to give an explanation. Nonetheless, it has been the established practice of the Government to leave the issue to be worked out by employers and employees in accordance with the terms and conditions of their employment contracts. It is reluctant to set out its approaches in the policy, and considers it unnecessary to deal with the matter in the legislation.

The result is the emergence of teething problems and ambiguities soon after the Ordinance was introduced. I therefore hope that the Secretary and the Government will continue to assist both employers and employees to forge the greatest consensus, so as to ensure the proper implementation of this good policy.

MR PAUL CHAN (in Cantonese): Deputy President, first of all, I wish to declare my interest. I am an employer and my company hires cleaning workers, amahs and mild mentally handicapped persons. Deputy President, I have all along strongly supported the legislation of minimum wage and sincerely hope that its implementation would benefit employees.

Today, I am going to discuss four points.

Firstly, today, people are still discussing whether it is right to legislate on minimum wage. In fact, people in favour of it usually argue that, after the enactment of the Minimum Wage Ordinance (the Ordinance), life would become more miserable for the disadvantaged, such as the elderly or people with disabilities. Worse still, the rate of unemployment would soar. We have already discussed these arguments when we enact the relevant legislation in this Council, and I had already presented my own views. So, I am not going to repeat. I just want to point out that, the enactment of the minimum wage legislation will inevitably bring negative effect on some people. Yet, the effects had already been considered by this Council during the Committee stage and scrutiny period. If we have to choose the lesser of two evils, it is hoped that employees covered in the safety net could be shielded from these negative effects.

Actually, it is not surprising at all to see that the implementation of minimum wage was followed by an increase in commodity prices. I believe the upward spiral of wages and commodity prices will not continue forever, and there will be a balancing point in the end. The most important of all is that the legislation of minimum wage — just as I have said earlier — targets at the dysfunctional market, and aims at addressing the plight of people suffering from working poverty by preventing extremely low wages. There will not be another "Uncle YIM", a cleaner at a public toilet.

Deputy President, the second point I wish to discuss is, whether thorough consideration has been made in the course of enactment? Have we thoroughly considered meal break pay and rest day pay, in particular? I think that the problem is not a lack of thorough consideration because as early as the Committee stage, Members were well aware that no mandatory provisions would be made to govern these two respects in order to retain certain flexibilities.

Let me cite two examples to illustrate why flexibilities are sometimes necessary. The first example is that, many old buildings in Tai Kok Tsui and Ma Tau Wai do not have many storeys and households, and they are mostly inhabited by elderly people — which is actually the case. Following the introduction of the minimum wage legislation, the wages of security guards have increased. As wage payments are shared among property owners, such an increment is still affordable. However, if meal breaks and rest days are also included in computing wages, individual property owners may no longer afford.

They would have no choice but to sack the security guards, which is indeed a lose-lose situation.

Another example concerns with leave compensation. As many monthly paid employees are unable to take leave, they have accumulated many days of untaken leave. How would their leave compensation be calculated? Suppose a monthly paid employee earns \$22,000 a month, there are 30 days in a month, so when employers calculate the leave compensation, many of them would first deduct 30 days by eight days (both Saturdays and Sundays are day offs). In other words, there are 22 working days. Therefore, the leave compensation for a monthly salary of \$22,000 is \$1,000 per day. However, if we mandatorily include leave payment in the \$22,000 monthly salary, leave compensation will then be calculated by dividing \$22,000 by 30 days, which will give \$733 per day. Thus, the absence of mandatory provisions on leave payment is not necessarily bad for employees. Therefore, Deputy President, different cases should have different considerations.

The third point that I am going to discuss is that, the prevailing conflicts actually originate from the greed of many people to reap maximum profit. This greed can be found in some employers. We noticed that some employers unilaterally dismissed some employees, but subsequently re-employed them under different terms and conditions, thereby depriving them of certain benefits to which they were originally entitled. I think this is irresponsible and offensive.

Sometimes, such greed was also found in employee representatives, who always chide other people as unscrupulous employers. I think this would only intensify and complicate this situation, but does nothing to help resolve the problem. I hope that employers and employees will try to walk in each other's shoes and understand their stance. They should sit down and discuss in a pragmatic manner, and resort to stopgap measures where necessary. For employers, employees are always the most important asset. If employees do not work happily or feel aggrieved and agitated, they will not perform well. For employees, if they put forward harsh requirements, those small enterprises may close down and they will become unemployed in the end.

Deputy President, the fourth point I wish to talk about is that, in my opinion, the SAR Government should be blamed for the present chaotic situation. Since the passage of relevant bill last year, it has a full 10-month period to

prepare the necessary guidelines, but it turns out that the guidelines were pretty stupid. There are two points that should be criticized. First of all, apart from the Legislative Council, the consultation as mentioned in the guidelines only refers to the tripartite committees of the Labour Department. It seems that other employers' organizations, professional bodies or trade associations have not been consulted. That is why the guidelines have attracted such strong reactions after the promulgation.

Secondly, the draft guidelines were issued in December and finalized in March. The only change needed is to specify clearly that rest days and meal breaks are not included in the computation of wages. If the Administration could have done better in its consultation and carried out more briefings and lobbying activities for the stakeholders before the promulgation of the guidelines, I believe the current situation would not have happened.

Deputy President, last of all, I wish to say that I am staunchly opposed to Mr Paul TSE's motion.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mr Paul TSE, you may now speak on the two amendments. The speaking time limit is five minutes.

MR PAUL TSE (in Cantonese): Deputy President, when I proposed this motion right at the beginning, I have stated clearly that I wish to provide Members with a platform to voice their views on the recent chaotic situation. Therefore, I think that colleagues who have used harsh wordings to staunchly oppose or comment on my proposal have misunderstood me. Basically, all I want is that Members could — as some colleagues have pointed out in their speeches — call on the Government to make clarifications on the present chaotic situation. The target has been achieved.

Deputy President, I basically agree with Mr Vincent FANG's amendment. He has, in fact, proposed some specific amendments and proposals to my pretty general suggestions, so that they can be put in place. It was my original intent to provide a discussion platform to perfect and improve this target.

I am afraid that I have some reservations about Dr Priscilla LEUNG's amendment, particularly because she has deleted a few lines about the criticisms that Members of this Council might have missed out something in the course of scrutiny. In fact, the remarks made by her just now have also made many colleagues, including Mr Alan LEONG He has probably made an indirect attempt to criticize all Members by saying that they have diligently discharged their duties. I also agree that most colleagues have spent a lot of time working diligently on this matter, but being an organization subject to the monitoring of the media and the general public, I think we should not be too complacent. When there are criticisms outside this council, Members should at least engage in self-reflection to figure out if something has been missed out or there are misunderstandings in the course of scrutiny. Regardless of whether the omission on our part is caused by the Government's deliberate or unintentional attempt, we are obliged to engage in self-reflection.

Dr Margaret NG highlighted that the case is not like what I had described. In the Bills Committee report, there are some paragraphs reporting on the discussion of the issue of meal break pay. I agree with Dr Margaret NG that we should not approve a piece of legislation so easily, and that we should clearly specify the areas in which the benefits can or cannot be attained. And yet, as regards the paragraphs about paid meal breaks — paragraphs 68 to 70 of the Bills Committee report — I think she must have some misunderstandings. These few paragraphs mainly concern with the place of employment and the direction of the employer relating to the computation of meal break pay, but not clause 3(2)(a) which I believe is the root of all these evils — we have agreed that it should be deleted, and the scope has been widened after the deletion. The problem no longer lies in the direction of the employer or the place of employment, but whether the divider should be 30 or 26. There is another suggestion that the divider should be either nine or eight.

If we look back at the relevant paper or record, there was no mention and detailed description of the issue. Mr Ronny TONG just now pointed out that the

amount under discussion has all along been \$5,000-odd, why would it become \$7,000? It goes without saying that this is precisely where problem lies. In this connection, I think that we should be subject to criticisms. If it is proved that we have really missed out something, we should accept criticisms and even forced the Government to make appropriate changes such that there will be no more room for conjecture.

Secondly, I am afraid that I cannot accept Dr Priscilla LEUNG's amendment concerning a fund. We have already set up too many funds. Rather, large amount of resources should be deployed to do many other tasks. No more funds should be set up for this purpose. I think that too many funds will only incur higher administrative costs.

For the remaining time, I wish to highlight another point which I feel regretful. In this Council, some colleagues have been criticized for merely casting votes without speaking, making clarifications or even chiding. Members from the so-called opposition camp always criticize Members returned by functional constituencies or Members from the pro-establishment camp. And yet, many of them said that they just come to vote and will not elaborate their stance at this juncture. Is it because they think that it is time for them to adopt a lower profile after successfully crossing one barrier? I do not know. However, I feel very regretful that they have adopted such an attitude. Such approach and attitude of debate should not be found in this Council. Thank you, Deputy President.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I wish to thank Mr Paul TSE again for proposing a motion debate on the Minimum Wage Ordinance (the Ordinance) today, and 19 Members for expressing so many precious views.

First of all, we must not forget that the minimum wage is the culmination of years of discussion among all stakeholders — including the Legislative Council, and the fruit of mutual understanding, compromise and endeavour. It represents a significant milestone of the development of Hong Kong's labour policy, and a major step forward in protecting our grass-roots workforce.

In the past, many unskilled workers worked six days a week and no less than eight hours a day for meagre wages. Now, they can earn at least \$5,824, which is calculated by multiplying 208 hours by the statutory minimum wage, \$28 per hour. The more they work, the more they earn. This is a fundamental improvement. We also welcome employers to provide their employees, on this basis, with better conditions of service in accordance with the contractual spirit, and in the light of their specific conditions and affordability.

For a past period of time, we saw that there were heated discussions on whether meal breaks and rest days should be paid. This actually involves the long-standing all-inclusive employment contracts under which employees are paid on a monthly basis. Some Members considered that the Government should be specific on this issue. In fact, as the authorities have pointed out time and again on different occasions both inside and outside this Council since last year, the objective of the minimum wage legislation is to set a wage floor, rather than govern or change the contractual arrangements between employers and employees. Whether meal breaks and rest days are paid depends on the employment conditions of service. Instead of being governed by the labour laws, the matter has all along been negotiated between employers and employees. Given that the situation of different industries and enterprises varies, the employees' needs also vary. It cannot be dealt with in a broad-brush manner, nor is legislation desirable. At present, in countries where minimum wage has been implemented, such as the United Kingdom, Ireland, Japan and the Mainland, no explicit provisions have been made either.

Therefore, we should not use statutory minimum wage to deal with these contractual arrangements, not to mention to take away the efforts made by the Legislative Council in the last Legislative Session. Apart from the 30 meetings conducted by the relevant Bills Committee, the Council had undergone 40 hours of debate to scrutinize the Ordinance in a thorough, careful and detailed manner.

In an article published in a number of newspapers on the eve of the implementation of minimum wage, that is 30 April, I stressed that while the provision of the best benefits to employees is beyond reproach, it is equally reasonable for employers to strive their best to control the business costs. I also reiterated that to some enterprises, the provision of better employment terms is not a matter of "conscience" but "ability". After all, the relationship between employers and employees is so intimate that they are actually riding on the same boat. Problems can only be genuinely resolved by adopting practical approaches

under the principles of lawfulness, fairness and reasonableness, and through communication and negotiation in the light of the actual situation with a view to forging a consensus. The Labour Department will actively promote negotiation and co-ordination when such a need arises.

I have all along stressed that there are three key points concerning the minimum wage issue:

Firstly, it is very important that the income of employees should be no less than before;

Secondly, employers should not reduce employees' benefits if conditions allow; and

Thirdly, employers should not unilaterally vary the employment contracts; and in case there are ambiguities in the contract, employers should have sufficient communication and negotiation with their employees.

If employers and employees can show tolerance in the spirit of rationality and pragmatism, grass-roots workers will definitely receive better treatment, thereby reducing the adverse impact on enterprises, especially the small and medium enterprises. What is more, it is not necessary to set up a relief fund for implementing the minimum wage during its transitional period as many problems can be resolved through communication.

Since the Ordinance was endorsed by the Legislative Council in July last year, the Labour Department has immediately launched different promotional and preparation activities. Since August last year, the Labour Department has deployed staff to hold briefings on statutory minimum wage for employers, employees and different people including members of Incorporated Owners, Owners Committees, Mutual Aid Committees, property management companies and human resources practitioners. So far, about 16 000 people have attended the 80-odd briefings organized by the Labour Department. Furthermore, over the past few months, the Labour Department has been answering enquiries from employers, employees and the public on the computation of statutory minimum wage through the 24-hour enquiry hotline 2717 1771 and its 10 labour relations district offices. Among them, the 24-hour enquiry hotline has handled about 40 000 enquiries on statutory minimum wage over the past six months, and the

Labour Relations Division has also conducted more than 900 in-person consultations this year.

The Labour Department has also conscientiously formulated detailed general reference guidelines and consulted the Legislative Council Panel on Manpower, Labour Advisory Board (LAB), as well as over 300 employers' and employees' organizations and relevant bodies on the guidelines since December last year — consultation was not confined to the Legislative Council Panel on Manpower and the LAB, but also some 300 employers' and employees' organizations and relevant bodies — the draft reference guidelines had been uploaded to the website of the Labour Department for the reference of the public and different sectors, and were finalized in March. Through the industry-specific reference guidelines formulated with the concerted efforts of employers, employees and the Government, which consist of six sets and cover nine industries, the Labour Department has included as many representative scenarios and cases as possible to assist the industry to compute wages according to their specific operation. In order to cater for different needs, the Labour Department has also published a Concise Guide for public information. We have explained the legal provisions and their applications in the previous seminars, as well as reference guidelines and relevant publications. Apart from providing the computation of minimum wage, employers are reminded not to pay their employees a monthly income less than that before the introduction of the Ordinance. Our promotional efforts will continue to ensure the smooth operation of the minimum wage system.

To dovetail with the implementation of minimum wage, the Labour Department has strengthened its manpower and adopted a multi-pronged strategy to step up its consultation and conciliatory services. It has also taken the initiative to conduct proactive inspections of workplaces of various trades, and explained the Ordinance to employers and employees to ensure the former's compliance with the provisions.

Regarding Mr Vincent FANG's proposed introduction of a half-year cushion period, we do not consider it necessary to introduce a cushion period for the implementation of minimum wage. I wish to reiterate that we will definitely be pragmatic at the initial stage of implementation. In case there are inadvertent employers, the Labour Department will first explain to employers the Ordinance and computation method, and ask them to pay the wages falling short of the statutory minimum wage. Subsequently, education and promotional efforts will

be made to assist them. However, in case there are wilful breaches of the Ordinance, enforcement actions will be taken by the Labour Department in a flexible manner, with a view to deal with the relevant cases under the principles of lawfulness, fairness and reasonableness.

The present economic upturn has provided a better starting point for the implementation of minimum wage. Nonetheless, we should not be too complacent. The Labour Department and the Employees' Retraining Board have strengthened their employment services and support, the overall support in particular, so as to help the employees affected by the implementation of minimum wage.

The Labour Department has set up a dedicated telephone hotline 2127 4916 with effect from April to specifically provide referral service for needy job seekers displaced as a result of the implementation of the Ordinance. Where appropriate, we will refer the displaced job seekers to join our specialized employment programmes. In addition, the Labour Department will organize large-scale job fairs on 25 and 26 May in Tseung Kwan O and in July, specifically for the low-paying sectors that are more likely to be affected by the minimum wage legislation. The Labour Department will also continue to operate its various specialized employment programmes (including the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme, the Employment Programme and the Work Orientation and Placement Scheme for the youths, middle-aged and persons with disabilities respectively) with a view to helping them on all fronts, so that they can face the challenges and difficulties in employment. We will closely monitor the actual effect of the Ordinance on the employment market and continue to adopt different policies to facilitate the employment of vulnerable groups.

In fact, as I said earlier, the implementation of the statutory minimum wage over the past week or so has been pretty smooth. The Labour Department has kept an eye on the situation and carried out constant inspections, as well as provide consultation and employment services for employers and employees.

During 1 to 10 May (yesterday), Labour Inspectors have conducted a total of 1 015 inspections. Of these inspections, there were 15 cases where the workers suspected that their wage level was below the statutory minimum wage. Labour Inspectors had immediately advised the parties concerned on the requirements and provisions of the Ordinance in order to safeguard the rights of

the employees. In the same period, the Labour Department's complaint hotline received one complaint about suspected non-compliance of the Ordinance on which prompt follow-up action was undertaken. In respect of employment support services, the Labour Department received on average over 3 000 vacancies per day. This is comparable to the situation prior to the implementation of minimum wage, reflecting the large number of employment opportunities available in the labour market.

For the SMEs, survey and research studies would be conducted by the Government to monitor and evaluate the actual impact of the statutory minimum wage, in particular, on enterprises in the low-paying sectors and the SMEs.

Dr Priscilla LEUNG mentioned the provision of support through various social welfare mechanisms to the elderly owners of old buildings with financial difficulties. I wish to explain that the existing CSSA Scheme has already provided cash assistance to households which cannot support themselves financially to help them meet their basic needs.

Rent allowance is payable to eligible CSSA recipients to meet the accommodation expenses. The amount of the allowance is the actual rent paid, which include rates, government rent and management fees, or the maximum level prescribed by the number of members in the household eligible for CSSA, whichever is the less. CSSA recipients, including elderly CSSA recipients, who need to pay building management fees, are generally entitled to rent allowance to meet the accommodation expenses such as rental and management fees. Yet, the total expenses should not exceed the maximum rent allowance.

Recently, members of the public have expressed concern about the possible increase in the cases of false self-employment. We understand that people are worried about the changes and effects that might be brought about by the implementation of the new legislation, but I must reiterate that employers cannot unilaterally change the status of their employees to self-employed persons. Otherwise, the employees may lodge a claim for remedies against the employer under the Employment Ordinance and common law. On the other hand, if an employer unilaterally claims that the status of an employee has been changed to self-employment, but if the said employee has all along been employed without any significant changes in the conditions of service and remuneration package, his status as an employee will not change as a result.

Between October 2009 and December 2010, apart from the regular workplace inspections, Labour Inspectors have taken special actions to inspect 452 organizations, targeting industries with more disputes of false self-employment. During that period, Labour Inspectors discovered that in the five cases involving false self-employment, the employers concerned were suspected to have violated the Ordinance and the Employees' Compensation Ordinance and prosecutions have been instituted against two of them. Regarding prosecution, between October 2009 and December 2010, the Labour Department had instituted prosecutions in 24 cases involving disputes of false self-employment/complaints. So far, only 17 cases had been successfully prosecuted.

The Labour Department will continue to closely monitor the development of cases involving disputes of false self-employment, and provide consultation services to the employees and employers concerned. The Labour Department will explain to them the different rights enjoyed by employees and self-employed persons, and most importantly, provide them with conciliation services when necessary. If an employee suspects that his employer has exploited his statutory rights by changing his status to self-employment, he should not hesitate but immediately report to the Labour Department. We will certainly undertake follow-up investigations expeditiously, and prosecution will be instituted against the offending employers if there is sufficient evidence.

As Members have expressed concern about the employment and internship of young people, I would like to talk about it briefly. The Ordinance applies to all employment relationships. The Ordinance does not apply if intern students and the participating organizations do not have any employment relationship. Statutory minimum wage also excludes student interns and work experience students as specified in the Ordinance. Postgraduate students who have taken up internship under an employment contract will also enjoy exemption under the relevant provision of the Ordinance. Young people who have not obtained tertiary education qualifications but have registered as an apprentice under the Apprenticeship Ordinance, are also not covered by the Ordinance. As I said earlier, the authorities will continue to work hard to promote various employment projects, which will certainly cover young people, by helping them to secure jobs.

Members have expressed concern about the Government's provision of paid rest days for non-skilled workers employed by its service contractors, alleging that this would exert pressure on the SMEs. Here, I would like to

clarify a very important point. The arrangement that non-skilled workers engaged under government service contractors are entitled to one paid rest day in every period of seven days, is made in the light of the circumstances of the Government. The relevant decision was made after considering the Standard Employment Contract of the Government and a wide range of factors. The relevant arrangement is purely the Government's procurement services policy rather than a guideline for the private sector. I must stress that this is not a guideline, nor is it mandatory at all. Private enterprises should make individual consideration in accordance with their actual operation conditions, abilities and needs. Thus, there is no question of the Government taking the lead to exert pressure.

Deputy President, statutory minimum wage has brought about fundamental changes to the employment system, and affected employers, employees and different sectors of the community, including landlords and consumers. Inevitably, there would be short-term pains before the birth of a brand new system and time is required to fix the teething problems. This is precisely why it takes time for us to be familiar with and adapt to the new legislation. There is nothing to do with the so-called "grey area". Although there are disputes during the process, the positive meaning of minimum wage should not be negated. The introduction of long service payment and mandatory provident fund was also followed by a long period of adaptation before they were gradually rationalized. If we temporarily suspend the implementation of the Ordinance, not only are we wasting our time, the grass-roots workers will also not be protected by the statutory minimum wage. I believe if everyone is willing to move one step forward, the entire society will certainly benefit in the end.

As the statutory minimum wage has officially come into force, we should look ahead. I sincerely call on different sectors of the community to uphold Hong Kong's good tradition of fostering harmonious labour relations, being accommodative with a view to giving full play to the statutory minimum wage and protecting grass-roots workers so as to create harmony.

Deputy President, I so submit. Thank you.

DEPUTY PRESIDENT (in Cantonese): I now call upon Dr Priscilla LEUNG to move the amendment to the motion.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, I move that Mr Paul TSE's motion be amended.

Dr Priscilla LEUNG moved the following amendment: (Translation)

"To delete 'as' after 'That,' and substitute with 'although the statutory minimum wage has come into force on 1 May this year, there are still many grey areas in how to correctly compute staff wages, so'; to add 'worrying that waves of business closures and layoffs may be triggered, while' after 'Minimum Wage Ordinance,'; to delete 'yet' after 'Ordinance are not'; to delete 'Members who supported the passage of the Minimum Wage Bill that day have recently been queried for failing to thoroughly scrutinize the relevant bill and underestimating the negative impact of the legislation' after 'public concern, and' and substitute with 'the Government has not provided other assistance measures for implementing the minimum wage; given the possible negative impact arising from the implementation of the Ordinance, such as the closure of some small and medium enterprises and the loss of certain low-skilled and elementary posts'; and to delete 'temporarily suspend the implementation of the Ordinance' immediately before the full stop and substitute with 'study the provision of funding to set up a 'relief fund for implementing the minimum wage during its transitional period', so as to assist small and medium enterprises which are facing difficulties as a result of implementing the minimum wage, thereby reducing elementary workers' unemployment risks; besides, in response to soaring building management fees caused by the implementation of the minimum wage, which adds to the burden on property owners, the Government may conduct studies on offering support through various social welfare mechanisms to property owners with financial difficulties, particularly the elderly owners of old buildings, so as to minimize the negative impact arising from the implementation of the minimum wage'."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Priscilla LEUNG to Mr Paul TSE's motion, be passed.

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

(Members raised hands)

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

(Members raised hands)

Mr IP Wai-ming rose to claim a division.

DEPUTY PRESIDENT (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for three minutes.

(During the ringing of the division bell, THE PRESIDENT resumed the Chair)

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

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

Functional Constituencies:

Dr Raymond HO voted for the amendment.

Dr Margaret NG, Mr CHEUNG Man-kwong, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted against the amendment.

Mrs Sophie LEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr IP Kwok-him and Mr Paul TSE abstained.

Geographical Constituencies:

Dr Priscilla LEUNG voted for the amendment.

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted against the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming and Mr CHAN Hak-kan abstained.

THE PRESIDENT Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, one was in favour of the amendment, 15 against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, one was in favour of the amendment, 16 against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr Vincent FANG, you may move your amendment.

MR VINCENT FANG (in Cantonese): President, I move that Mr Paul TSE's motion be amended.

Mr Vincent FANG moved the following amendment: (Translation)

"To delete 'as' after 'That,' and substitute with 'after the passage of the Minimum Wage Ordinance by the Legislative Council last year, the preparatory work undertaken by the Government for implementing the legislation was chaotic, and the general guidelines for employers and employees and the reference guidelines for individual industries were only published one after another very shortly before the commencement of the legislation, so'; to delete ', the general guidelines promulgated by the Government as well as the specific guidelines formulated for a number of industries which are mostly affected by the Ordinance are not yet able to allay public concern, and Members who supported the passage of the Minimum Wage Bill that day have recently been queried for failing to thoroughly scrutinize the relevant bill and underestimating the negative impact of the legislation' after 'Minimum Wage Ordinance' and substitute with '; in particular, the relevant guidelines are not only unable to allay public concerns about the implementation of the statutory minimum wage, but have also triggered controversies over employee benefits, such as whether employees are entitled to any wages for their meal breaks and rest days, etc., with the result that the negative impact of the legislation may be far more serious than expected; in this connection'; and to delete 'to temporarily suspend the implementation of the Ordinance' immediately before the full stop and substitute with ': (a) to vigorously publicize that under the statutory minimum wage, employees' minimum wage should be \$28 per hour times the number of actual working hours; (b) to step up promoting that there should be no retrogression of employees' remunerations when compared with their previous remunerations; (c) to encourage the community to respect the rule of law, refrain from making arbitrary moral judgment, and oppose labelling employers who cannot afford extra expenses as 'unscrupulous employers'; (d) to proactively and thoroughly clarify public skepticism or misunderstanding of the legislation; and (e) to introduce a half-year cushion period for the implementation of the legislation, during which mediation will first be conducted and there will not be immediate prosecution in the event of disputes, so that employers and employees will have sufficient time to adapt to the new legislation, so as to enable all sectors in the society, in the spirit of rationality, pragmatism and partnership, to bring forth a soft landing of the minimum wage to enable all employees in Hong Kong to truly benefit'."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Vincent FANG to Mr Paul TSE's motion, be passed.

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

(Members raised hands)

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

(Members raised hands)

Mr IP Wai-ming rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Wai-ming 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, Mr Tommy CHEUNG, Mr Vincent FANG and Mr Paul TSE voted for the amendment.

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms LI Fung-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP

Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted against the amendment.

Mr CHEUNG Hok-ming and Mr CHAN Hak-kan abstained.

THE PRESIDENT Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, four were in favour of the amendment, 18 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 20 were against the amendment and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): As Mr Paul TSE's speaking time has been exhausted, he cannot reply.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Paul TSE be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised hands)

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

(Members raised hands)

Mr IP Wai-ming rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Wai-ming 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.

PRESIDENT (in Cantonese): Among the Members returned by functional constituencies, one was in favour of the motion, 21 against it and one abstained (*Laughter*)

(Mr Ronny TONG rose)

PRESIDENT (in Cantonese): Mr Ronny TONG, what is your problem?

MR RONNY TONG (in Cantonese): President, I have pressed the wrong button.

PRESIDENT (in Cantonese): Mr Ronny TONG, how would you like to vote?

MR RONNY TONG (in Cantonese): I vote against the motion.

PRESIDENT (in Cantonese): So, in the official record of proceedings, it would be recorded that Mr Ronny TONG voted against the motion.

Functional Constituencies:

Mr Paul TSE voted for the motion.

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the motion.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted against the motion.

THE PRESIDENT Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, one was in favour of the motion, 21 against it and one abstained; while among the Members returned by geographical constituencies

through direct elections, 23 were present and 22 were against the motion. 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): Second motion: Improving ancillary facilities at various crossings for the convenience of residents travelling between Guangdong and Hong Kong.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Jeffrey LAM to speak and move the motion.

IMPROVING ANCILLARY FACILITIES AT VARIOUS CROSSINGS FOR THE CONVENIENCE OF RESIDENTS TRAVELLING BETWEEN GUANGDONG AND HONG KONG

MR JEFFREY LAM (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, I recall that at this time last year, I proposed a motion debate on "Proactively implementing the Framework Agreement on Hong Kong/Guangdong Co-operation". Last week, Mr Andrew LEUNG proposed a motion on "Promoting regional economic integration between Guangdong and Hong Kong". It is evident that the Economic Synergy has always worked towards the objectives of promoting the co-operation between Guangdong and Hong Kong, enhancing the exchange and integration between the two places, and developing a quality living area in Guangdong and Hong Kong, so that the two places can enjoy the mutual benefit and develop together. Today, I propose a motion on "Improving Ancillary Facilities at Various Crossings for the Convenience of Residents Travelling between Guangdong and Hong Kong", which is a specific measure for facilitating the exchange between Guangdong and Hong Kong under the framework of further co-operation between the two places.

President, there are 11 immigration control points in Hong Kong, and six of them are land boundary control points. In the past two years, exchanges

between Hong Kong and Mainland have become increasingly frequent. With the introduction of the "multiple-entry endorsement" policy for permanent residents of Shenzhen and further promotion of the Individual Visit Scheme, the number of inbound tourists has scaled new heights. On the other hand, due to the rapid development of the Mainland, an increasing number of Hong Kong people go to the Mainland for purposes of working, visiting relatives and sightseeing. During festive seasons, the flow of visitors and goods between the two places heightens, adding heavy burden to boundary control points of which utilization rates are already extremely high.

Take the Labour Day holiday as an example. The number of Mainland inbound tourists increased by 21.6% in comparison with the same period last year, reaching 304 000 visitor trips. During the entire holiday period, 1.9 million visitor trips entered and exited Hong Kong via various land boundary control points, representing a year-on-year increase of 11%. During the Easter holiday, an enormous number of Hong Kong and Macao tourists entered the Mainland. The visitor flow passing the Shenzhen crossing for the three consecutive days exceeded 700 000 visitor trips, 50% higher than that in normal times. It is evident that the gradual expansion of the Individual Visit Scheme is not the only reason leading to the increase in inbound tourists. Moreover, the communication and exchanges of local residents with people on the Mainland have not changed, and a rising trend will prevail.

Hence, it is expected that the utilization rate of various boundary control points will only increase but not decrease in future. However, as revealed by the present situation, during peak periods of certain festivals or even over normal weekends, the visitor flow at various land boundary control points is extremely high, even to the extent of reaching or exceeding the full capacity.

President, we may first look at the example of Lo Wu. In 2009-2010, the daily average passenger traffic was around 240 000 trips. During weekends or festive periods, the daily passenger traffic reached 300 000 trips. During the peak period of Easter on 22 April this year, the cross-boundary passenger traffic at Lo Wu reached 372 000 trips, which was very close to the daily maximum capacity of 400 000 trips as designed.

President, as the passenger traffic is approaching full capacity, it will not only cause inconvenience to visitors and local residents, but will also pose

challenges to the carrying capacity of the East Rail extension of the MTR Corporation Limited (MTRCL). Moreover, the East Rail extension has to cope with the passenger flow heading to the two control points at Lo Wu and Lok Ma Chau Spur Line. Residents who may not be heading to those control points but have to ride on the East Rail to travel between urban areas and the New Territories will find it very inconvenient.

Moreover, the increase in passenger traffic will exert pressure on the manpower deployment of the Customs and Excise Department, the Immigration Department and the Police Force. If, unfortunately, there are unexpected incidents, the safety of passengers is a cause of worry. It is not merely a matter about clearance but the safety of passengers, so I have to draw the attention of the Government to this situation.

The Shenzhen Bay Control Point and Lok Ma Chau Spur Line Control Point commenced operation a few years ago in succession, since then, the utilization rate of the two control points has been increasing. In the year 2010, the daily number of Mainland visitors to Hong Kong at the two control points has increased more than 50% as compared with that in 2009. The diversion of visitors to these control points has in some measure alleviated the pressure at Lo Wu Control Point and Huanggang Control Point. Yet, the passenger traffic passing through Lo Wu Control Point has also recorded an increase of over 20%. Hence, the decrease in passenger traffic resulted from diversion is offset by the increase. The two new control points cannot play a significant role in alleviating the pressure of passenger traffic, they only serve to delay the time of the two busiest control points reaching full capacity.

President, why is it that the new control points, having been commissioned for a few years, still fail to divert the passenger traffic of Lo Wu and Huanggang Control Points? The reason is that Lo Wu and Huanggang Control Points have been in operation for a longer time, with better railway and road networks in both Hong Kong and Shenzhen. Passengers crossing the border through these two control points may have to spend more time on clearance, but the comprehensive connecting services provided on both sides of the crossings can comparatively save some time in respect of the whole journey. Hence, many people still choose to use these two control points.

For instance, many passengers cross the border at Lo Wu not because they have to stay in Shenzhen, but because they want to go to the railway station and

transport terminal near Lo Wu Control Point to head towards other cities in the Pearl River Delta Region. The same situation applies to Huanggang Control Point. After crossing the border, passengers may have direct access to Guangzhou-Shenzhen Superhighway and other highways. For the cargo trade and the logistic sector, this is the most time-saving route. In comparison with the Lok Ma Chau Spur Line Control Point, though passengers may access the Shenzhen MTR at Fumin Station after crossing the border, there is no large-scale provincial transport terminal or railway station in the vicinity. Hence, after crossing the border at Lok Ma Chau, passengers have to go the urban area in Shenzhen to take railway or buses to go to other places.

Certainly, the Government cannot solve the problems concerning transport support on the Mainland. However, it does not mean that the SAR Government can do nothing. First, the SAR Government may, under the Framework Agreement on Hong Kong/Guangdong Co-operation, discuss with the Shenzhen Provincial Government on the provision of ancillary facilities at aligned control points, the improvement of the connection of transport networks, the upgrading of hardware at control points, and the commencement of improvement or extension works. If the two places can come up with practical and feasible plans after discussion, I believe this will be a win-win approach benefiting both places. In the past, while we could propose to the Mainland Government measures to enhance convenience in clearance through various channels, such as business associations and the Chinese People's Political Consultative Conference, and so on, the specific proposals have to be examined and implemented by the governments of the two places and the relevant counterpart departments.

On the other hand, there is room for the SAR Government to improve the connecting hardware at control points on Hong Kong side. The Liantang Boundary Control Point under planning, the Qianhai/Nonghua Railway Control Point pending approval and the customs clearance control point at Guangzhou-Shenzhen-Hong Kong Express Rail Link are some of the examples. From now on, we have to project the flow of passengers and goods, work on the design of ancillary facilities and conduct environmental protection assessment. The authorities should attend to the details of the work, so as to guard against the nitpickers on cross-boundary infrastructure projects who remain silent for the time being but show "sudden concerns about environmental protection" when the project has entered the implementation stage, which will throw the Government

off its guard. There are in fact precedents and the Government should learn a lesson from the past and stay alert.

Apart from new control points, the ancillary facilities of a number of the existing control points can be further improved. Among the six existing cross-boundary land control points in the territory, there are only two cross-boundary railway lines. According to a survey conducted by the Idea4HK and the Hong Kong Public Governance Association last July, 46% of the interviewees considered that the development of express railway should be given the highest priority. It is evident that railway is playing a very prominent role and this is the demand of the public. As for increasing the carrying capacity of the East Rail extension, the authorities should examine the road networks and provide bus routes to connect towns near the border, such as Sheung Shui, Fan Ling and Tin Shui Wai, to Lo Wu Control Point or Lok Ma Chau Spur Line Control Point, so as to alleviate the pressure of the East Rail. Moreover, the authorities may discuss with the MTRCL and bus companies measures, such as fare concessions, to balance the utilization rate of the two control points and offer an alternative cross-boundary means of transport to the public. I suggest that the Government may further examine this option.

President, apart from hardware, software enhancement may directly alleviate the pressure at control points. According to the survey I mentioned earlier, 24.8% of the interviewees considered the unavailability of 24-hour clearance at all control points would impede the exchange between the two places. It is evident that the opening of more control points for 24-hour clearance is the demand of some citizens. Moreover, the Economic Synergy had, in the submission on this year's Budget, pointed out that the authorities may refer to the e-Channels clearance approach adopted for Hong Kong residents and examine the feasibility of providing self-service clearance access and smart card for Mainland visitors with "multiple entry endorsement" to streamline clearance procedures, thereby shortening the time required for clearance.

President, I would like to talk about the arrangement on co-location of boundary crossing arrangement, which have been discussed a number of times in the past. Since the approval of the funding for the Express Rail Link, the Government has made no specific progress regarding co-location boundary crossing arrangement on the pretext that the relevant study on is still underway. I understand that the Government is under the pressure of some members from

various political parties and groupings. In the past, I did learn about the views that Mainland law-enforcement officers coming to Hong Kong for law enforcement would give rise to various problems and jeopardize the principle of "one country, two systems".

In my view, the judiciary system in Hong Kong must be solemnly safeguarded. However, if we look at the approach adopted by countries to the Schengen Convention in Europe, we cannot but ask why such convenient arrangements are feasible among countries of different sovereignty but not between two places under the premise of "one country"? I am afraid it is not a matter of feasibility but determination to get things done.

President, the trend of integration of Guangdong and Hong Kong cannot be stopped or turned back. Regarding measures facilitating exchanges between the two places, we should seek collective wisdom, give more thoughts and efforts to this issue, instead of preventing, by hook or by crook, exchanges and integration. I welcome other colleagues to put forth more constructive proposals on my motion.

President, I so submit.

Mr Jeffrey LAM moved the following motion: (Translation)

"That, since exchanges between Hong Kong and Mainland have become increasingly frequent, the utilization rates of various land boundary control points are rising year by year, with serious congestion in the flows of people and vehicles occurring frequently during peak periods, this Council urges the Administration to adopt the following improvement measures:

- (a) to conduct studies on the acutely uneven utilization rates of boundary control points in Hong Kong at present, put in place different incentive measures to divert cross-boundary travellers and balance the utilization rates of various crossings, and enhance the arrangements for crowd diversion on weekends and during public holidays, so as to shorten the clearance time for residents travelling between Guangdong and Hong Kong;

- (b) to expeditiously discuss with the Mainland Government improvement to the ancillary facilities near various boundary control points, so as to enhance the linkage between the boundary control points and the facilities such as roads and railway lines, etc., and make it more convenient for residents in both places to travel to and from boundary control points; and
- (c) to expedite the studies on the clearance arrangements at the new boundary control points under planning or construction and on the surrounding ancillary facilities, and having regard to demand, launch extension or improvement works, so as to ensure that the new boundary control points can achieve better diversion effect and alleviate congestion at other crossings."

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

SECRETARY FOR SECURITY (in Cantonese): President, as exchanges between Hong Kong and the Mainland become more and more frequent, the passenger flow at land boundary control points continue to increase. In the first three months of this year, there are on average 503 000 passenger trips passing through various land boundary control points, up 11% as compared with the figure during the same period in 2008, and the increase in the number of trips made by Mainland visitors is obvious. In the first three months of this year, the number of Mainland visitors arriving Hong Kong via land boundary control points per day is 115 000, up 66% as compared with the figure in 2008.

As for vehicle flow, though the number of goods vehicle passing through control points has decreased, the vehicle traffic of private vehicles passing through control points has increased substantially. In the first three months of this year, the average number of clearance trips made by private vehicles per day was 17 000 vehicle trips, 12% up as compared with the same period in 2008.

Actually, with the commissioning of the Shenzhen Bay Control Point and Lok Ma Chau Spur Line Control Point, it has brought about the diversion effect on other control points. The percentage of the number of trips passing through

Lo Wu Control Point and Lok Ma Chau Control Point in the total number of trips using land boundary control points has decreased from 59% and 30% in 2007 to 49% and 17% respectively in the first quarter of this year. On the other hand, the percentage of vehicle traffic in Lok Ma Chau Control Point in the total vehicle traffic has also decreased from 75% in 2007 to 62% in the first quarter of this year.

Despite the increase in passenger traffic, the immigration clearance of travellers at various control points remains smooth. The Immigration Department (ImmD) has a performance pledge of completing clearance procedures within 30 minutes for 95% of travellers using land boundary control points. Actually, the ImmD had enhanced this performance pledge last year by raising the percentage rate, from the original 92% to 95%, so as to provide more efficient service to travellers. The new performance pledge is met by various land boundary control points in general.

At the same time, the SAR Government has adopted a number of measures to enhance the handling capacity of control points and clearance efficiency, which include adopting measures to manage passenger flow, strengthen its electronic service and carry out improvement works at control points. I will brief Members about these measures.

In managing passenger flow, measures are adopted during long holidays or peak periods to facilitate passenger movement. The ImmD and relevant departments have adopted a number of measures, including:

- (a) before long holidays, the ImmD would assess the passenger traffic with the tourism industry and deploy manpower accordingly;
- (b) the ImmD would work with the Police Force, the Transport Department, the Customs and Excise Department (C&ED) and the MTR Corporation Limited at the joint command centre to closely monitor the passenger flow; and
- (c) the ImmD would step up publicity before long holidays and encourage passengers to avoid using cross-boundary service during peak hours, it would also upload onto its website the number of arriving and departing passengers at various control points, so that

passengers may avoid using control points which are particularly busy.

In strengthening electronic service, apart from coping with the passenger traffic at peak periods, we have also made strenuous effort to strengthen the electronic measures at control points. The ImmD will further upgrade the e-Channel system. Since March 2009, the ImmD has launched a pilot scheme on Express e-Channel at Lo Wu Control Point to shorten the clearance time from 12 seconds to eight seconds. At present, 1.4 million citizens have registered for the service.

Since Mainland visitors account for about 80% of the total number of land boundary visitors, it is very important to address the demand for clearance service of Mainland visitors. To enhance the clearance service for Mainland visitors, the ImmD will expand the e-Channel service to Mainland visitors, so that registered Mainland visitors travelling frequently between Hong Kong and the Mainland may use the e-Channels. This new service is planned to launch in January 2012 first at Lo Wu Control Point and Lok Ma Chau Spur Line Control Point.

In respect of vehicle traffic, to provide smooth electronic road cargo system, the C&ED has established the Road Cargo System to move towards electronic customs clearance. The system was officially launched on 17 May last year, and will be fully implemented on 17 November this year. Under the system, registered shippers or freight forwarders may submit cargo information in advance in electronic format, and truckers may use the seamless automatic clearance service.

As for progress of new control point facilities, in the coming years, the SAR Government and the relevant Mainland departments will set up new control point facilities to further facilitate cross-boundary exchanges of passengers, cargoes and goods. The SAR Government and the Mainland Government will continue to take forward the various advance work on Liantang/Heung Yuen Wai Boundary Control Point, aiming to complete no later than 2018. At the ground level of the new control point, cross boundary facilities for goods vehicles, private vehicles and coaches, as well as public transport interchange will be provided. For the convenience of the public in using the new control point, the

Development Bureau has commenced a study to examine the feasibility of providing ancillary facilities, such as public car parks, at the new control point.

Concerning the improvement works of control points, improvement works will be carried out as far as possible at control points to enhance their handling capacity. In this connection, the SAR Government has all along maintained close liaison with the Mainland Government. To tie in with the retrofitting works at Huanggang Control Point and Man Kam To Crossing, the SAR Government is now implementing improvement works at Lok Ma Chau Control Point and Man Kam To Control Point. We plan to double the number of e-Channels at Lok Ma Chau Control Point, from 20 to 46 and improve the facilities at the Passenger Terminal Building; the whole project is expected to be completed in 2013. The improvement works at the Passenger Terminal Building of Man Kam To Control Point had commenced in January 2011, and the number of e-Channels will be doubled from the existing nine to 18, which is expected to be completed within 2012.

Regarding transport support, Members propose to enhance the linkage of control points and other transport facilities, at present, convenient linkage facilities are now provided at control points in Hong Kong and Shenzhen. We may look at the examples of Shenzhen Bay Control Point and Lok Ma Chau Spur Line Control Point. Public transport interchanges are provided at the two control points, and the public may access the two control points by various public transport services, including buses and green minibuses. After crossing the boundary, the public may take the MTR or other public transport near the control points.

All along, the SAR Government have maintained close communication with the Mainland authorities to co-ordinate in various aspects and strengthen clearance service, thereby providing greater convenience to residents of the two places in travelling between the two places. We will continue to enhance the handling capacity and clearance efficiency for control points by implementing various measures.

President, I so submit. I am willing to listen to the views of Members.

DR RAYMOND HO (in Cantonese): President, I recall that in 1990s of the last century, the ancillary facilities for land boundary control points were seriously inadequate. Serious congestion of passenger and vehicle traffic occurred from time to time. These incidents were directly attributed to the lack of long-term planning on large-scale infrastructure on the part of the Government. More often than not, the Government would only respond to or implement remedial measures urgently when problems have arisen, or even when problems have aggravated. A lot of precious time was thus lost. At that time, the inadequate ancillary facilities at land boundary control points between Hong Kong and the Mainland had impeded passenger and vehicular movement, causing colossal economic loss. Eventually, the Government had to enhance the ancillary facilities at control points to improve the situation. Lok Ma Chau Control Point and Shenzhen Bay Control Point, which had been completed in succession, are conducive to the diversion of passenger and vehicular traffic.

In comparison with the situation a decade ago, the ancillary facilities of land boundary control points in Hong Kong and the Mainland have improved markedly. Certainly, during weekends and long vacations, passenger congestion is still found in major land boundary control points, particularly at some popular control point like Lo Wu. During festive periods, such as the Chinese New Year and the Labour Day holidays, the situation will be quite serious.

In January last year, the Chief Secretary for Administration, Mr Henry TANG, said at a special meeting held by the House Committee on the Framework Agreement on Hong Kong/Guangdong Co-operation that there were adequate control points in Hong Kong connecting with the Mainland. He pointed out at that time that there were adequate control points in Hong Kong connecting with the Mainland, which included the Liantang Boundary Control Point, the two control points at the airport link road, as well as the control points at Hong Kong-Zhuhai-Macao Bridge and Guangdong-Shenzhen-Hong Kong Express Rail Link, which were in the planning or construction stage.

While the assessment of the Government in this respect has been very optimistic, I hold that the Government should be on alert given the experience in the past, particularly in consideration of the closer ties between Hong Kong and the Mainland. First, Hong Kong signed the Framework Agreement on Hong Kong/Guangdong Co-operation with the Guangdong Province last year. The Agreement has brought the economic co-operation between Guangdong and Hong Kong to a new stage, including the co-operation between Hong Kong and

Shenzhen in developing Qianhai into an international service centre to further enhance the connection between Hong Kong and Shenzhen. The consolidated economic co-operation between the two places will definitely increase the number of people travelling between the two places for business purposes. On the other hand, the number of Mainland visitors arriving Hong Kong and the number of Hong Kong residents visiting the Mainland as tourists will also increase. As such, the demand for service at control points, land boundary control points in particular, will certainly increase. Hence, the Government must be well prepared in advance. In fact, the lead time the Government required in planning control points and relevant ancillary facilities is quite long. I recall the time I proposed the construction of the Eastern Corridor, and it took us 10 years to discuss the construction of Liantang Boundary Control Point. This is a case in point. Since the planning stage takes rather long time, I hope the Government will make prompt arrangements in planning the construction of other cross-boundary facilities and communicate with the Mainland.

Recently, the Chinese Academy of Social Sciences published the 2011 Blue Book on Urban Competitiveness. The report specifically mentioned that Hong Kong was lagging behind in infrastructure. Hong Kong should be alert about this. Large scale cross-boundary infrastructure projects provide the impetus for Hong Kong to participate in regional co-operation. Hence, the Government must review the need in this aspect from time to time and plan accordingly.

The Government should, apart from having two strings to its bow in the planning of control points, promote the merits of various control points through different channels to encourage the public to use different control points for clearance. Moreover, the Government should further examine the means to strengthen and enhance the e-Channel service for visitors. According to my observation, the public in general consider the e-Channel service satisfactory. However, I do not know if it is the problem of the user or the device that some e-Channels may take more than once to verify the fingerprints of passengers, which causes delay to passenger movement. If the problem lies with the users, the authorities may consider launching publicity, so that passengers can understand the correct practice and procedures. If it is a problem with the device or the software, the authorities should follow up with the service providers and make improvement. I am glad to hear the Secretary saying earlier that the operation of e-Channels will be strengthened. Surely, I hope that 24-hour

clearance service will be provided at all control points to meet with the future demand.

Comparing with the situation 10 years ago, the exchanges between Hong Kong and Mainland have become closer. It is thus of great importance for the Government to facilitate the passenger and vehicular flow at control points, it should not be complacent and should make early planning. At the same time, the authorities should review the utilization rate of various control points from time to time, and it should also introduce effective measures to bring the utilization rate of various control points to the most desirable level.

President, I so submit. Thank you.

MS MIRIAM LAU (in Cantonese): President, in recent years, cross-boundary activities in the areas of economic, cultural and tourism, and so on, between Guangdong and Hong Kong have been frequent. In the year 2009-2010, the number of passengers travelling between the Mainland and Hong Kong through land boundary control points has reached about 190 million passenger trips. It has become a common phenomenon for residents of both places to work and study across the boundary. Regrettably, despite the rapid and frequent exchanges and interactions of residents of both places, the infrastructure and ancillary facilities at various boundary control points are a bit lagging behind the prevailing trend.

Take the long-established Lo Wu Control Point as an example. Though over 47% of passengers are using this control point for clearance, the facilities provided will soon reach full capacity. For instance, on the first day of the Easter holiday (22 April) this year, some 370 000 passenger trips used Lo Wu Control Point, which is close to its full capacity of 400 000 passenger trips as designed.

Initially, Lok Ma Chau Control Point is set up to divert passengers from Lo Wu. However, at present, passengers using the Lok Ma Chau Spur Line only find convenience in interchanging for Route 4 of the Shenzhen MTR. The ancillary facilities in the surrounding area are extremely inadequate. As a result, many passengers choose to use Lo Wu Control Point rather than Lok Ma Chau Control Point. Take the first day of the long holiday for Easter, that is, 22 April, as an example. Only 130 000 passenger trips used Lok Ma Chau Control Point

for clearance, which is less than half of its designed daily capacity of 300 000 passenger trips. The Control Point is somehow lying idle.

The ancillary facilities at Lo Wu are more developed and satisfactory than the boundary control point at Futian, the Mainland side of Lok Ma Chau Control Point. Right at the exit of Lo Wu Control Point, all kinds of transport, including taxis, buses and minibuses, are available, and one can conveniently go to the city centre or other places on the Mainland. On the contrary, it is very difficult to find a taxi in Futian. In this connection, the Hong Kong Government should further discuss with the Shenzhen authorities to continue to improve the transport support at Futian Boundary Control Point.

Geographically speaking, residents in Northwest New Territories and those living along the West Rail will most likely use Lok Ma Chau Control Point. However, since the implementation of the Northern Link Project has been held up for a long time, the West Rail cannot be linked to Lok Ma Chau Control Point, and this has prevented Lok Ma Chau Control Point from effectively fulfilling its function of diverting passenger traffic from Lo Wu.

Moreover, at present, the same fare is charged for railway journey to both Lo Wu and Lok Ma Chau. This has made Lok Ma Chau, a control point with inadequate facilities, even more unattractive. In this connection, the Hong Kong Government may discuss with the MTR Corporation Limited (MTRCL) to introduce more incentives in the form of fare concessions. For instance, the \$3 discount for journey returning to Hong Kong provided at Lok Ma Cha MTR Saver may be slightly increased to further encourage the public to use that control point. Or it may at least consider providing double concession to passengers using Lok Ma Chau Control Point during peak periods in holidays. The authorities should offer incentives to attract passengers to switch to Lok Ma Chau Control Point, thereby alleviating the problem of "overcrowding" at Lo Wu Control Point every holiday.

Furthermore, the MTRCL has now offered a temporary concession for passengers travelling in groups to Lok Ma Chau on MTR. Each passenger paying with Octopus Card at a minimum fare of \$25 will receive an MTR Shops \$10 Cash Coupon and a redemption coupon for a single journey ticket of Shenzhen Metro. We hope that this type of concession will continue to be provided and expanded.

We notice that the improvement works at Shenzhen Bay Control Point will be completed in July. By then, its handling capacity will be doubled to 120 000 passenger trips per day, which should be able to cope with the future increase in passenger traffic. However, the cross-boundary daily average flow was 8 800 vehicles last year, which is far below the daily vehicular flow of 58 600 as it is designed for. Hence, the authorities should strive to increase the quotas of cross-boundary coach services travelling via Shenzhen Bay, and provide special quotas to service providers during holidays when passenger traffic increase substantially. The arrangement will divert more passengers to Shenzhen Bay Control Point and the facilities at the control point can be fully utilized.

Moreover, the Government must expeditiously plan for new control points to cope with the increasing flows of passengers and goods. Presently, as two thirds of the cross-boundary vehicles are now using Huanggang Boundary Control Point, the control point is overloaded, and vehicles exiting at Huanggang Boundary Control Point are usually affected by the serious congestion when they enter the urban area in Shenzhen. Hence, to implement the planning on "East in-East out, West in-West out" for vehicles entering and exiting the Mainland, the Government must commence the works on Liantang/Heung Yuen Wai Boundary Control Point as soon as possible.

Moreover, the 10 major infrastructure mentioned in 2007 Policy Address include the Hong Kong-Shenzhen Western Express Line project (that is the Hong Kong-Shenzhen Airport Rail Link). The rail link connects Chek Lap Kok airport and the Shenzhen airport, so that Hong Kong and Shenzhen can be complementary to each other, and this will be conducive to the consolidation of the competitive edge of Hong Kong. The project can brook no delay.

Finally, apart from hardware support, the Hong Kong Government must put in additional effort in software support. Since the Mainland has decided to issue electronic permits in phrases from 2012 onwards to Mainland residents entering Hong Kong, we support the funding application of around \$250 million submitted by the Immigration Department to the Finance Committee earlier for increasing new model e-Channels and upgrading computer systems, hoping that the SAR Government will cope with the situation properly.

President, I so submit.

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

MR LAU KONG-WAH (in Cantonese): President, I think the motion debate proposed by Mr Jeffrey LAM today is of utmost importance, for the economic exchanges, flows of passenger and goods between Guangdong and Hong Kong have been increasingly frequent. I believe these exchanges will be more frequent in future, and the increasing trend of the figures quoted by the Secretary earlier will only go up but not down, because for the time being, the number of places opened for Individual Visit Scheme only account for a very small portion of the country.

Regarding the reception and clearance capacity of Hong Kong, Mr Jeffrey LAM described the situation as overloaded. In fact, we often notice a lot of passengers waiting in long queues at control points. Certainly, with the introduction of e-Channels, the clearance process of Hong Kong passengers is relatively satisfactory. However, there are still some limitations in hardware and if this problem persists, it will not only cause inconvenience to visitors but also raise safety concerns.

Surely, in the short term, a relatively desirable approach is to issue special permits to Mainland visitors, so that they can use e-Channels. However, in the long run, as I mentioned earlier, the increasing trend will only continue rather than slow down, so long-term planning is extremely important.

This Council has passed the funding application for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL). I remember that this Council had had a heated debate on the XRL at the time, and a number of Members took a doubtful, negative and opposing attitude. However, recently, an increasing number of Hong Kong people, including Members of this Council, have travelled on the XRL and its importance is well evident.

Mr Jeffrey LAM put forth a very important point earlier. He said that if co-location clearance arrangement was not provided upon the completion of the XRL, it would have certain effects on the XRL. Therefore, I hope that the Administration will discuss with the Mainland as soon as possible to finalize the planning.

The long-term planning also includes Liantang Boundary Control Point, which will certainly link to the eastern part of the Mainland. If we drive to the eastern part of the Mainland, we will find the completion of many road networks in the eastern part of Guangdong Province, pending the construction of Liantang Boundary Control Point on Hong Kong side. Certainly, as the works has not yet been commenced, it will be a relatively long time till its completion.

In my view, regarding the development of the Mainland, the construction processes are quite fast and quite efficient. On the contrary, the works in Hong Kong, even the entire process of development, is relatively slow. That is why the Chinese Academy of Social Sciences has given such comments on the competitiveness on Hong Kong, particularly on the implementation of infrastructure projects. I consider that the comment has hit the nail on the head, many colleagues in this Council should think about this.

In respect of the Hong Kong-Zhuhai-Macao Bridge, though there are some hurdles, I believe the Bridge is very important in connecting Hong Kong to the western part of Guangdong and regions farther away. Members should all know the importance of the Bridge. Despite the hurdles, it does not mean the project should come to a standstill. Hence, I hope the problem can be solved as soon as possible. Nonetheless, on this issue or many other infrastructure projects, some political parties adopt a doubtful attitude or even obstruct the commencement of works. In fact, this approach will not win the support of the public, and will impede the development of Hong Kong. Many people tell us that they notice the problem is becoming palpable.

President, I would like to raise another point. In the past, we had proposed providing 24-hour clearance at Lo Wu Control Point, and many people had also put forth this idea as well. At that time, the Administration held the view that all areas around Lo Wu were closed area and must be accessed by train, even if 24-hour clearance was provided, 24-hour train service would not be provided, it thus considered the proposal impracticable. However, with the opening up of the frontier closed area, as well as the frontier area of Lo Wu, I think the Government should re-visit the issue. Since Lo Wu Control Point is linked to Lo Wu Railway Station which serves travellers from many provinces, the provision of 24-hour clearance at Lo Wu Control Point will help in diverting passenger flow.

If sites near the Lo Wu Railway Station can be released, planning can be made for building facilities for feeder buses, minibuses and taxis. Though these arrangements cannot be made today, when the frontier closed areas are open up in future, all these will become feasible, it depends only on the determination of the Government in doing so. Secretary, these arrangements may be beyond your purview. However, in respect of ancillary facilities, be they related to transport service or release of sites, I think the proposals can be put forth again. After all, it takes a relatively long time for planning to implementation.

However, Members may realize from the relevant figures that if additional control points are not set up and if measures are not introduced, the passenger flow between the two places will definitely be affected. I hope that the Secretary will consider this proposal with various departments. It is not a new proposal, it was voted down only due to the geographical, historical and environmental constraints at the time. However, this is a fully practical proposal today. I hope the Secretary will think twice about this.

Thank you, President.

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

MR JAMES TO (in Cantonese): President, I will not repeat the points put forth by colleagues, but the Democratic Party would like to raise the following points.

First, from a forward-looking perspective, I believe the development between the Mainland and Hong Kong will grow closer. Hence, the Administration should have foresight and make long-term planning. It should pay special attention to the concept of diversion. Those heading towards the east should use the control points in the east, while those heading towards the west should use the control points in the west. Ms Miriam LAU has mentioned this point earlier. Mr LAU Kong-wah has mentioned earlier the 24-hour clearance at Lo Wu Control Point. Members understand that the transport support at Lo Wu Control Point is actually the best and thus its utilization rate is the highest. If 24-hour clearance at Lo Wu Control Point is only a transitional arrangement, I think it is feasible and not difficult to make the planning. However, if this is a long-term arrangement, passengers will be further attracted

to use Lo Wu Control Point, which is not conducive in diverting passenger flow. After all, control points at Shenzhen Bay and Western Corridor have to be used. In other words, people heading towards the west should use control points in the west, and those heading towards the east should use control points in the east.

Certainly, there are issues which we cannot deal with unilaterally, and the Mainland will have to consider its own needs and economic development in making the decision. To be frank, the decision of certain issues does not rest with the Central Authorities completely, for the regional interests involved have made the issues more complicated. No matter what, conceptually speaking, either the construction of new control points or the enhancement of transport support at existing control points should base on the primary principle of balancing the utilization rate of various control points.

Second, President, I am concerned about the overcrowding situation at existing control points, as well as the condition of work of government staff stationed at various control points. The Panel on Security will discuss some complaints made by staff of the Immigration Department next month. Actually, they had made similar complaints two years ago. Since the Secretary and the Under Secretary are both in the Chamber now, they are surely well aware of the situation of their colleagues. The problems they raised are not false. Though the Administration has adopted some improvement measures, the problems still exist. Hence, I hope the Secretary will consider the problems seriously. According to the information provided to us by the trade unions concerned, the problems they mentioned will be triggered at any moment and they are in a very dangerous state.

When the Secretary spoke for the first time earlier, he mentioned that with the implementation of diversion measures, the utilization rate of Lo Wu Control Point had decreased from 59% to 49%. However, Secretary, you have to bear in mind that the figure is far higher than the absolute figure we mentioned. We hope that the utilization rate of Lo Wu Control Point will be further reduced. We believe that the utilization rate of Lo Wu Control Point will rebound in the near future, or I should say it would rebound very soon. In view of the trend, we worry that all control points will reach full handling capacity in the next five to 10 years, unless there are sudden and drastic changes. This is the second point.

Third, Mr Jeffrey LAM has specifically mentioned the need to shorten the clearance time in his motion. I would like to examine this point with the

Secretary. The Secretary said in his speech that 92% to 95% of passengers could complete clearance in 30 minutes and he considered the situation desirable. I believe Mr Jeffrey LAM will voice further views later. In fact, for frequent travellers, such as Hong Kong travellers or travellers using e-Channels, the time they need for clearance is far shorter than 30 minutes. In average, a considerable number of travellers have to spend more than 30 minutes for clearance, even if they only account for 5% of the total number of travellers, the actual number of travellers involved is quite big. Even with the exclusion of travellers holding travel documents with problems or those who have to be enquired further, the remaining number of travellers affected is still undesirably large. I do not know whether the Secretary will still use 30 minutes as the standard time for clearance in planning for the next eight to 10 years, or 20 years. Will he shorten this standard clearance time when he makes future planning? Or will he maintain the views that 30 minutes is a desirable standard for clearance, which should be followed forever and no improvement will be made. In fact, the so-called improvement only means an increase from 92% to 95%.

President, these are the views of the Democratic Party. We hope that the Secretary will consider the issue from a forward-looking and long-term perspective. Regarding the opening of new control points, in terms of the cost-effectiveness and the absolute value of development, in particular, the development of sites on both sides of the boundary, I project that, on the basis of the present situation, it will bring benefits and no loss in the next ten to twenty years, and this will be conducive to the development in various aspects of society as a whole.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): President, I have to thank Honourable Members for the views and proposals expressed on the motion. I will then respond to the views of Members collectively.

A number of Members are concerned about the sufficiency of manpower of the Immigration Department (ImmD) in coping with the increase in passengers.

It is a fact that the increasing number of passengers has exerted pressure on various control points. All along, the ImmD deploys resource of the department flexibly to cope with passenger flow during peak period and peak hours. In the year 2011-2012, the ImmD will increase its manpower appropriately to meet the increasing service demand, and it will expand the e-Channel service to alleviate the pressure on clearance service.

Regarding the addition of departmental posts on permanent establishment and resource allocation, established procedures have been laid down in the Government. We will follow these established procedures in examining the increasing trend of passengers with the ImmD, and review the manpower demand of the ImmD.

Several Members have expressed grave concern about the opening hours of control points. Some Members have proposed extending the opening hours of control points. At present, 24-hour clearance service is provided at Lok Ma Chau Control Point, and the opening hours of other control points are from 6.30 am to 12 midnight in general.

Regarding the figures for the first quarter of 2011, the average passenger trip using Lok Ma Chau Control Point for clearance during the overnight period (from 12 midnight to 6.30 am) is 14 800 passenger trips per day, accounting for 17% of the whole day passenger trips at Lok Ma Chau. The number of passengers using Lok Ma Chau Control Point during overnight period remains steady in recent years, no rapid increase has been recorded. According to the circumstance, the existing opening hours of control points should be able to cope with the demand of passengers. Despite that, we will continue monitoring the actual need of passengers and give full consideration to the demand of passengers and effectiveness of service, and so on.

President, Mr Jeffrey LAM and Mr LAU Kong-wah have mentioned the co-location clearance arrangement for Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL). The construction works of the XRL (Hong Kong section) is in full swing and is expected to commission as scheduled in 2015. To examine the provision of more convenient clearance arrangement for passengers, the Government has set up a task force composing of relevant departments, including the Transport and Housing Bureau, the Security Bureau, the Department of Justice, the Constitutional and Mainland Affairs Bureau and the Highways

Department, to examine in-depth issues involving and relating to the implementation of co-location clearance arrangement for XRL. The task force will examine issues from various aspects and draw reference from the experience of other countries and regions. The terminus of XRL at West Kowloon will be developed into a railway hub, connecting the Airport Express Link and the Kowloon Southern Link.

President, I would like to thank Honourable Members again for proposing this motion and speaking on this. We will consider the views of Members proactively.

President, I so submit.

PRESIDENT (in Cantonese): Mr Jeffrey LAM, you may now reply and you have two minutes and 24 seconds.

MR JEFFREY LAM (in Cantonese): President, I have to thank a number of Members for the precious views they expressed on the clearance issues between Guangdong and Hong Kong. In a nutshell, the views expressed seek to remind the Government to save for rainy days and make early preparation. According to the many examples in the past, it will usually take a rather long time for Hong Kong to carry out planning and construction work for the proper implementation of infrastructure projects and improvement of facilities at boundary control points.

I am a bit disappointed today, for only Secretary Ambrose LEE is present. The subject of the motion today indeed covers many infrastructure projects, transport issues and communications with the Mainland, and so on, and I initially expected that the other Directors of Bureaux concerned will also attend the meeting today. Now, I can only hope that they are watching the television and have heard our views.

I know that the Security Bureau and the Immigration Department have adopted many improvement measures, but I consider that there is still room for improvement, particularly on 24-hour clearance. Time has changed. In the past, there was only one access. But now, people can drive to Hong Kong from

various places on the Mainland. In the event of traffic congestion, people may have to stay overnight on the Mainland because the control points have closed. Hence, I hope the SAR Government and the Secretary will continue to examine relevant measures with the Mainland authorities concerned.

However, the Government has failed to attach importance to immigration issues from the perspective of long-term development and policies, and I consider further discussion about this issue is required. Some Members pointed out earlier that it was because of the underestimation of the Government in the past that the utilization rates of various control points in Hong Kong are approaching full capacity. Not only will it cause inconvenience to the public, Hong Kong will also suffer loss in terms of time and money in its long-term development. As for infrastructure issues, I hope that Members will raise their concerns, if any, in this Chamber in future, as they did today, rather than silently blocking the implementation of the project afterwards. *(The buzzer sounded)*

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

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Jeffrey LAM be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 18 May 2011.

Adjourned accordingly at twenty-five minutes to Nine o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Paul CHAN's supplementary question to Question 2**

As regards the statistics of private equity funds and other alternative investment vehicles, the Securities and Futures Commission (SFC) indicated that it currently does not conduct surveys on these funds. The SFC would continue to consider the need to gather such information, in the light of the discussions regarding the regulation of these funds in the international arenas and the local market conditions.